

DEVELOPMENTS IN THE FIELD

# Mapping Human Rights Violations Connected to Renewable Energy Development in India: A Case Study of the ‘Oran Land’ at Thar Desert and Energy Transition

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## Abstract

This article examines India’s energy transition agenda, which the central government drives to reduce the impact of climate change through the development of renewable energy. It presents a case study of the ‘Oran Land’ in the Thar desert in India, which is affected by the country’s energy transition agenda. It further highlights issues relating to human rights infringement linked to corporations undertaking the transition and operating in the ‘Orans’—a community-protected land. The article concludes with discussions on legislative developments in India and global best practices that seek to mainstream human rights into business practice and further strengthen compliance with the United Nations Guiding Principles on Business and Human Rights.

**Keywords:** climate change; energy transition; human rights; Indigenous Peoples’ rights; land rights

## 1. Introduction

In pursuit of strategies to address climate change, governments across countries in the Global North and South are taking actions such as expanding renewable energy capacities and reducing dependence on fossil fuels.<sup>1</sup> While this approach is an effective way to mitigate the climate change crisis, it has created human rights challenges.<sup>2</sup> The climate crisis has gained unprecedented attention, leading to consistent calls at the international level for countries to scale up actions to tackle climate change and its impact. In response, governments across the world, including India, have announced plans to implement an energy transition agenda, including renewable energy development, to slow down climate

<sup>1</sup> International Renewable Energy Agency (IRENA), *World Energy Transitions Outlook 2024: 1.5°C Pathway* (Abu Dhabi: IRENA, 2024).

<sup>2</sup> Colombia Center on Sustainable Development, *Enabling A Just Transition: Protecting Human Rights in Renewable Energy Projects*, (Colombia: Colombia Center on Sustainable Development, 2023); see also Organization for Economic Cooperation and Development (OECD), *Development Co-Operation Report 2024: Chapter 31 Human Rights and Indigenous People in Just Energy Transition* (Paris: OECD, 2024); Danish Institute for Human Rights, *Outcome Report on the Human Rights Impacts of Nordic Investments in Renewable Energy Development in Global South* (Copenhagen: DIHR, 2021).

change.<sup>3</sup> However, the challenges posed by renewable energy development in India exacerbate social exclusion, restrict access to land and other resources and cause marginalization of communities.<sup>4</sup>

Against the background above, this article examines India's energy transition agenda, which is pursued through the development of renewable energy as a way to reduce the use of fossil fuels and mitigate climate change. In doing so, it considers the 'Oran Land' case study in the Thar Desert in India and highlights the human rights issues linked to corporations operating in the 'Orans'—a community-protected land. Further, it analyses emerging issues linked to human rights infringement associated with the development of renewable energy as part of India's energy transition agenda. The human rights issues discussed in this article concern those affecting the rights of Indigenous peoples and communities hosting renewable energy projects. The aim of this article is to draw attention to how India's energy transition agenda, mainly pursued through the development of renewable energy projects, threatens the rights of Indigenous people.

## II. Renewable Energy Development Projects in India

Presently, there is a surge in the development of large-scale renewable energy projects, including solar and wind, in India. This is due to the country's energy transition agenda, which aligns with the target of producing 500 GW of power from renewables by 2030 in India.<sup>5</sup> It has been observed that the move towards clean energy projects in India is driven by the country's quest to aggressively meet its ambitious net zero emission target by 2070.<sup>6</sup> The pursuit of India's net zero emission target through the development of renewable energy projects is leading to the neglect of human rights norms in Indigenous communities in India. Indigenous communities in rural India depend on community lands for livelihood, sustenance, and cultural identity.<sup>7</sup> India's ambitious net zero emissions target is impacting Indigenous communities, such as the *Orans*, facing human rights violations from Private Renewable Power Corporations (PRPCs) that have been allotted land by the government to develop renewable energy projects.<sup>8</sup> In many cases, such land allocation is done without due consultation with locals despite evidence that such lands are host to endangered species

<sup>3</sup> Indian Renewable Energy Development Agency (IREDA), 37<sup>th</sup> Annual Report *Energy For Ever* (New Delhi: IREDA, 2024).

<sup>4</sup> Ryan Stock and Benjamin K Sovacool, 'Left in the Dark: Colonial Racial Capitalism and Solar Energy Transitions in India' (2023) 105 *Energy Research & Social Science*; see also Siddharth Sareen and Sunila S Kale, 'Solar "Power": Socio-political Dynamics of Infrastructural Development in Two Western Indian States' (2018) 41 *Energy Research & Social Science* 270–8; Komali Yenneti, Rosie Day and Oleg Golubchikov, 'Spatial Justice and the Land Politics of Renewables: Dispossessing Vulnerable Communities through Solar Energy Mega-Projects' (2016) 76 *Geoforum* 90–9; The Energy Resource Institute (TERI), *Renewable Energy to Responsible Energy: A Call for Action* (New Delhi: TERI, 2021).

