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Legal Invisibility of Mobile Communities under Environmental Justice Frameworks: A Transnational Legal Analysis Centered on Sea Nomadic Peoples

Shih-Wei Tang

Asia University, Taichung, Taiwan, 413305, China

ABSTRACT

Environmental justice (EJ) frameworks increasingly shape environmental governance through principles of equitable protection, meaningful participation, and recognition of marginalized groups. Yet many EJ instruments and implementation routines implicitly assume a territorially settled community that can be easily located, enumerated, and represented. This article develops the concept of "legal invisibility" to describe how mobile communities are structurally excluded from the categories and procedures that trigger environmental rights, consultation, and remedies. Centering sea nomadic peoples, the study conducts a transnational legal analysis that synthesizes EJ theory with governance subjecthood and examines how international and transnational regimes—particularly Indigenous rights norms, the law of the sea, and development-oriented legal identity commitments—interact with domestic administrative systems. The analysis finds that legal invisibility is produced through administrative illegibility, jurisdictional fragmentation in maritime space, and misrecognition in environmental decision-making. It argues that mobility-sensitive EJ requires recognition of maritime relationality, procedural standards for stakeholder identification based on ecological dependence rather than residence, and safeguards that couple legal identity reforms with cultural autonomy to avoid assimilationist outcomes.

KEYWORDS

Environmental justice; Legal invisibility; Mobile communities; Sea nomadic peoples; Governance subjecthood; Maritime jurisdiction; Legal identity; Transnational law

1 Introduction

Environmental justice frameworks often presume that those affected by environmental decisions can be clearly identified as members of a settled population with stable residence, documentation, and recognized political standing. Mobile communities frequently do not meet these predicates. Their movement patterns, dispersed livelihoods, and uneven access to civil registration can leave them present in ecological reality yet absent from administrative records and procedural maps. This produces a distinct form of exclusion: harms and risks are experienced, but legal systems and EJ mechanisms fail to "see" affected groups as eligible participants or rights-holders. The result is not limited to unequal distribution of environmental burdens; it also includes systematic barriers to participation and recognition.

This article examines the legal invisibility of mobile communities under EJ frameworks through a transnational legal analysis centered on sea nomadic peoples. It shows how invisibility is generated by the interaction of state-centric identity systems, territorially segmented ocean governance, and consultation practices built around sedentary assumptions. It then outlines a mobility-sensitive EJ approach that does not treat mobility as a defect to be corrected, but as a legitimate social form requiring tailored legal recognition and procedural accommodation.

2 Environmental Justice and the Preconditions of Legal Visibility

Environmental justice is typically expressed through three mutually reinforcing dimensions: distributional justice, procedural justice, and recognition justice. Distributional justice asks how environmental benefits and burdens are allocated across populations. Procedural justice asks who can participate in decision-making and under what conditions. Recognition justice asks whether a group is acknowledged as a legitimate subject of rights and governance, rather than treated as peripheral, abnormal, or politically unintelligible.

Across these dimensions, EJ depends on a foundational institutional act: affected persons must be made legally visible. Legal visibility is not merely an epistemic condition of "being known" in a sociological sense. It is a governance condition that determines whether individuals and groups are legible within the categories that activate duties, protections, and remedies. Many EJ systems operationalize vulnerability through spatial and demographic metrics that presuppose stable residence, fixed community boundaries, and accessible documentation. When these assumptions are built into eligibility rules, stakeholder lists, and notice procedures, mobility can become a silent disqualifier.

The concept of governance subjecthood helps clarify why this disqualifier persists. Governance subjecthood refers to the ways legal and administrative systems define who counts as a participant in public decision-making and who appears

only as an object of regulation. In state-centered systems, recognized citizenship or lawful residence often functions as the gateway to voice, services, and enforceable claims. Those lacking such status may be governed through security, licensing, or enforcement logics rather than rights-based participation. In EJ contexts, this can transform environmental governance into a two-tier structure: settled and documented populations are treated as consultable stakeholders, while mobile and undocumented populations are treated as compliance risks or informal users, even when they are materially affected.

Legal invisibility thus emerges when EJ's normative commitments—equity, participation, recognition—are routed through administrative mechanisms that require stable identity and locality. The injustice is structural because it is produced by routine rules, not necessarily by explicit discriminatory intent. A framework can affirm participation in principle while excluding mobile communities in practice through design choices that render them procedurally unreachable or legally undefined.

3 Mechanisms of Legal Invisibility in Mobile Contexts

Legal invisibility is generated through interacting mechanisms that span documentation systems, environmental regulation, and social classification. A first mechanism is administrative illegibility. Civil registration and identity documentation typically require fixed points of contact, stable addresses, or institutional access that is unevenly available to mobile populations. Where registration is incomplete or inconsistent, the absence of records can be misinterpreted as the absence of entitlement. This shapes who is counted in environmental baselines, who receives notices, and who can access complaint pathways. Even when mobile communities engage regularly with state institutions through policing or licensing, that contact often does not translate into the form of recognition that supports rights assertion.

