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

Abstract

In pursuit of addressing the perils of climate change impacts, governments across countries in the Global North and South are taking actions such as expanding renewable energy capacities and reducing dependence on fossil fuels. While this approach has proved to be an effective way to undertake the transition from a carbon-based economy, it has however created human rights challenges. This article examines India’s energy transition agenda driven by the central government 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 that 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: Energy transition; Renewable energy; Land rights; Indigenous Peoples’ Rights; Human rights; Climate change

I. Introduction

Over the years, the climate crisis has continued to gain unprecedented attention, consequently, leading to consistent calls at the international level for countries to scale up actions to tackle climate change and its impact. This has led many governments across countries in the Global North and South to take actions such as energy transition to slow down climate change. In this article, the authors examine India’s energy transition agenda pursued through the development of renewable energy, and as a way to reduce the use of fossil fuels. In doing so, we examine emerging issues linked to human rights infringement associated with the development of renewable energy as part of India’s energy transition agenda. It is pertinent to note that the human rights issues discussed in this article concern those affecting the rights of indigenous peoples and communities hosting renewable energy projects in India.

Against the background above, we examine the challenges posed by renewable energy development in present-day India to show how such development exacerbates social exclusion, increases constrained access to land and other resources and causes marginalization of communities. Furthermore, we look at the case study of the “Oran Land” in the Thar desert in India and highlight the human rights issues linked to corporations operating in the “Orans” - a community-protected land. The idea 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 is in line with the target to produce 500 GW power from renewables by 2030 India.¹ 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 2070.² 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. There are indigenous communities in rural India that depend on community lands for livelihood, sustenance, and their cultural identity.³ India’s ambitious net zero emissions target is impacting these indigenous communities such as the Orans facing human rights violations from Private Renewable Power Corporations (PRPCs) who have been allotted land by the government to develop renewable energy.⁴ This is done without due consultations with locals despite the presence of evidence that such lands are host to endangered species, public welfare projects including schools, and water tanks to support grazing and agricultural farming in various

¹ 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).

² 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).

³ Priti Gupta, ‘India’s Solar power future clashes with local life’ BBC available at <https://www.bbc.com/news/business-62848096>

⁴ 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* 90-99. See also Rishika Pardikar, ‘Orans’ of Rajasthan in danger of being taken over by green energy projects’ Frontline available at <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 17 October 2023).

communities.⁵

Presently, the PRPCs in collaboration with the government of India are bypassing legislative provisions that are supposed to ensure impact assessment is conducted, together with human rights due diligence and prioritisation of social inclusion and consultation before the uptake of energy projects.⁶ This action shows how India's energy transition agenda pursued through the development of clean energy is threatening the rights of indigenous communities. The approach to 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 ensure that corporation prioritises engagement with local communities in order to prevent, mitigate or cease human rights impacts linked to their operations.⁷

III. Orans – The Sacred Groves at the Thar Desert in India

The Sanskrit meaning of Oran is “Aranya” which means the undisturbed forest.⁸ Orans are the community forest lands located in the Thar Desert region in the state of Rajasthan in India. The Orans are rich in biodiversity and are home to endangered species, and a source of water in the desert. Unfortunately, the lands that host these resources are currently being allotted to PRPCs without any effective impact assessments, social inclusion and stakeholder consultations.⁹ 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 the area of 600,000 hectares and are a rich source of forest products, grazing reserves, and water and critical in addressing climate change.¹⁰ The indigenous tribal communities manage and protect the Orans and practice the traditional

⁵ 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-idAFL8N2TL3I6> (accessed on 18 September 2023).

⁶ Ryan Stock, ‘Triggering resistance: Contesting the injustices of solar park development in India’ (2022) 86 *Energy Research & Social Science*.

⁷ United Nations Guiding Principles on Business and Human Rights UNHRC (adopted on 16 June 2011).

⁸ 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.

⁹ Pradeep Chaudhry, Naveen K Bohra, Karna Ram Choudhary, ‘Conserving biodiversity of community forests and rangelands of a hot arid region of India’ (2011) 28 *Land Use Policy* 506 -513.

