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Tribal Land Rights and Renewable Energy Expansion in India: Reconciling Climate Goals with Constitutional and Human Rights Obligations

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India's ambitious increase in renewable energy works under a backdrop of long-standing issues of tribal land rights and environmental justice.¹ Although the Constitution and laws such as PESA (1996) and the Forest Rights Act² (FRA) recognise tribal self-government and their rights over their land, the development of large-scale solar and wind projects is putting pressure on communally held agricultural, forest, or pasture lands (Land Conflict Watch, and many instances). The Land Acquisition Act (2013) states that for any land to be acquired in Scheduled Areas, Gram Sabha consent will be required to have the land acquired (Right to Fair Compensation and Re&R Act).³ Despite the existence of these protections, technical implementation gaps exist that allow many projects to move forward without authentic free, prior, and informed consent (FPIC) and without shared benefits. The Primary focus of this article will be on India's legal system, including the Constitution (Articles 15(4), 46, and 244, Fifth and Sixth Schedule),⁴ statutory provisions (PESA, FRA, LARR and the Electricity Act 2003), and renewable energy policy, as well as secondary case law from both before and after 2025. These documents and examples will be used to explore the obligations placed upon the country of India by international and domestic human rights standards, including international conventions such as (the ILO) and (UNDRIP), environmental regulations

¹ The Provisions of the Panchayats (Extension to Scheduled Areas) Act 1996

² The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006

³ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013

⁴ The Constitution of India 1950, art 15(4), 46 and 244 and sch VI

such as (ELA) and (FPIC) and to demonstrate the relationship between green energy and Indigenous peoples' rights using comparative examples from other countries (Brazil-examples of wind power developments amongst Pankararu Tribes, First Nations in Canada having become energy partners and native title litigation in Australia with solar energy development).

Keywords: *tribal rights, renewable energy, climate justice, indigenous peoples.*

INTRODUCTION

The Indian government's push to establish renewable energy (RE) targets is clashing with the laws that protect the rights of tribes to their lands. A hypothetical example that illustrates the tension between India's drive for RE and tribal land rights would be an unnamed company that planned to log an extensive tract of forestland to develop a RE project and offer offsetting carbon credits to support the project. The company's assertion regarding receiving carbon credits will not nullify or supersede any statutory rights that are protected by law.⁵ For instance, the Forest Rights Act (FRA) 2006 protects the rights of the communities that live in or depend upon forests, and prohibits any eviction of tribal or traditional forest dwellers from occupied forestland until their claims to the land are resolved.⁶ Similarly, the Forest Conservation Act (FCA) 1980⁷ prohibits the use of any forestland for non-forest purposes without obtaining the central government's approval. The Panchayats (Extension to Scheduled Areas) Act (PESA)⁸ prohibits acquiring land under the jurisdiction of a Gram Sabha without first consulting the Gram Sabha. In conclusion, individual and collective rights of tribal communities, and the laws that control the use of forestland, are not able to be modified or negated due to the receipt of carbon offsets or achieving climate change objectives.

The main finding was –

There are Legal Gaps: Indian law does not require FPIC for Renewable Energy Projects, and environmental permits frequently fail to implement thorough social impact assessments, and PESA and FRA provisions, such as Gram Sabha approvals, have been used only infrequently;

⁵ The Constitution of India 1950; National Action Plan on Climate Change (Government of India 2008)

⁶ Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006

⁷ Forest (Conservation) Act 1980

⁸ Panchayats (Extension to Scheduled Areas) Act 1996

There are Conflicts - Reports have shown widespread examples of controversy, such as Enel wind farms built in Brazil ‘without the consent’ of indigenous people and an Australian-based solar project seeking to ‘erase’ the existing Native Title; and

There are Policy Shortfalls - The target for renewable energy is to have 50% of installed capacity be non-fossil-based by 2030 and thus drive rapid land acquisition without consultation with affected Tribes.