<sup>5</sup> Press Information Bureau (Government of India), 'The Ministry of New and Renewable Energy,' <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1913789> (accessed 18 September 2023).

<sup>6</sup> Press Information Bureau (Government of India), 'Net Zero Emission Targets,' <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1945472#:~:text=India%2C%20at%20the%2026th%20session,achieve%20net%20zero%20by%202070> (accessed 18 September 2023).

<sup>7</sup> Priti Gupta, 'India's Solar Power Future Clashes with Local Life,' *BBC* (14 October 2022), <https://www.bbc.com/news/business-62848096> (accessed 17 October 2023).

<sup>8</sup> Yenneti et al, note 4, 2; see also Radhika Pardikar, 'Orans of Rajasthan Are in Danger of Being Taken Over by Green Energy Project,' *The Frontline Hindu* (12 January 2023), <https://frontline.thehindu.com/environment/orans-of-rajasthan-in-danger-of-being-taken-over-by-green-energy-projects/article66329333.ece#:~:text=The%20Rajasthan%20orans%20are%20home,considered%20ideal%20for%20solar%20power> (accessed on 18 September 2023).

and public welfare projects, including schools and water tanks to support grazing and agricultural farming in various communities.<sup>9</sup>

Due to India's energy transition agenda, the PRPCs, in collaboration with the government, are bypassing legislative provisions that are supposed to ensure impact assessment is conducted, together with human rights due diligence and prioritization of social inclusion and consultation before the uptake of energy projects.<sup>10</sup> This action shows how the transition agenda pursued through the development of clean energy is threatening the subsistence rights of Indigenous communities. The approach to the energy transition in India championed by the PRPCs contrasts sharply with the target of the United Nations Guiding Principles on Business and Human Rights (UNGPs). In practice, the UNGPs help to ensure that corporations prioritise engagement with local communities to prevent, mitigate or cease human rights impacts linked to their operations.<sup>11</sup>

### III. *Orans*—The Sacred Groves at the Thar Desert in India

The Sanskrit meaning of *Oran* is 'aranya,' which means the undisturbed forest.<sup>12</sup> *Orans* are community forest lands in the Thar Desert region in Rajasthan, India. They are rich in biodiversity, home to endangered species, and a water source in the desert. Unfortunately, the lands hosting these resources are currently allotted to PRPCs without effective impact assessments, social inclusion or stakeholder consultations.<sup>13</sup> This has led to conflict between renewable energy proponents and members of host communities, thus questioning India's approach towards achieving its net zero emission target by 2070.

Geographically, *Orans* stretch around 600,000 hectares and are a rich source of forest products, grazing reserves, and water and critical in addressing climate change.<sup>14</sup> Indigenous tribal communities manage and protect the *Orans* and practice the traditional customs of biodiversity conservation. It has been observed that *Orans* have cultural, spiritual, and environmental significance in the Thar Desert region and that they are considered the home of local saints and various endangered wild animal and bird species, including the great Indian bustard and black buck, among others.<sup>15</sup>

Unfortunately, PRPCs are acquiring the *Orans* through government allotment schemes to develop clean energy, including solar and wind power projects.<sup>16</sup> Due to its geographical location, the Thar Desert is a favourable site for hosting solar and wind power projects. The PRPCs acquire *Orans* without conducting pre-allotment environmental or social and human impact assessments. Reports show that the PRPCs are restricting the Indigenous tribal communities from accessing *Orans* and also cutting down trees and vegetation to make space

<sup>9</sup> The Energy Resource Institute (TERI), *Socio-environmental De-Risking Instruments for Solar Power in India* (New Delhi: TERI, 2021); see also Athar Parvaiz, 'Feature-Rare Birds, Forest Protectors Clash with India's Clean Energy Vision,' *Thomson Reuters Foundation* (13 February 2022), <https://www.reuters.com/article/india-solar-just-transition-idAFL8N2TL316> (accessed on 18 September 2023).

<sup>10</sup> Ryan Stock, 'Triggering Resistance: Contesting the Injustices of Solar Park Development in India' (2022) 86 *Energy Research & Social Science*.

<sup>11</sup> United Nations Guiding Principles on Business and Human Rights, UNHRC 17/4 (adopted on 16 June 2011).

<sup>12</sup> Shalabh Kumar and Monali Sen, 'Short communication: Rajasthan's Thar Desert Orans as a Community Conservation Strategy Under the Post-2020 Global Biodiversity Framework' (2022) 28 *International Journal of Protected Areas and Conservation* 73.

<sup>13</sup> Pradeep Chaudhry, Naveen K Bohra and Karna Ram Choudhary, 'Conserving Biodiversity of Community Forests and Rangelands of a Hot Arid Region of India' (2011) 28 *Land Use Policy* 506–13.