¹⁰ Aman Singh and Aditya Gupta, ‘Conserving Orans for Sustainable Livelihoods’, *LISA India* (14 March 2010) 18.

customs of biodiversity conservation.¹¹ It has been observed that Orans have cultural, spiritual and environmental significance in the Thar Desert region and that they are considered as home of local saints and of various endangered wild animals and bird species including the Great India Bustard, and Black Buck among others.¹²

Unfortunately, the Orans are being acquired by PRPCs through government allotment schemes for the development of clean energy including solar and wind power projects.¹³ Due to its geographical location, the Thar Desert is a favourable site for hosting solar and wind power projects. The PRPCs are acquiring Orans without conducting pre-allotment environment 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 for solar panels, laying down power transmission lines and for the construction of ancillary infrastructures over Orans.¹⁴

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.¹⁵ 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.¹⁶ In 2021, the court held that the allotment of Oran lands for solar energy projects was made arbitrarily without considering the land usage

¹¹ Gadi, B.R, 'Oran: A traditional system for conservation of biodiversity in Indian Thar desert' (2016) 2 *International Education & Research Journal* 34.

¹² 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) 28:2 *International Journal of Protected Areas and Conservation* 73.

¹³ 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 18 September 2023).

¹⁴ 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-idAFL8N2TL3I6> (accessed 18 September 2023).

¹⁵ 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).

¹⁶ *Kalyan Singh & Ors. v State of Rajasthan* Raj. HC (2021), 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 18 September 2023).

purposes and social impacts of allotment.¹⁷ Additionally, the Supreme Court of India has been approached through a public interest litigation raising the concern of rising deaths of the Great Indian Bustard bird due to collusion with power transmission lines of the renewable energy projects in Western Rajasthan and Gujarat regions.¹⁸ In this case, the Supreme Court ordered that the transmission lines should be laid underground and advised the PRPCs to adopt the principle of Ecocentrism while developing renewable energy projects.¹⁹

It is important to note that the renewable energy projects developed by PRPCs have benefitted other local communities by making them energy prosumer communities. For example, 30 cities in the state of Rajasthan are proposed to be developed as green cities which will be based on rooftop solar panels.²⁰ This is in line with the proposed Agrivoltaics-based approach of a 1-megawatt solar power plant established to provide energy access to marginalized communities in the state of Rajasthan.²¹ This approach has led to the Modhera village in the western state of Gujarat which is now India's first round-the-clock solar-powered village.²² 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 there has been a successful implementation of the Agrivoltaics technique in the Gobi Desert and has converted the desert region into vast tracks of green lands.²³ Also, it has been reported by the Energy Institute of India that PRPCs are carrying out useful corporate social responsibility activities in the villages adjoining their projects which included augmenting primary schools, drinking water, and drip irrigation infrastructures.²⁴ However, this approach has not prevented or reduced potential violations of human rights, especially in the Oran land in the Thar Desert region of India.

¹⁷ *Kalyan Singh & Ors. v State of Rajasthan* Raj. HC (2021).

¹⁸ *M.K Ranjit Singh & Ors v Union of India* AIR SC (2021).

¹⁹ *ibid*

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²¹ 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). Agrivoltaics involves the simultaneous use of land for agriculture and photovoltaic power generation from solar plants. Currently, there are 11 pilot projects of agrivoltaics operationalized in India. See International Institute for Sustainable Development (IISD), *Agrivoltaics in India – Opportunities for scale up* (Canada: IISD, 2023).

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²³ National Solar Energy Federation of India (NSEFI), *Agrivoltaics in India: Overview of Operational Projects and Relevant Policies* (New Delhi: NSEFI, 2021).

²⁴ The Energy Resource Institute India (TERI), *Addressing Land Issues for Utility scale Renewable Projects in India* (New Delhi : TERI, 2018).

It is pertinent to note that 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. Although members of the community have filed civil suits for challenging the acquisition of their private land rights by PRPCs, they have, however, failed to raise it as a violation of indigenous rights. This is largely due to poor land records maintenance, lack of awareness about human rights and lack of access to legal services. On the part of the government, there has been no clear official response or statement on the issue because of its focus on achieving the 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 mistake of eastern states involving excessive coal mining where there was stiff competition for attracting PRPCs. In doing this, they relaxed due diligence of human rights, environmental and social impacts and were silent on concerns of human rights violations associated with the projects. It appears from the viewpoint of the government that the benefits of the renewable energy projects far outweigh the negative impact on members of the Oran land in the Thar Desert region.