Recommendations: Change some laws and regulations to mandate the use of Free, Prior and Informed Consent (FPIC) and fair sharing of benefits from affected communities (e.g. LARR and EIA rules amended to provide for Social Impact Assessments and Gram Sabha consent); create explicit guidelines for site selection (e.g. to create degraded ‘renewable zones’ as far away from core tribal land as practical); significantly build capacity and provide full transparency in the implementation of the PESA/FRA; create trusts or ‘green levies’ for affected communities; and develop better processes for filing grievances (i.e. empower the National Green Tribunal (NGT) and other tribunals with specific renewable-related mandates).⁹

There are existing models, including but not limited to: Indigenous Land Use Agreements in Australia, equity-sharing arrangements with tribes in Canada,¹⁰ and mandatory environmental and social impact studies in Brazil (currently under consideration). These policies are intended to help achieve India’s climate goals in accordance with the Constitution of India and the human rights of its citizens, therefore ensuring an equitable energy transition for all tribal people in India.

LEGAL AND CONSTITUTIONAL FRAMEWORK

In India, Articles 15(4) and 46 of the Constitution provide special protections and support to Scheduled Tribes (ST). There are laws protecting tribal areas such as the Fifth Schedule of the Constitution (244(1)), which governs STs’ access to land and resources. There is additional protection for STs because the Constitution gives the President authority to identify STs (Art. 342), and, through the provisions of the Fifth Schedule, restricts the sale of tribal lands and

⁹ National Green Tribunal Act 2010

¹⁰ Anthony Kung et al., ‘Indigenous co-ownership of mining projects: a preliminary framework for the critical examination of equity participation’ (2022) 40(4) *Journal of Energy & Natural Resources Law* <<https://www.tandfonline.com/doi/full/10.1080/02646811.2022.2029184-d1e184>> accessed 10 June 2026

requires the Governor to administer and maintain control of forests and other minor mineral resources.¹¹ Finally, the Directive Principles (the Constitution also provides for welfare and development of STs) add a level of welfare support to STs through additional Articles 371 (providing additional protections for tribal welfare) in states with large ST populations by safeguarding the rights of the STs to their land and to occupy seats in the legislative bodies of those states.¹²

The purpose of the Fifth and Sixth Schedules is to ensure that tribal land is protected, as are Panchayat Raj and other self-governing bodies established under Amendment 73 and Amendment 74 and the PESA Act (1996), which customises Panchayati Raj for Scheduled Areas.¹³ Subsequently, the definition of 'village' under customary law also allows for a Gram Sabha (or village assembly) to be the primary unit of governance. Section 4 of the PESA Act¹⁴ states that every Gram Sabha 'will have the power and responsibility for the protection and preservation of the traditions, customs, cultural identity, community resources and customary dispute resolution methods' of the people in that village. Additionally, the PESA Act (Section 4(i)) requires that the Gram Sabha or Panchayats must be consulted before the acquisition of land in Scheduled Areas for public or private development projects and before the resettlement or rehabilitation of affected persons. Unfortunately, the strong institutional structure of the Gram Sabha is only enforced in practice through state regulations.

The Forest Rights Act (FRA) of 2006 is a law enacted to rectify the historical injustices faced by Scheduled Tribes and other traditional forest dwellers.¹⁵ Under the Act, both individual and community forest rights are granted to these communities, including the right to use and cultivate land that has been in their possession before 2005, the right to collect and use all types of minor forest products, the right to use land for grazing and the right to use forest land as a habitat for animals. The Gram Sabha (village council) has been designated as the principal decision-making authority under the FRA; therefore, before the community can make a claim under the FRA, it must petition the Gram Sabha to do so, and the Gram Sabha will initiate the claim by forwarding the petition to the appropriate Sub-Divisional and

¹¹ The Constitution of India 1950, arts 15(4), 46, 244(1), 342 and 371 and sch V

¹² Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006

¹³ The Constitution of India 1950, pts IX and IXA

¹⁴ Panchayats (Extension to Scheduled Areas) Act 1996, s 4

¹⁵ The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006; Forest Rights Act 2006

District Level Committees. Additionally, the FRA requires every Gram Sabha to grant approval for the clearance of all development projects under FRA §3(1)(j) and §4(2)(e).¹⁶ Specifically, by the explicit provisions in Section 4(2) of the FRA, ‘clearance of such developmental projects shall be conditional upon the recommendation of the Gram Sabha’. Furthermore, where a development project requires the relocation of a population from their original land to new land, the FRA requires the Gram Sabha to provide ‘free, prior and informed consent’ regarding the proposed resettlement package under FRA §4(3)(e). Although these improvements are consistent with the international FPIC standard (UN Declaration on the Rights of Indigenous Peoples (UNDRIP) Art. 32(2), see below), the actual implementation of these provisions has proven uneven, and to a significant extent, the Gram Sabhas have been ignored in providing consent.