<sup>14</sup> Aman Singh and Aditya Gupta, 'Conserving Orans for Sustainable Livelihoods,' *LISA India* (14 March 2010), <http://www.krapavis-oran.org/pdf/oran.pdf> (accessed on 18 September 2023).

<sup>15</sup> Kumar and Sen, note 12, 3.

<sup>16</sup> Pardikar, note 8, 3.

for solar panels, laying down power transmission lines and constructing ancillary infrastructures over *Orans*.<sup>17</sup>

The Indigenous tribal communities constituting over 40 villages have been involved in several protests against the arbitrary allotment of *Oran* Lands and are demanding protection of their community rights to access the *Orans*.<sup>18</sup> Such protest has attracted the attention of the High Court of the state of Rajasthan, which led to the cancellation of the allotment of 900 acres of land made to a PRPC by state revenue authorities.<sup>19</sup> In 2021, the local communities of western Rajasthan approached the High Court of Rajasthan to challenge the allotment of community lands to the PRPC including parts of *Orans*. The High Court held that the allotment of lands for solar energy projects was made arbitrarily by the revenue department without considering the allotment's land usage purposes and the social impacts of the projects to be executed.<sup>20</sup> Additionally, the Supreme Court of India has been approached through public interest litigation raising the concern of rising deaths of the great Indian bustard bird due to collusions with power transmission lines of the renewable energy projects in western Rajasthan and Gujarat. In this case, the Supreme Court ordered that the transmission lines be laid underground and advised the PRPCs to adopt the principle of egocentrism while developing renewable energy projects.<sup>21</sup>

The renewable energy projects developed by PRPCs have benefitted other local communities by making them energy prosumer communities. For example, 30 cities in Rajasthan are proposed to be developed as green cities based on rooftop solar panels.<sup>22</sup> The government of Rajasthan is also establishing 1-megawatt agrivoltaic solar power projects to provide energy access to farming communities.<sup>23</sup> The practice of agrivoltaics can be useful in resolving the conflict between Indigenous communities' land rights and renewable energy project development in India. This has been done in China, where the agrivoltaics technique has been successfully implemented in the Gobi Desert and has converted the desert region into vast tracks of green lands.<sup>24</sup> On a similar note, the state government of Gujarat has developed Modhera village as India's first round-the-clock solar-powered village.<sup>25</sup> While these projects are promising, they are also associated with human rights issues.<sup>26</sup> Although there has been an effort to address some of the issues through actions that tend to pacify host communities, human rights violations persist. For example, the Energy Institute of

<sup>17</sup> Athar Parvaiz, 'Feature-Rare Birds, Forest Protectors Clash with India's Clean Energy Vision,' *Thomson Reuters Foundation* (13 February 2022), <https://www.reuters.com/article/india-solar-just-transition-idAFL8N2TL316> (accessed 18 September 2023).

<sup>18</sup> Azera Parveen Rahman, 'Locals Brace to Fight for Their Orans in Rajasthan,' *Mongabay India* (20 July 2020), <https://india.mongabay.com/2020/07/locals-brace-to-fight-for-their-oran-in-rajasthan/> (accessed 9 September 2023).

<sup>19</sup> Pardikar, note 8, 3.

<sup>20</sup> *Kalyan Singh & Ors. v State of Rajasthan* Raj. HC (2021).

<sup>21</sup> *M.K Ranjit Singh & Ors v Union of India* AIR SC (2021).

<sup>22</sup> Energy Department (State Government of Rajasthan, India), 'Rajasthan Solar Energy Policy 2019' <https://rajnivesh.rajasthan.gov.in/Uploads/d64c2541-89cb-44ae-bcd4-a5090c9f59ba.pdf> (accessed 2 March 2024).

<sup>23</sup> Agrivoltaics involves the simultaneous use of land for agriculture power generation from solar and photovoltaic. Currently, there are 11 agrivoltaic pilot projects operationalized in India. See International Institute for Sustainable Development (IISD), *Agrivoltaics in India: Challenges and Opportunities for Scale Up* (Canada: IISD, 2023).

<sup>24</sup> National Solar Energy Federation of India (NSEFI), *Agrivoltaics in India: Overview of Operational Projects and Relevant Policies* (New Delhi: NSEFI, 2021).

<sup>25</sup> Sunil Kataria, 'India's First Solar Village,' *Thomson Reuters Foundation* (1 November 2022), <https://www.reuters.com/business/cop/indias-first-fully-solar-village-lights-up-lives-poor-residents-2022-11-01/> (accessed on 21 February 2024).

<sup>26</sup> Ryan Stock and Benjamin K Sovacool, 'Left in the Dark: Colonial Racial Capitalism and Solar Energy Transitions in India' (2023) 105 *Energy Research & Social Science*.