IV. Human Rights Infringements by PRPCs in 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.²⁵ Due to the allotment of land to PRPCs by the government, 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.²⁶

Another negative impact of the renewable energy projects in the Orans land is that the projects are not highly job intensive as they only offer jobs during the construction phase. This means

²⁵ 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 201–207.

²⁶ Ahearn, A, Sternberg, T with Hahn, A (eds), *Pastoralist Livelihoods in Asian Drylands: Environment, Governance and Risk*, (Cambridgeshire: The White Horse Press, 2017) 177-198. See also Anuradha Nagaraj & Roli Srivastava, 'India's Solar energy boom fuels local struggle for green justice', *Thomson Reuters Foundation* (14 February 2022), <https://www.context.news/climate-justice/long-read/indias-solar-energy-boom-fuels-local-struggle-for-green-justice> (accessed 22 September 2023).

that upon completion of the project, it hardly offers jobs to locals except for casual work of cleaning and guarding the solar panels.²⁷ 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. Consequently, these have led to internal displacements of male members of indigenous tribes to urban centres in search of 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, which then exposes them to further exploitations and economic vulnerabilities.²⁸

It is pertinent to note that the forceful displacement of the indigenous people of Orans is an injustice 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 which prevents minority communities from being deprived of their right to enjoy culture with other members of society.²⁹ 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.³⁰ 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.³¹

One important aspect of the human rights infringement by PRPCs linked to the Orans is the lack of fair procedure when acquiring lands for energy projects.³² For example, the Oran communities have witnessed 40 villages protesting against the forceful acquisition of Orans by PRPCs and the non-settlement of their tenure rights and restricting their access.³³ In some

²⁷ 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).

²⁸ The Energy Resource Institute (TERI), *Renewable Energy to Responsible Energy – A call for Action* (New Delhi: TERI, 2021).

²⁹ International Covenant on Civil and Political Rights, 2200A UNGA (adopted on 16 December 1966, entered into force 23 March 1976) art 27.

³⁰ 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 (1) *Global Energy Law and Sustainability* 39 -71.

³¹ The Energy Resource Institute (TERI), *Renewable Energy to Responsible Energy – A call for Action* (New Delhi: TERI, 2021).

³² The Energy Resource Institute (TERI), *Addressing the land issues for Utility scale Renewable Energy development in India* 15 (New Delhi: TERI, 2018).

³³ 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->

cases, the villagers alleged that they were not informed or consulted before the decisions for the development of power projects were taken. Additionally, there are also cases where lands that have been pre-allotted for the construction of community welfare projects like water canals for irrigation, schools, and public toilets for village communities were acquired by PRPCs for renewable energy projects.³⁴

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.³⁵ Such action by the government and PRPCs could destroy the ecological significance of Orans in the Thar desert region by way of reducing the ability of indigenous communities to adapt to climate change, especially in long summers and droughts. It is also an infringement on their human rights to live in a safe environment which is protected under various international human rights covenants and also part of India's constitution.³⁶

Presently, there has been a rise in land conflicts between PRPCs and members of indigenous communities leading to an increase in legal claims and threat to the social acceptance of renewable energy projects in India.³⁷ The increase in legal claims is exacerbated by the lack of access to remedy for human rights infringement against indigenous communities by PRPCs.³⁸ This is also fuelled by the lack of mandatory impact assessments that are supposed 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.³⁹ The governments of India support the removal of social impact assessment by incorporating fast-track acquisition policy measures.⁴⁰ This is because most of the solar and wind energy projects in India are financed by government financial agencies or

[projects/article66329333.ece#:~:text=The%20Rajasthan%20orans%20are%20home,considered%20ideal%20for%20solar%20power](#) (accessed 18 September 2023).

³⁴ *Kalyan Singh & Ors. v State of Rajasthan* Raj. HC (2021).