Laws governing the acquisition of any land for a public purpose are found in the Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 (LARR Act).¹⁷

The LARR Act distinguishes between Scheduled Areas, which are areas designated by state legislatures, and non-Scheduled Areas. The LARR Act 2013 provides for the following when acquiring land for public use in a Scheduled Area:

1. The LARR Act states that, as far as possible, no acquisition of land shall be made in a Scheduled Area, and, if any acquisition is made, it shall be a demonstrable last resort.
2. Before issuing an acquisition notification for a Scheduled Area, the acquiring agency must obtain prior consent from the appropriate Gram Sabha, Panchayat, or Autonomous District Council.

Section 41¹⁸ has been largely overlooked by those acquiring land for projects in Scheduled Areas. Many projects claim to be acquiring land in ‘state land’ and have used the 2014 Amendments to reduce or eliminate penalties related to the acquisition of land in Scheduled Areas.

¹⁶ Forest Rights Act 2006, ss 3(1)(j) and 4(2)(e)

¹⁷ Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013

¹⁸ Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 s 41

The primary statute governing electricity in India is the Electricity Act 2003¹⁹, which provides rules about how power can be generated by non-govt. entities as well as utilities to provide equal access to the grid for distributors. The Act contains some compulsory NGO – Renewable Purchase Obligations (RPO) and some form of Tribal Protection but does not specifically spell out protections for indigenous peoples; all renewable power developers must still obtain permission under LARR and Environmental Acts to clear land & meet environmental minimum standards before placing or operating equipment on their property. The Act also does not comment on how quickly capacity would grow; rather, it defers to existing laws regarding land use rights through other means/laws.

Environmental Impacts from Other Statutes: There are several environmental statutes triggered by renewable energy projects. The Environment (Protection) Act 1986²⁰ and its subordinate EIA Notification (2006, amended) mandate that large solar parks, wind turbine farms, hydropower plants, etc., must obtain environmental approvals before commencing construction. These processes include public hearings; however, often these are just considered formalities – for example, until 2020 wind turbine farms were permitted to pass the approval process with a ‘technical meeting’ only and not an entire EIA, thereby reducing the amount of time spent in public consultation. The Forest Conservation Act 1980²¹ requires that a project must have the approval of the Central Government to divert forest land for use; thus, the majority of renewable energy projects, particularly solar parks, have sought to obtain ‘non-forest’ classification for the use of tribal lands located within the Scheduled Areas as a method of circumventing more stringent review. The Wildlife Protection Act 1972 as well as the many state laws applicable to tribal lands (e.g., the Chotanagpur Tenancy Act²² in the State of Jharkhand) may limit the manner in which land can be used; conflicts exist when land used for a project encroaches into either Wildlife Sanctuary lands or tribal lands that have restrictions.

Renewable Energy Guidelines: Government climate commitments have stimulated an assortment of renewable energy policy tools, including the National Solar Mission (2010),²³

¹⁹ Electricity Act 2003

²⁰ Environment (Protection) Act 1986

²¹ Forest (Conservation) Act 1980

²² Wildlife (Protection) Act 1972; Chotanagpur Tenancy Act 1908

²³ ‘INDIA: Jawaharlal Nehru National Solar Mission Towards Building SOLAR INDIA’ (Ministry of New and Renewable Energy, 2010) < <https://policy.asiapacificenergy.org/node/2544> > accessed 10 June 2026

wind and small hydro policies, and the recently introduced National Tariff Policy (2022), which offers additional incentives for renewable energy development. Renewable Energy Development – MNRE – provides guidelines for solar parks which recommend against locating them on either forested or agricultural land;²⁴ however, the guidelines are non-binding. States like Maharashtra²⁵ and Tamil Nadu²⁶ developed policy frameworks that prohibit using prime farmland or protected lands for solar and wind development, yet projects continue to be developed on disputed & challenged parcels of land (e.g., over 1,000 turbines have been installed on community grazing lands in Tamil Nadu). There is no single federal law governing the intersection of climate policy and tribal rights, resulting in the development of numerous separate and uncoordinated policy initiatives.²⁷