India has reported that PRPCs carry out useful corporate social responsibility activities in the villages adjoining their projects, including building and rehabilitating primary schools, providing drinking water, and installing drip irrigation infrastructures.<sup>27</sup> However, this approach has not prevented or reduced potential human rights violations, especially in the Oran Land in the Thar Desert region of India.

As part of the response to the infringement of Indigenous rights from renewable energy projects, members of the Oran community have largely relied on social protests and have not approached constitutional courts to seek remedies to enforce their rights against PRPCs.<sup>28</sup> Although community members have filed civil suits before the Rajasthan High Court, where the plaintiffs challenged the acquisition of their private land rights by PRPCs, but have failed to raise the issue of human rights abuses associated with the land acquisition.<sup>29</sup> This is largely due to poor land records maintenance, lack of awareness about human rights and access to legal services.<sup>30</sup> It is pertinent to note that on the part of the government, there has been no clear official statement on the issue because of its focus on achieving the ambitious net zero emission target by 2070. The central and state governments of western Indian states like Gujarat and Rajasthan have failed to learn from the mistakes of eastern states involving excessive coal mining, where they have neglected the environmental and human rights concerns of coal communities.<sup>31</sup> Regrettably, western Indian states, the epicentre of current renewable development, compete to attract private investors.<sup>32</sup> Consequently, they have been involved in relegating due diligence of human rights and environmental and social impacts and are silent on concerns of human rights violations associated with the projects.<sup>33</sup> It appears that from the government's viewpoint, the benefits of the renewable energy projects far outweigh the negative impacts on members of the Oran Land in the Thar Desert region.

#### IV. Human Rights Infringements by PRPCs in the Orans Thar Desert Region of India

Presently, the renewable projects in the Thar Desert region of India are not only a potential threat to Orans but are also infringing the rights of marginalised Indigenous tribal communities settled around project sites. We note that many of the locals in the communities are traditional pastoralists or cattle herders who depend on Orans for their subsistence and livelihood.<sup>34</sup> Due to the government's allotment of land to PRPCs, the Orans are enclosed by barbed wires. Thus, Indigenous communities are losing their rights of access to the Orans. It is important to note that this has severely disturbed their traditional livelihood, cultural values and village economic activities.<sup>35</sup>

<sup>27</sup> The Energy Resource Institute India (TERI), *Addressing Land Issues for Utility Scale Renewable Projects in India* (New Delhi: TERI, 2018).

<sup>28</sup> Land Conflicts Watch, *Green Energy Red Zones: Land Conflicts in Rajasthan's Renewable Energy Drives* (New Delhi: Land Conflict Watch, 2024); see also Delhi Solidarity Group, *The Anatomy of Solar Land Grab* (New Delhi: Delhi Solidarity Group, 2021).

<sup>29</sup> *Kalyan Singh & Ors. v State of Rajasthan* Raj. HC (2021).

<sup>30</sup> Land Conflict Watch, note 28, 6.

<sup>31</sup> Niti Aayog (Government of India), *Interministerial Committee Report on Just Transition from Coal* (New Delhi: Niti Aayog, 2021).

<sup>32</sup> Yenneti et al, note 4, 2.

<sup>33</sup> Yenneti et al, note 4, 2; see also The Energy Resource Institute, note 4, 2.

<sup>34</sup> M Rawat and S Dookia, 'Sacred groves of Thar desert: A case study of Kolu Pabuji Oran of western Rajasthan and its biodiversity profiling' (2017) 2 *International Journal of Zoology Studies* 201–7.

<sup>35</sup> A Ahearn, T Sternberg and Hahn A (eds.), *Pastoralist Livelihoods in Asian Drylands: Environment, Governance and Risk*, (Cambridgeshire: The White Horse Press, 2017) 177–98; see also Anuradha Nagaraj and Roli Srivastava, 'India's Solar energy boom fuels local struggle for green justice,' *Thomson Reuters Foundation* (14 February 2022), <https://doi.org/10.1017/bhj.2024.29>

Another negative impact of renewable energy projects on *Oran* Land is that they are not highly job intensive as they only offer jobs during construction. This means that upon completion of the projects, few jobs are offered to locals except for casual work of cleaning and guarding the solar panels.<sup>36</sup> The land allotment to PRPCs by the government has encouraged land grabbing of *Orans* without adequate measures to address the loss of subsistence and livelihood of members of host communities.<sup>37</sup> Consequently, these have led to internal displacements of male members of Indigenous tribes to urban centres in search of a livelihood. The displacements leading to urban migration cause more challenges for male members as they are hardly skilled or educated to match the urban job requirements, exposing them to further exploitation and economic vulnerability.<sup>38</sup>

The forceful displacement of the Indigenous people of *Orans* is a gross human rights violation as it has caused the loss of their traditional lifestyle and cultural values. This is in contravention of Article 27 of the International Covenant on Civil and Political Rights that prevents minority communities from being deprived of their right to enjoy culture with other members of society.<sup>39</sup> Also, the displacement of people to make room for renewable energy projects is a way to deny Indigenous communities the right to access other natural resources, livelihood and subsistence that is part of their cultural rights.<sup>40</sup> This action has huge impacts on women, who are among the worst affected victims as they are mainly engaged in herding and pastoral activities in addition to household work and taking care of the children.<sup>41</sup>