A second mechanism is jurisdictional fragmentation in maritime space. Ocean governance is structured through legal zones and state jurisdictional claims. While these zones offer clarity for regulation and resource management, they can cut across customary routes and livelihood patterns that rely on seasonal movement and relational use of marine environments. Mobility that crosses administrative boundaries becomes subject to permits, inspections, and discretionary enforcement, with the practical effect that customary access may be recoded as unauthorized activity. For communities whose social organization is tied to marine mobility, fragmentation does not simply add administrative complexity; it reshapes the conditions under which they can exist as lawful users of their own ecological space. A third mechanism is category misfit. Environmental governance often recognizes stakeholders through land-based community definitions, property relations, or residence within a defined project area. Mobile communities may not appear in these frames even when they are repeatedly exposed to the consequences of coastal development, conservation zoning, resource extraction, or pollution. When a governance process equates "community" with "village" or "municipal population," mobility-based groups can be excluded at the earliest stage of consultation design.

A fourth mechanism is misrecognition as illegality. When mobility is treated as suspicious, legal systems may conflate movement-based livelihood with regulatory avoidance. In such contexts, the absence of documents is interpreted as wrongdoing rather than as an indicator of exclusion. This produces a feedback loop: invisibility increases enforcement vulnerability, enforcement vulnerability deters engagement with institutions, and reduced engagement deepens invisibility.

Together, these mechanisms create what can be termed an EJ eligibility gap. Mobile communities may experience environmental burdens and governance impacts, yet they are not counted as the relevant population for assessment, not reached through notice procedures, and not recognized as holders of culturally grounded claims. The resulting protection deficit is not accidental; it is the predictable outcome of sedentary default settings embedded in law and administration.

4 Transnational Legal Orders and the Conditional Protection of Mobility

Transnational legal regimes provide language and tools that can counter legal invisibility, but their protective capacity is uneven and often dependent on domestic translation. Three normative clusters are particularly relevant: Indigenous rights standards, the law of the sea, and development-oriented commitments to legal identity and inclusive access. Indigenous rights norms emphasize collective rights, cultural integrity, and relationships to traditionally used lands and resources, including coastal waters. These principles support the claim that cultural survival can depend on continued access to marine environments and that governance must respect community-defined lifeworlds rather than imposing settlement-based templates. At the same time, the operational reach of these norms frequently depends on whether a state formally recognizes a group within domestic legal categories. Where recognition is withheld or contested, the normative promise of transnational standards may not translate into enforceable protection.

The law of the sea structures jurisdiction over maritime zones, navigation, resource rights, and certain duties at sea. Its

stabilizing function is important for governance, yet it also reinforces a state-centric allocation of authority that can marginalize mobility-based lifeworlds. Ocean space is treated as divisible into zones of control, and lawful use is commonly mediated through flag status, registration, and licensing regimes. For sea nomadic peoples, these legal technologies can become gatekeeping instruments that determine who is treated as a legitimate maritime actor and who is treated as irregular. Humanitarian obligations at sea exist, but they do not, by themselves, resolve the deeper question of recognition and sustained access to marine resources and routes.

Development-oriented commitments, including global targets supporting legal identity and inclusive access to resources and markets, offer a bridge between EJ and practical governance. Legal identity commitments frame documentation as an inclusion tool that enables access to services and rights. Resource-access commitments frame small-scale livelihoods as deserving of protection within governance and market systems. These commitments can function as interpretive anchors: they link the legitimacy of participation and access to the broader goal of inclusive governance, rather than treating documentation as a purely technical matter. Yet development goals can remain aspirational unless implemented through concrete administrative reforms and mobility-sensitive procedures.

The transnational picture is therefore mixed. International norms can supply an ethical and legal vocabulary for recognition, but they often do not automatically dismantle domestic mechanisms of invisibility. A mobility-sensitive EJ approach must treat transnational norms as enabling conditions that require targeted implementation strategies, not as self-executing solutions.

5 Reframing Environmental Justice: From Sedentary Defaults to Mobility-Sensitive Standards

If legal invisibility is structurally produced, it cannot be resolved merely by adding mobile communities to existing lists. The underlying design assumptions must be revised. A mobility-sensitive EJ framework begins with recognition justice. Recognition must extend beyond land-based belonging and static residence. For sea nomadic peoples, belonging is often relational and ecological: it is expressed through patterned marine use, customary routes, intergenerational knowledge of currents and habitats, and social organization shaped by maritime space. Legal recognition should therefore be capable of acknowledging maritime relationality as a legitimate basis for rights-bearing community status, without requiring conversion to settlement as the condition of legitimacy.