International Obligations: India is part of several treaties that indirectly address the rights of indigenous peoples. India has not ratified ILO Convention 169, the Indigenous and Tribal Peoples Convention of 1989;²⁸ however, India is bound by ILO 107 of 1957²⁹, and India supports the aspirational UN Declaration of Indigenous Peoples (UNDRIP - 2007).³⁰ Article 32 of UNDRIP includes the requirement for ‘free, prior and informed consent’ (FPIC) of indigenous peoples as a condition of a project affecting their land. Additionally, both the International Covenant on Civil and Political Rights (Art. 27) and the Declaration on the Rights of Peasants (UNDROP 2018) affirm the land and cultural rights of minority communities;³¹ while these treaties are not directly enforceable domestically, they influence judicial interpretation of domestic law. For example, under Article 19 of UNDRIP, states must ‘consult and cooperate in good faith with the intention to reach an agreement for the purpose of obtaining the free, prior, and informed consent of indigenous peoples before they adopt and implement administrative measures that may affect the interests of indigenous peoples.’

²⁴ ‘Development of Solar Parks and Ultra Mega Solar Power Projects’ (*Ministry of New and Renewable Energy*) <<https://mnre.gov.in/en/development-of-solar-parks-and-ultra-mega-solar-power-projects/>> accessed 10 June 2026

²⁵ Maharashtra Renewable Energy Policy 2020

²⁶ Tamil Nadu Renewable Energy Policy 2019

²⁷ Dr Joseph Kiesecker et al., ‘Renewable Energy and Land Use in India: A Vision to Facilitate Sustainable Development’ (2020) 12(1) Sustainability <<https://www.mdpi.com/2071-1050/12/1/281>> accessed 10 June 2026

²⁸ Indigenous and Tribal Peoples Convention 1989

²⁹ Indigenous and Tribal Populations Convention 1957

³⁰ United Nations Declaration on the Rights of Indigenous Peoples 2007

³¹ United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas 2018

MAJOR RENEWABLE PROJECTS AND CONFLICTS

Large-scale solar parks and wind farms being rapidly built by India frequently conflict with tribal community land. To achieve government targets like 500GW RE by 2030 requires tens of thousands of hectares to be available. Unfortunately, many times large-scale solar parks and wind farms have been allocated on or next to forests/grazing land/tribal villages, resulting in an increase in lawsuits/possibly ill feelings, etc., regarding the projects:

Wind Farms located in Tamil Nadu, Andhra Pradesh, and Maharashtra have leased land to companies that traditionally were used only for grazing animals. As a result of the Western Ghats, Wind Farms have occurred on the traditional grazing land of some Adivasi community members. The Ganesh formula provides details and background of these conflicts (e.g., Wind farm facing controversy/wind turbines built on Common Village Land).³²

Solar Parks: The establishment of solar parks in Rajasthan and Gujarat (i.e., Karnal, Jaisalmer, Gujarat Solar Park has led to land acquisition of thousands of acres (much of this land was agricultural or otherwise commonly held) by [corporations/developers]. In Kutch and Barmer, tribal farmers have resisted the loss of grazing lands. In Odisha and Jharkhand, the establishment of solar parks has met resistance due to the threat posed to their existing forest rights. For example, the proposal for a 1,500-mw hydro-solar hybrid project at Subarnarekha in the tribal area of Odisha has raised concerns about diverting agricultural land from forest use and potential relocation of the affected populations.

Hybrid Projects and Other Emerging Technologies: Many of the latest technologies (green hydrogen and pumped hydro storage) are also intended to be located in remote, often tribal, locations. A recent example of this is the proposed Wak Solar Farm in northern Australia (2,500 ha, up to 2.7 GW). In this example, Total Energies applied for permission to build the Wak Solar Farm on Wulna (Aboriginal) tribal land near Darwin and requested the extinguishment of native title of the land as well. Traditional owners have condemned this approach as ‘bulldozing’ their Aboriginal rights.