One important aspect of the human rights infringement by PRPCs linked to the *Orans* is the lack of fair procedures when acquiring lands for energy projects.<sup>42</sup> For example, the *Oran* communities have witnessed 40 villages protesting against the forceful acquisition of *Orans* by PRPCs, the non-settlement of their tenure rights and the restriction of their access.<sup>43</sup> In some cases, the villagers alleged that they were not informed or consulted before the decisions to develop power projects were taken. Additionally, there are cases where PRPCs acquired lands that had been pre-allotted for the construction of community welfare projects like water canals for irrigation, schools and public toilets for village communities for renewable energy projects.<sup>44</sup>

The non-compliance to procedural measures in land acquisition by PRPCs for projects is an infringement on the right of Indigenous communities to own and enjoy land, and this constitutes an act of deprivation of access to property.<sup>45</sup> Such action by the government and PRPCs could destroy the ecological significance of *Orans* in the Thar Desert region by reducing the ability of Indigenous communities to adapt to climate change, especially in

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[www.context.news/climate-justice/long-read/indias-solar-energy-boom-fuels-local-struggle-for-green-justice](http://www.context.news/climate-justice/long-read/indias-solar-energy-boom-fuels-local-struggle-for-green-justice) (accessed 22 September 2023).

<sup>36</sup> Arathi Menon, 'Given Lands for Power, Pavagada Residents are Now Powerless,' *Mongabay India*, (14 February 2022), <https://india.mongabay.com/2022/02/given-land-for-power-pavagada-residents-now-powerless/> (accessed 22 September 2023).

<sup>37</sup> Singh and Gupta, note 14, 4; see also The Energy Resource Institute, note 27, 6.

<sup>38</sup> The Energy Resource Institute, note 4, 2.

<sup>39</sup> International Covenant on Civil and Political Rights (adopted on 16 December 1966, entered into force 23 March 1976), art 27.

<sup>40</sup> Thoko Kaime and Godswill Agbaitoro, 'An Energy Justice Approach to Resolving the Conflict Between the Development of Energy Access Projects and Human Rights Risks and Violations in Africa: Can a Balance be Struck?' (2022) 3 *Global Energy Law and Sustainability* 39–71.

<sup>41</sup> The Energy Resource Institute, note 4, 2.

<sup>42</sup> Ibid.

<sup>43</sup> Pardikar, note 8, 3.

<sup>44</sup> *Kalyan Singh & Ors. v State of Rajasthan* Raj. HC (2021).

<sup>45</sup> Universal Declaration on Human Rights (adopted on 10 December 1948, entered into force 10 December 1948) art 17 (1), (2).



long summers and droughts. It also infringes on their rights to live in a safe environment, protected under various international human rights covenants and part of India's constitution.<sup>46</sup> There has been a rise in land conflicts between PRPCs and members of Indigenous communities, leading to an increase in legal claims and a threat to the social acceptance of renewable energy projects in India.<sup>47</sup> The increase in legal claims is exacerbated by the lack of access to remedies for human rights infringement against Indigenous communities by PRPCs.<sup>48</sup> This is also fuelled by the lack of mandatory impact assessments to accompany such projects. It is observed that the renewable energy policies for solar and wind power projects do not incorporate provisions for mandatory impact assessments before the allotment of lands to PRPCs.<sup>49</sup> Regrettably, India's governments support removing social impact assessments by incorporating fast-track acquisition policy measures.<sup>50</sup> Most solar and wind energy projects in India receive funding from government financial agencies or banks.<sup>51</sup> As a result, these entities are highly motivated to ensure the rapid implementation of the renewable energy projects they finance.

Additionally, there is the issue of the lack of an Environmental Impact Assessment (EIA) framework. The EIA regime in India provides an exemption for solar and wind power projects, thus allowing the project developers to commence operations without conducting EIAs or even securing environmental clearance.<sup>52</sup> The latest EIA notification exempts solar photovoltaic power projects, solar parks and solar thermal power projects from obtaining environmental clearance as their implementation does not involve the emission of greenhouse gases.<sup>53</sup> This appears to be one of the approaches adopted by the government to increase the development of renewable energy projects in India. There is ample evidence to suggest that solar and wind power projects also cause environmental damage. For example, the National Green Tribunal of India (NGT) in a matter before it raised by a non-governmental organization (NGO) on behalf of the agropastoral community of Challakere village of Karnataka. The community's rights to access the more than 10,000 acres of grasslands were restricted by renewable project developers. The ESG argued that the renewable project developers have not secured the necessary environment clearance under EIA notification 2006. The NGT allowed the developers to proceed with the work and observed that EIA 2006 exempts solar and wind power projects. Also, the NGT has asked the Ministry of Environment, Forest and Climate Change to reconsider the exemption given to solar and wind power projects from producing EIA because the technology used is still at its

<sup>46</sup> *MC Mehta v Union of India* AIR SC (1987), In this case, the Supreme Court of India interpreted Article 21 of the Indian Constitution stating that right to life includes right to live in a safe environment.