³⁵ Universal Declaration on Human Rights, 217A (adopted on 10 December 1948, entered into force 10 December 1948) art 17 (1), (2).

³⁶ *MC Mehta v Union of India* AIR SC 1086 (1987).

³⁷ ASAR, *Powering Ahead – An Assessment of the Socio Economic and Environmental Impact of the large scale renewable energy projects* (New Delhi: ASAR 2019).

³⁸ Ryan Stock, 'Triggering resistance: Contesting the injustices of solar park development in India' (2022) 86 *Energy Research & Social Science*.

³⁹ 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 Rajasthan Solar Energy Policy 2019 (India), See also Rajasthan Wind and Hybrid Energy Policy 2019 (India).

⁴⁰ ASAR, *Powering Ahead – An Assessment of the Socio Economic and Environmental Impact of the large scale renewable energy projects* (New Delhi: ASAR 2019).

government banks⁴¹, hence they are more interested in faster implementation of the renewable projects which they are financing.

Additionally, there is the issue of a 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 EIA or even securing environmental clearance.⁴² The latest notification on EIA exemption stated that since the solar and wind energy project implementation does not involve the emission of greenhouse gases. 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 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 nascent stage and are not fully developed. Therefore, appropriate precautions must be taken to avoid environmental impacts from the projects.⁴³

It is reported that the PRPCs are using land lease models to bypass the mandates of Social Impact Assessment, Free Informed Prior Consent, effective community consultation and fair compensation which are provided under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013. This Act is applicable when private corporations purchase lands from community members for infrastructure projects but the PRPCs are taking land on lease model to bypass the provisions of the Act.⁴⁴ The royalty paid to the communities is relatively less than the socio-economic impact they are facing due to the loss of land.⁴⁵

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,⁴⁶ the International Covenant on

⁴¹ The Indian Renewable Energy Development Agency (IREDA), *36th Annual Report of IREDA* (New Delhi: IREDA, 2023)

⁴² Environment Impact Assessment Notification 2006 (India).

⁴³ *Leo F. Saldanha v Union of India and others* 2014 (NGT).

⁴⁵ The Energy Resource Institute (TERI), *Renewable Energy to Responsible Energy – A call for Action* (New Delhi: TERI, 2021).

⁴⁶ Universal Declaration on Human Rights, 217A (adopted on 10 December 1948, entered into force 10 December 1948).

Civil and Political Rights,⁴⁷ and the International Covenant on Economic, Social and Cultural Rights.⁴⁸ Additionally, India institutionalised human rights protection through legislation that established the National and State Human Rights Commissions under the Protection of Human Rights Act 1993.⁴⁹

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 the establishment of guidelines and regulatory norms. To this end, in 2009, 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.⁵⁰ This could be seen as a practical move by the MCA to endorse and adopt the UNGPs on Business and Human Rights,⁵¹ in particular through the establishment of National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business 2011.⁵²

In 2019 the MCA further established the National Guidelines on Responsible Business Conduct,⁵³ which is to ensure that businesses in India should conduct themselves in an ethical, transparent and accountable manner. This guideline is meant to promote the idea of getting businesses to respect human rights throughout their value chains. As a way to further recognise 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 2020.⁵⁴ 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.⁵⁵

⁴⁷ International Covenant on Civil and Political Rights, 2200A UNGA (adopted on 16 December 1966, entered into force 23 March 1976).

⁴⁸ International Covenant on Economic, Social and Cultural Rights, 2200A UNGA (adopted on 16 December 1966, entered into force 3 January 1976).

⁴⁹ The Protection of Human Right Act 1993 (India).

⁵⁰ Ministry of Corporate Affairs India, 'Corporate Social Responsibility Voluntary Guidelines 2009', https://www.mca.gov.in/Ministry/latestnews/CSR_Voluntary_Guidelines_24dec2009.pdf (accessed 22 September 2023).

⁵¹ United Nation Guiding Principle on Business and Human Rights, UNHRC (endorsed on 16 June 2011).

⁵² Ministry of Corporate Affairs 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 (accessed 23 September 2023).

⁵³ 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).