³² Ramachandra Guha, *The UNQUIET WOODS: Ecological Change and Peasant Resistance in the Himalaya* (Univ of California Pr 2000)

Policy-driven Land Conflicts: Centrally supported projects (e.g., NTPC's 2GW solar projects) have often failed to consider local rights when establishing these projects. Many individuals and organisations are concerned about 'green grabbing' of traditional lands under the pretence of combatting climate change. For example, Pankararu indigenous people in Brazil reported that 'wind turbines built without their consent' were developed with no consideration for their traditional rights. Similar reports are being made in India.

Many reports by NGOs (such as Land Conflict Watch and CJP) list conflicts between renewable energy projects and Indigenous people in India, but no single comprehensive list exists. In many states, the approvals of GR and Forest clearance for renewable energy projects in Indigenous territory were based on questionable grounds (e.g. false categorisation as 'forest' or 'wasteland' to bypass PESA). Up until 2020, there was no law requiring FPIC for renewable projects in India, and thus large EIA processes and LAA processes proceeded with minimal consent from local villages.

CARBON OFFSETS AND CREDITS IN INDIA

Carbon credits are calculated based on how much a forest can absorb carbon. The Forest Resource Assessment (FRA) identifies forests as a source of livelihood, culture, spirituality, and self-governance. You cannot clear an existing mature forest to build a solar farm and replace it by planting new trees somewhere else in the world. Globally, there has been a growing emphasis on 'Nature-Based Solutions' to climate change that require safeguards for the rights of Indigenous Peoples.³³ Because of this, any climate change mitigation projects that rely on carbon offsets need to comply with Free, Prior and Informed Consent (FPIC), have benefit-sharing and social safeguards.

The Supreme Court's ruling on Niyamgiri is an excellent example of how Indian courts can uphold tribal rights in relation to their traditional lands by directing the Gram Sabhas to decide if mining would violate the religious and/or cultural rights of the Dongria Kondh Tribe. As such, the Niyamgiri Case has produced a significant change to the Forest Rights Act (FRA), changing it from a welfare statute to a tool for democratically managed environmental governance. The Niyamgiri Case provides clear guidance on how development initiatives that will affect forest land must first obtain the consent of the local

³³ *Climate Change 2022: Mitigation of Climate Change* (Cambridge University Press 2023)

communities and support their cultural continuity;³⁴ these principles apply equally to renewable energy projects that involve clearing forests and taking land from communities as they do to all other development initiatives.

Under current laws in India, companies cannot obtain an exemption from offsets by purchasing trees from other locations for projects which require action under the Forest Rights Act ('FRA')/Forest Conservation Act ('FCA'). To clear forested areas for the purpose of implementing a project, proponent companies must apply through the FRA/FCA.

Voluntary Carbon Markets (VCMs) allow Indian companies to acquire carbon credits to offset their emissions (such as from UN-REDD, or through voluntary registries) by way of various market-based instruments (such as Social Carbon, Gold Standard), but these types of transactions have no bearing on land tenure for the purposes of obtaining land-use approvals.³⁵ Therefore, afforestation done for the purpose of receiving carbon credits must comply with FRA (federal and state laws permitting the use of certain types of properties for afforestation) as well as certain environmental laws governing land use, including those of forested and non-forested lands.³⁶

The Clean Development Mechanism (CDM) certified a limited number of afforestation projects between 2021 and 2026; however, the replacement for the CDM (global use of Article 6 mechanisms)³⁷ is already in effect and has no bearing on local compliance for afforestation projects.³⁸

When Forests are converted into non-forest use, compensatory afforestation (CA)³⁹ must occur according to the Forest (Conservation) Act (FCA) and the Compensatory Afforestation Fund Management and Planning Authority (CAMPA) scheme. Therefore, funds from companies for CA go to CAMPA and will be used for plantations. Some companies have indicated that they will do 'equivalent reforestation' to offset carbon; however, CA must occur according to strict rules regarding where the CA can occur (usually contiguous land

³⁴ *Orissa Mining Corporation Ltd v Ministry of Environment and Forests & Ors* (2013) 6 SCC 476

³⁵ United Nations Framework Convention on Climate Change 2024

³⁶ 'Global Carbon Pricing Revenues Top a Record \$100 Billion' (*World Bank*, 21 March 2024) <<https://www.worldbank.org/en/news/press-release/2024/05/21/global-carbon-pricing-revenues-top-a-record-100-billion>> accessed 10 June 2026

³⁷ United Nations Framework Convention on Climate Change 2024

³⁸ Kyoto Protocol to the United Nations Framework Convention on Climate Change 1997

³⁹ Compensatory Afforestation Fund Act 2016

within the state adjacent to the area that the forest was cleared). If a company has a forest cleared in one of India's states and uses CA to replant its trees in Rajasthan, the CA will not be recognised unless approved by the Chief Secretary of the state in which the forest was cleared.