<sup>47</sup> ASAR, *Powering Ahead: An Assessment of the Socio-economic and Environmental Impacts of Large Scale Renewable Energy Projects and an Examination of the Existing Regulatory Content* (New Delhi: ASAR 2019).

<sup>48</sup> Stock, note 10, 3.

<sup>49</sup> Press Information Bureau (Government of India), 'The Ministry of New and Renewable Energy,' <https://pib.gov.in/newsite/printrelease.aspx?relid=137373> (accessed 18 September 2023); see also Energy Department (State Government of Rajasthan, India), 'Rajasthan Solar Energy Policy 2019' <https://rajnivesh.rajasthan.gov.in/Uploads/d64c2541-89cb-44ae-bcd4-a5090c9f59ba.pdf> (accessed 2 March 2024).

<sup>50</sup> ASAR, note 47, 9.

<sup>51</sup> The Indian Renewable Energy Development Agency (IREDA), 36<sup>th</sup> *Annual Report of IREDA* (New Delhi: IREDA, 2023).

<sup>52</sup> The Ministry Environment, Forest and Climate Change (Government of India), 'Office Memorandum on Applicability of EIA for Solar PV Power Projects, Solar Park Development, Solar Thermal Power Plant' [https://environmentclearance.nic.in/writereaddata/OMs-2004-2021/182\\_OM\\_07\\_07\\_2017.pdf](https://environmentclearance.nic.in/writereaddata/OMs-2004-2021/182_OM_07_07_2017.pdf) (accessed 2 March, 2024).

<sup>53</sup> The Ministry Environment, Forest and Climate Change (Government of India), 'Office Memorandum on Applicability of Environmental Clearance for Solar Photovoltaics Power Projects' [https://environmentclearance.nic.in/writereaddata/OMs-2004-2021/81\\_OM\\_13\\_05\\_2011.pdf](https://environmentclearance.nic.in/writereaddata/OMs-2004-2021/81_OM_13_05_2011.pdf) (accessed 2 March, 2024).

nascent stage and is not fully developed.<sup>54</sup> Therefore, appropriate precautions must be taken to avoid environmental impacts from the projects.<sup>55</sup>

## V. Legislative Developments on Business and Human Rights in India

As a response from the Indian government, there has been a strong commitment to human rights protection by ratifying and endorsing various international legal instruments. The most prominent are the Universal Declaration on Human Rights,<sup>56</sup> the International Covenant on Civil and Political Rights,<sup>57</sup> and the International Covenant on Economic, Social and Cultural Rights.<sup>58</sup> Additionally, India has institutionalised human rights protection through legislation establishing the National and State Human Rights Commissions under the Protection of Human Rights Act 1993.<sup>59</sup>

The Ministry of Corporate Affairs (MCA) in India is also making efforts to mainstream the culture of respecting human rights by local businesses and corporations through guidelines and regulatory norms. To this end, in 2009, the MCA issued what is known as 'Voluntary Guidelines on Corporate Social Responsibility' to mainstream the concept of business responsibility, which includes respect for human rights in their operations.<sup>60</sup> This could be seen as a practical move by the MCA to endorse and adopt the UNGPs on Business and Human Rights,<sup>61</sup> particularly through establishing National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business 2011.<sup>62</sup>

In 2019 the MCA further established the National Guidelines on Responsible Business Conduct,<sup>63</sup> which ensures that businesses in India conduct themselves ethically, transparently and accountably. This guideline promotes the idea of businesses respecting human rights throughout their value chains. To further recognize the need for more responsible and socially sustainable business models, the MCA released a draft of the National Action Plan on Business and Human Rights 2020.<sup>64</sup> It is interesting to note that this document adopts the three pillars of the UNGPs, which are (i) the state duty to protect human rights, (ii) the corporate responsibility to respect and (iii) access to remedy.<sup>65</sup> Notwithstanding the legislative framework India has put in place to ensure the protection of human rights in businesses and corporations in line with the UNGPs, a central priority of the government is to meet its energy transition agenda, which in many cases has resulted in little or no attention to human rights in efforts to advance energy transition programmes.

<sup>54</sup> *Leo F. Saldanha v Union of India and others NGT* (2014).

<sup>55</sup> The Indian Renewable Energy Development Agency, *note* 51, 9.

<sup>56</sup> Universal Declaration on Human Rights (adopted on 10 December 1948, entered into force 10 December 1948).