Procedural justice requires corresponding reforms in participation and consultation design. Many impact assessment and conservation procedures identify affected communities through residence-based criteria, public notices posted in administrative centers, and consultation meetings organized around fixed localities and official representatives. Mobility-sensitive procedure would shift the stakeholder-identification principle from residence to ecological dependence and exposure. In practical terms, the question becomes: who relies on the marine ecosystem and who will bear the risks or losses created by a policy, project, or protected-area rule? Once this principle is adopted, participation mechanisms can be adapted to match mobility realities through flexible consultation schedules, mobile-accessible communication channels, culturally appropriate representation, and evidence standards that do not presume written documentation as the only form of legitimacy.

Distributional justice must also be reframed. When access to fisheries, markets, or environmental benefits is conditioned on licenses, permits, or identity papers that mobile communities disproportionately lack, distribution is mediated by status rather than by sustainability practice, dependence, or vulnerability. A mobility-sensitive EJ approach treats missing documentation as a governance problem to be corrected through inclusive measures, not as a moral basis for exclusion. This is especially important where environmental governance intersects with poverty, marginalization, and unequal state presence. Finally, epistemic justice deserves explicit attention. Environmental decisions often rely on data systems that undercount mobile communities, and on forms of knowledge that prioritize scientific measurements over lived ecological expertise. A mobility-sensitive EJ framework should treat community ecological knowledge as relevant evidence, particularly in marine governance where local and customary knowledge can be critical to understanding ecosystem dynamics. Integrating such knowledge does not require rejecting scientific methods; it requires designing institutions that can accept multiple forms of valid evidence.

6 Reform Pathways: Identity, Procedure, and Cross-Border Coordination Without Assimilation

Mobility-sensitive EJ reform must operate across interconnected domains: legal identity, environmental governance procedures, and transboundary cooperation. Legal identity is foundational because it enables access to services, remedies, and representation. Identity reforms, however, must be designed to avoid assimilationist outcomes. If documentation is made conditional on settlement, or if identity is linked to policies that restrict mobility, inclusion becomes a vehicle for cultural erasure. A rights-based approach instead pursues flexible registration processes, mobile

service delivery, and administrative pathways that respect mobility as a legitimate life pattern.

Environmental governance can embed EJ safeguards through standardized procedures. Impact assessments and conservation decisions can incorporate vulnerability screening that is sensitive to mobility-based exposure and dependence. Stakeholder identification protocols can be revised to include mobile user groups as affected parties. Consultation duties can be framed around use and impact rather than residence and property. Grievance mechanisms can be made accessible through low-barrier formats that do not rely solely on stable addresses, formal legal counsel, or bureaucratic literacy.

Cross-border and regional coordination is essential where marine mobility intersects multiple jurisdictions. Jurisdictional fragmentation can be mitigated through cooperative agreements that harmonize access regimes for traditional and small-scale users, coordinate enforcement to reduce arbitrary targeting, and align humanitarian, environmental, and identity-related obligations. Coordination also reduces the risk that mobility is treated as a security exception that overrides EJ commitments. Where cooperation is weak, the same community may be alternately ignored and criminalized depending on location, making procedural rights unreliable.

Institutional culture also matters. Reforms are more likely to be sustained when governance actors treat mobile communities as partners in stewardship rather than as governance problems. Training, guidelines, and accountability mechanisms can reduce bias and improve the quality of engagement. A mobility-sensitive EJ model is ultimately a legitimacy project: it aims to produce governance that is fair not only in outcomes, but also in how it defines who counts.

7 Conclusion

Mobile communities can become legally invisible under environmental justice frameworks when EJ is operationalized through sedentary assumptions about place, membership, and administrative legibility. For sea nomadic peoples, invisibility is not merely informational; it is a patterned governance outcome that blocks recognition, forecloses participation, and transforms customary mobility into regulatory deviance. Transnational legal regimes offer partial tools to counter these dynamics, yet their protective capacity is frequently constrained by domestic status gates and by the territorial segmentation that structures maritime governance.

This article's central contribution is a mobility-sensitive EJ model that treats mobility as a legitimate social form rather than an administrative anomaly. Recognition should include maritime relationality and customary ecological dependence. Procedures should identify stakeholders by exposure and reliance, not solely by residence. Legal identity reforms should expand inclusion while explicitly safeguarding cultural autonomy and avoiding settlement-based conditionality.

For practical application, the analysis supports revising impact assessment and conservation governance to include mobility-sensitive stakeholder protocols, low-barrier participation channels, and evidence practices that validate community ecological knowledge. It also supports coordinated regional approaches where mobility crosses jurisdictions, reducing discretionary enforcement and stabilizing access and remedy. Future research can develop operational metrics for "visibility" in EJ governance, test procedural innovations for mobile participation, and examine how mobility-sensitive safeguards affect both ecological outcomes and rights realization across different legal settings.

About the Author

Shih-Wei Tang, Master's Degree, Department of Leisure and Recreation Management.

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