Green Credit Programme (2023): A new Ministry of Environment, Forests and Climate Change (MoEFCC) programme that provides green credits to plantation companies for the restoration of degraded lands has been introduced. Under the new programme, companies growing forests on degraded land will generate green credits that can be sold. Green credits may provide a source of financing for the company's forestry activities, but the scheme does not provide a legal basis for permitting the clearing of existing forests.⁴⁰

Perform, Achieve and Trade (PAT) and Renewable Energy Certificates (RECs):⁴¹ Companies can earn PAT and RECs for energy efficiency improvements and generating renewable energy, respectively. While earning PAT or RECs reduces a company's emissions or renewable energy procurement obligations, they are not land offsets.⁴²

The draft Carbon Market under the Carbon Credit Trading Scheme (CCTS, 2024): The proposed amendments to the Energy Conservation Act would enable the Government of India to issue carbon credits (CC) based upon a baseline and credit approach. These CCs would be calculated based upon the carbon intensity of the emissions produced by a given industry and are not related to land use.

KEY COURT DECISIONS AND TRIBUNALS

Although Indian tribal courts usually focus on extracting rights based on their geography or location, some rules still apply to all tribal rights in India.

Samata v State of Andhra Pradesh (1997)⁴³ is one of the first rulings from India's Supreme Court. It has been used by many other Indian Courts as an example of how to handle issues relating to tribal councils (pre-2000). While the actual rationale for *Samata* isn't a lot like

⁴⁰ 'Green Credit Programme Prime Minister's Message' (*Green Credit*) <<https://www.moefcc-gcp.in/>> accessed 10 June 2026

⁴¹ Renewable Energy Certificate (REC) Regulations 2022

⁴² 'Perform Achieve Trade (PAT)' (*Bureau of Energy Efficiency*)

<https://beeindia.gov.in/show_content.php?lang=1&level=1&ls_id=185&lid=72> accessed 10 June 2026

⁴³ *Samatha v State of Andhra Pradesh & Ors* (1997) 8 SCC 191

current rules, it does establish that only a valid government entity or a cooperative of scheduled tribes is allowed to mine in scheduled areas. From a scheduled area, this case affirms that the lands designated to tribes by the Indian government are sacred, and they are protected under the Fifth Schedule of the Constitution.

The Niyamgiri judgement (2013)⁴⁴ is a ruling by the Supreme Court of India in the State of Odisha v L&T (Vedanta) case, upholding the Dongria Kondh Tribe's right to veto the bauxite mine proposal in Odisha.' In doing so, the Indian Supreme Court relied on PESA/FRA-like provisions to require that all land resource disposal decisions must have the consent of the Village/District Council (Gram Sabha), applying an interpretation of international law (i.e., UN Declaration on the Rights of Indigenous Peoples). This case may have occurred over a mining dispute, but it applied principles of tribal consent described.

NSSF Versus India Union: In relation to hydroelectric developments located in Northeastern Areas, it was determined under Article 21 of the Constitution of India - Fundamental Right that both Employment and a Safe Environment Will Not Be Barred by the Destruction of either on Projects.

In 2019, the Supreme Court ordered cancellation of the circular issued by the Ministry of Environment and Forests⁴⁵ (MOEF) that had enabled the bypassing of Forest Rights Act (FRA -2006) requirements for clearing forests in scheduled areas for all wildlife projects; thus, making such bypasses null and void. The Supreme Court made it clear that executive orders cannot dilute the conditions of the FRA (including Gram Sabha consent) for any executive order.