<sup>57</sup> International Covenant on Civil and Political Rights (adopted on 16 December 1966, entered into force 23 March 1976).

<sup>58</sup> International Covenant on Economic, Social and Cultural Rights (adopted on 16 December 1966, entered into force 3 January 1976).

<sup>59</sup> *The Protection of Human Rights Act, 1993* (India).

<sup>60</sup> Ministry of Corporate Affairs India, 'Corporate Social Responsibility Voluntary Guidelines 2009,' [https://www.mca.gov.in/Ministry/latestnews/CSR\\_Voluntary\\_Guidelines\\_24dec2009.pdf](https://www.mca.gov.in/Ministry/latestnews/CSR_Voluntary_Guidelines_24dec2009.pdf) (accessed 22 September 2023).

<sup>61</sup> United Nation Guiding Principle on Business and Human Rights, UNHRC17/4 (endorsed on 16 June 2011).

<sup>62</sup> Ministry of Corporate Affairs (Government of India), 'National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business 2011,' [https://www.mca.gov.in/Ministry/latestnews/National\\_Voluntary\\_Guidelines\\_2011\\_12jul2011.pdf](https://www.mca.gov.in/Ministry/latestnews/National_Voluntary_Guidelines_2011_12jul2011.pdf) (accessed 23 September 2023).

<sup>63</sup> Press Information Bureau (Government of India), 'Ministry of Corporate Affairs Guidelines on Responsible Business Conduct,' <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1568750> (accessed 22 September 2023).

<sup>64</sup> Ministry of Corporate Affairs India (Government of India), 'Zero Draft National Action Plan on Business and Human Rights 2020,' [https://www.mca.gov.in/Ministry/pdf/ZeroDraft\\_11032020.pdf](https://www.mca.gov.in/Ministry/pdf/ZeroDraft_11032020.pdf) (accessed 23 September 2023).

<sup>65</sup> Indian Institute of Corporate Affairs (Government of India), 'National Action Plan on Business and Human Rights,' [https://iica.nic.in/sob\\_nap.aspx](https://iica.nic.in/sob_nap.aspx) (accessed 23 September 2023).



Such lack of human rights considerations in energy transition efforts may impact the effectiveness of energy transition programmes, especially with continued human rights violations connected to renewable energy development projects in the *Oran Land* in the Thar Desert. The next section looks at India's compliance with the three pillars of the UNGPs, together with international best practices.

## VI. International Best Practices—Utilizing the UNGPs to Address Human Rights Issues Associated with the *Oran Land* in the Thar Desert Region of India

The UNGPs on business and human rights remain a valuable tool that could be used to address issues relating to the violation of human rights by businesses and corporations operating in communities.<sup>66</sup> It has been incorporated into business models for developing wind and solar farms used in Canada and Australia where the communities are allowed to participate and share profits or ownership percentages in the energy projects.<sup>67</sup> Adopting the UNGPs and translating them into clear national action plans and legislation on business and human rights could guarantee strong community participation in energy contracts entered into by governments to develop energy projects.<sup>68</sup> In practice, adopting the UNGPs provides members of host communities with some sort of equitable rights that could bring about energy partnerships,<sup>69</sup> or even the setting up of clean energy networks.<sup>70</sup> This model could help protect the rights of host communities of energy projects while at the same time providing them with a sense of belonging, promoting benefit sharing and providing them an opportunity to participate in the implementation of energy projects.

France is also an example of a country that continues to use the UNGPs through legislative instruments to address potential human rights violations linked to businesses and corporations. France has legislation that demands corporate duty of vigilance.<sup>71</sup> This legislation ensures that companies implement a vigilance plan, particularly addressing human rights violations resulting directly or indirectly from their operations, subsidiaries or subcontractors.<sup>72</sup> The vigilance plan includes human rights risk identification and mitigation measures and is enforceable through court orders if any company fails to implement it.<sup>73</sup> This approach could be adopted in India, particularly through relevant agencies and the PRPCs, to ensure that operations or plans to increase renewable energy development in the *Oran Land* do not lead to more human rights abuse and violations.

As part of the principles embedded in the UNGPs, due diligence is paramount if businesses and corporations are expected to avoid human rights challenges during their operation.<sup>74</sup>

<sup>66</sup> Robert McCorquodale, *Business and Human Rights* (Oxford University Press 2024).

<sup>67</sup> Colombia Center on Sustainable Development, *note 2*, 1.

<sup>68</sup> See the list of countries in the National Action Plans on Business and Human Rights at United Nations Human Rights, 'National Action Plans on Business and Human Rights,' <https://www.ohchr.org/en/special-procedures/wg-business/national-action-plans-business-and-human-rights> (accessed 17 December 2024).

<sup>69</sup> Right Energy Partnership, 'Mission and Goals,' <https://rightenergypartnership.org/about/#mission> (accessed 7 November 2023).