⁵⁴ Ministry of Corporate Affairs India, 'Zero Draft National Action Plan on Business and Human Rights 2020', https://www.mca.gov.in/Ministry/pdf/ZeroDraft_11032020.pdf (accessed 23 September 2023).

⁵⁵ Indian Institute of Corporate Affairs, 'National Action Plan on Business and Human Rights', https://iica.nic.in/sob_nap.aspx (accessed 23 September 2023).

Notwithstanding, the legislative framework that India has put in place to ensure the protection of human rights in businesses and corporations in line with the UNGPs, there remains a known fact that the government's priority is to meet its energy transition agenda. This may have an impact on the effectiveness of the framework, especially as we continue to see violations of human rights connected to renewable energy development projects in Oran land located 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 – Utilising the UNGPs to Address Human Rights Issues Associated with the Orans 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. It has been incorporated into business models for developing wind and solar farms used in Canada and Australia where the communities are allowed to both participate and share profits or ownership percentages in the energy projects.⁵⁶ Adopting it in practice could guarantee strong community participation in energy contracts entered into by central governments for the development of energy projects. In practice, adopting the UNGPs provides members of host communities with some sort of equitable right that could bring about energy partnerships,⁵⁷ or even the setting up clean energy network.⁵⁸ It is important to note that 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, together with 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 makes an effort 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.⁵⁹ The idea behind this legislation is to ensure that companies implement a vigilance plan, particularly addressing human rights violations resulting directly or indirectly from their operations or

⁵⁶ Colombia Center on Sustainable Development, *Enabling A Just Transition: Protecting Human Rights in Renewable Energy Projects*, (Colombia: 2023).

⁵⁷ Right Energy Partnership, 'Mission and Goals', <https://rightenergypartnership.org/about/#mission> (accessed 7 November 2023).

⁵⁸ First Nations Clean Energy Network, 'Best Practises Network Guide', https://www.firstnationscleanenergy.org.au/network_guides (accessed 7 November 2023).

⁵⁹ 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.

subsidiaries or sub-contractors.⁶⁰ The vigilance plan includes human rights risk identification and mitigation measures and is enforceable through court orders in case any company fails to implement it.⁶¹ This approach could be adopted in India, in particular through relevant agencies and the PRPCs to ensure that operations or plans to increase the development of renewable energy in the Oran land are not leading to human rights abuse.

As part of the principles embedded in the UNGPs, due diligence is considered paramount if businesses and corporations are expected to avoid human rights challenges in the course of their operation.⁶² 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 look towards introducing 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 prioritised. This would mean generally upholding human rights of indigenous communities and vulnerable groups including communities relying on the Oran land in the Thar Desert region of India. This sort of legislation 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.

Lastly, the harms inflicted by renewable energy projects must be timely and adequately compensated through a robust grievance redressal system.⁶³ The Ministry of New and Renewable Energy of India can use existing local self-governing bodies such as the Gram Panchayats⁶⁴ to enable access to remedy for affected people of Orans. It will strengthen the observance of UNGPs as well as ensure timely reporting of human rights abuses and their mitigation.

VII. Conclusion

While the idea of 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 takes into consideration the human rights of host communities that may be affected by renewable energy

⁶⁰ French Corporate Duty of Vigilance Law <https://respect.international/wp-content/uploads/2017/10/ngo-translation-french-corporate-duty-of-vigilance-law.pdf> accessed 28 February 2024

⁶¹ *ibid.*

⁶² 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).

⁶³ Colombia Center on Sustainable Development, *Enabling A Just Transition: Protecting Human Rights in Renewable Energy Projects*, (Colombia: 2023).

⁶⁴ The Gram Panchayats is a local body set up at the community level that is responsible for????????

projects. This article sets out a discussion of 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 the use of 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. As has been argued by an academic scholar, adopting such an approach means putting human rights at the heart of the energy paradigm, and that human rights abuses in the fossil fuel and mining sectors are not replicated.⁶⁵ The use of the UNGPs in India's Thar Desert region, particularly in the case of the Oran land would bring into the stark reality that the transition to renewable energy depends on a human rights-based approach.

⁶⁵ 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* 252-258.