Environmental tribunals such as the National Green Tribunal (NGT)⁴⁶ have been examining various social aspects of environmental issues over their lifetime. However, as of 2025, the NGT has not released any noteworthy judgment related to a renewable energy project's tribal conflict. Some forest or environmental clearance appeals reference the Forest Rights Act

⁴⁴ *Orissa Mining Corporation Ltd v Ministry of Environment & Forest & Ors* (2013) 6 SCC 476

⁴⁵ *Wildlife First & Ors v Ministry of Environment and Forests & Ors* (2019) SCC OnLine SC 238; Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006

⁴⁶ National Green Tribunal 2010

(FRA) and the Panchayats (Extension to Scheduled Areas) Act (PESA).⁴⁷ This suggests there is still a demand for compliance with FRA/PESA from NGT and SC.

INTERNATIONAL AND HUMAN RIGHTS OBLIGATIONS

Human rights commitments should guide India's climate transition and therefore go far beyond UNDRIP and ILO CORE Conventions. Two additional key areas are: The International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 1,⁴⁸ the right to self-determination (cited often by tribal peoples), and the International Covenant on Civil and Political Rights (ICCPR), Article 27,⁴⁹ which addresses the protection of cultural rights of citizens belonging to minorities in their own territories. The United Nations Convention on the Elimination of All Forms of Racial Discrimination (CERD) condemns any form of development that violates Indigenous land rights.⁵⁰ Even though the UN Guiding Principles on Business and Human Rights (UNGPs) have not been formally ratified (In the case of India,⁵¹ for example, it has not ratified ILO 169, the more exacting convention on behalf of Indigenous groups), they provide general support for the right to respect Indigenous land rights by companies conducting business in relation to land use.⁵²

India has agreed to incorporate human rights terminology in the various climate agreements made at the international level, including the Pre-Amble to the Paris Agreement and COP documents, which both mention that the parties agree to honour the indigenous people and their rights as part of any efforts undertaken relating to climate change.⁵³ In addition, while the Green Credit Programme (2023) does reward individuals with credits for planting trees as part of the afforestation initiative,⁵⁴ it does not provide them the legal authority to use an EP Act versus cleared protected forests and is thus a purely voluntary programme option. India has also agreed to obtain Free, Prior and Informed Consent (FPIC) from indigenous

⁴⁷ Panchayats (Extension to Scheduled Areas) Act 1996; Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006

⁴⁸ International Covenant on Economic, Social and Cultural Rights 1966, art 1

⁴⁹ International Covenant on Civil and Political Rights 1966, art 27

⁵⁰ International Convention on the Elimination of All Forms of Racial Discrimination 1965

⁵¹ 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' (United Nations Human Rights Council, 2011)

<https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinessshr_en.pdf> accessed 10 June 2026

⁵² International Labour Organization, Indigenous and Tribal Peoples Convention 1989

⁵³ *Report of the Conference of the Parties on its twenty-first session, held in Paris from 30 November to 13 December 2015* (UNFCCC, 2015)

⁵⁴ Green Credit Rules 2023

people before making any projects from UNDRIP (2007),⁵⁵ even though India has yet to sign or ratify it. Finally, the proposed new Carbon Credit Trading Scheme (CCTS, 2024) under the Energy Conservation Regulations will form a national cap and credit system; however, it will also not have the authority to pre-empt domestic land and natural resource laws.

Recently, there have been reports by the UN and other organisations that have highlighted the need for Free, Prior and Informed Consent (FPIC). The UN Special Rapporteurs⁵⁶ and the Business & Human Rights Resource Centre have reported over 200 allegations of infringement of Indigenous People's rights due to renewable energy projects around the world.⁵⁷ Norway's Supreme Court ruled in February 2022 that the wind turbines that were installed without consent on Sami lands infringed upon human rights, and Norway subsequently agreed to remove these wind turbines as a result of the ruling. While these cases occurred outside of India, they reflect the growing understanding at a global level that clean energy cannot be achieved at the expense of the rights of Indigenous Peoples. As India is a signatory to the Paris Climate Change Agreement and the Sustainable Development Goals (SDGs), it also has an obligation to seek to balance SDG 7 (Access to Energy) with SDG 16 (Inclusive Decision Making) and SDG 10 (Reducing Inequality).