<sup>70</sup> First Nations Clean Energy Network, 'Best Practises Network Guide,' [https://www.firstnationscleanenergy.org.au/network\\_guides](https://www.firstnationscleanenergy.org.au/network_guides) (accessed 7 November 2023).

<sup>71</sup> Elsa Savourey and Stephane Brabant 'The French Law on the Duty of Vigilance: Theoretical and Practical Challenges Since its Adoption' (2021) 6 *Business and Human Right Journal* 141.

<sup>72</sup> French Corporate Duty of Vigilance Law 2016 (France).

<sup>73</sup> *Ibid.*

<sup>74</sup> Business & Human Rights Resource Centre, 'Renewable Energy & Human Rights Benchmark,' <https://www.business-humanrights.org/en/from-us/briefings/renewable-energy-human-rights-benchmark/> (accessed 22 November 2023).

Therefore, human rights due diligence practice can be mainstreamed in renewable energy development in India through financial institutions that provide funds needed for the development of energy projects. To achieve this, India could introduce specific legislation with clear sanctions that would state that at the planning stage of the project due diligence that includes compliance with the UNGPs should be prioritized. This proposal could be one of the potential solutions as it can make all renewable energy proponents, both from the public and private sectors, uphold the human rights of Indigenous communities and vulnerable groups, including those relying on the *Oran* Land in the Thar Desert region of India. The point is that the movement towards due diligence through adopting specific legislation that covers all public and private projects is a potential direction towards greater accountability in developing energy projects in the *Oran* Land.

To further achieve this, India could draw lessons from the Council of the European Union's approval of the Corporate Sustainability Due Diligence Directive,<sup>75</sup> also referred to as 'CSDDD,' which contains due diligence and governance obligations applicable to EU-based companies. Through the directive, members of the council are expected to develop specific legislation that would be used to ensure that businesses respect human rights in the course of carrying out their operations. This sort of legislation in India would be made to apply to all energy projects (including solar, wind and hydro) that are directly or indirectly funded by financial and government institutions and the PRPCs.

Lastly, the harms inflicted by renewable energy projects must be timely and adequately compensated through a robust grievance redressal system.<sup>76</sup> The Ministry of New and Renewable Energy of India can use existing local self-governing bodies such as the Gram Panchayats<sup>77</sup> to enable access to remedies for the affected people of *Orans*. It will strengthen the observance of UNGPs and ensure timely reporting of human rights abuses and their mitigation.

## VII. Conclusion

While developing renewable energy to address climate change and drive the energy transition agenda in India is good, it is equally important that such a strategy considers the human rights of host communities that may be affected by renewable energy projects. This article discusses emerging human rights issues arising from India's current approach to energy transition through the development of renewable energy projects at *Orans* in the Thar Desert region of the state of Rajasthan. It has discussed how the development of renewable energy projects by PRPCs in India has caused the *Orans* to face multiple threats to human rights, including the ones connected to the destruction of biodiversity under community ownership, traditional knowledge and cultural values. It also discussed the non-adherence to international best practices, such as using the UNGPs on business and human rights set out for corporations and businesses to mainstream human rights into the plan, development and execution of clean energy projects.

It concludes that the practicability of India's energy transition agenda requires an approach that demands that corporate actors respect human rights in their operations.

<sup>75</sup> European Union, 'Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directives (EU) 2019/1937' [https://www.erm.com/globalassets/insights/documents/erm-policy-alert-csddd\\_april-2024\\_v9.pdf](https://www.erm.com/globalassets/insights/documents/erm-policy-alert-csddd_april-2024_v9.pdf) (accessed 23 June 2024).

<sup>76</sup> Colombia Center on Sustainable Development, note 2, 1.

<sup>77</sup> The Gram Panchayats are local bodies set up at the community level based on the principle of local self-government of villages in India. They are responsible for implementing the government's public welfare schemes.

As argued by an academic scholar, adopting such an approach means putting human rights at the heart of the energy paradigm and ensuring that human rights abuses in the fossil fuel and mining sectors are not replicated.<sup>78</sup> The use of the UNGPs in India's Thar Desert region, particularly in the case of the *Oran Land*, would highlight the stark reality that the transition to renewable energy depends on a human rights-based approach.

**Competing interest.** The authors declare none.

**Financial support.** No funding was received for this article.

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<sup>78</sup> Elodie Aba, 'A Fast and Fair Energy Transition: How Community Legal Action and New Legislation Are Shaping the Global Shift to Renewable Energy' (2023) 8 *Business and Human Rights Journal* 252–8.

**Cite this article:** Saksham Misra and Godswill Agbaitoro, 'Mapping Human Rights Violations Connected to Renewable Energy Development in India: A Case Study of the *'Oran Land'* at Thar Desert and Energy Transition' (2025) *Business and Human Rights Journal* 10, no. 1: 249–259. <https://doi.org/10.1017/bhj.2024.29>