ENVIRONMENTAL PRINCIPLES (EIA AND FPIC)

Several key principles of environmental law reinforce the importance of tribal consultation. The India EIA Notification (2006/2020) requires public hearings on most projects that are large enough to require such hearings;⁵⁸ however, 'public' typically does not include any tribes or tribal members; thus, their issues and concerns are not properly addressed. In India, the principle of free, prior and informed consent (FPIC) is not a formal statutory requirement, but the majority of consultations in India occur after projects have been built and/or constructed, with very little input from tribal groups and very little chance of affecting the project's outcome. The precautionary principle (ratified at Rio in 1992)⁵⁹ and sustainable

⁵⁵ S James Anaya, *INDIGENOUS PEOPLES IN INTERNATIONAL LAW* (2nd OUP 2004)

⁵⁶ *Report of the Special Rapporteur on the Rights of Indigenous Peoples* (United Nations Human Rights Council, 2023)

⁵⁷ 'Renewable Energy and Human Rights Benchmark' (*Business & Human Rights Resource Centre*, 29 June 2020) <<https://www.business-humanrights.org/en/from-us/briefings/renewable-energy-human-rights-benchmark/>> accessed 10 June 2026

⁵⁸ *Environmental Impact Assessment Notification* (Ministry of Environment and Forests, 2006)

⁵⁹ Rio Declaration on Environment and Development 1992; *Vellore Citizens Welfare Forum v Union of India & Ors* (1996) 5 SCC 647

development should be used as guidance for the siting of projects to prevent long-term damage to tribal land.

Enforcement of Environmental Impact Norms by the National Green Tribunal Act,⁶⁰ 2010 has been done mainly by way of Cumulative Impact Assessments (CIA's). Cases of the Tribunal in respect of renewable energy have been limited to issues of technical clearance, i.e. appeals against environment clearances for wind farms etc., and not to the issue of social consent.

Importantly, the concept of 'indigenous peoples' is protected by way of Principle 22 of the Rio Declaration of 1992,⁶¹ which establishes the need to adopt special measures for protection of indigenous peoples, although non-binding. No Indian Supreme Court has opposed such application of Principle 22 of the Rio Declaration,⁶² particularly through its decisions in *Godavarman* (1997) affirming that forests are Public Trust and in *T.N. Godavarman*⁶³ directives requiring measures for family welfare to persons displaced by projects on such government-owned land; thus, establishing that consideration of tribal peoples' livelihoods and culture is necessary within the framework for making decisions about environmental resources. In respect of renewables, it can be argued that the prior habitation by indigenous peoples of any land would trigger a duty to share the benefits derived by such projects by way of benefiting indigenous peoples.

The principle here is that energy projects shall follow 'the principle of unity' rather than 'the principle of can' as related to displacement of persons as a result of energy projects (art. 32 of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP))⁶⁴ – though not recognised in Indian law by its exact name, it does constitute an internationally accepted minimum standard. Indian law does come close to compliance with such requirement (FRA Section 4(2) requiring submission of a recommendation to Gram Sabha);⁶⁵ however, consent obtained from Indigenous peoples under such laws/funds used for displaced Indigenous peoples does not constitute true 'informed' consent.

⁶⁰ National Green Tribunal Act 2010; *Hanuman Laxman Aroskar v Union of India* (2019) 15 SCC 401; *Alembic Pharmaceuticals Ltd v Rohit Prajapati* AIR 2020 SC 445

⁶¹ Rio Declaration on Environment and Development, principle 22

⁶² Rio Declaration on Environment and Development 1992

⁶³ *T N Godavarman Thirumulpad v Union of India & Ors* (1997) 2 SCC 267

⁶⁴ United Nations Declaration on the Rights of Indigenous Peoples 2007, art 32

⁶⁵ Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, s 4(2)

CONFLICT RESOLUTION MECHANISMS

What conflict resolution strategies can be developed when there are disputes? In India, there are several different forms of conflict resolution:

Consultative Institutions: The first resolution method is through the Gram Sabha (the village assembly) as established in both the PESA and FRA. In the consultation processes of both PESA and FRA, consultation with and the ability to reject proposed projects are required. The Gram Sabha does not provide legally binding authority outside Scheduled Areas, and enforcement mechanisms often fall short within them. In many cases, other community leaders (particularly in Tribes) feel that the Gram Sabha is being controlled by outside authorities and therefore are not giving true consent.

Benefit Sharing: At present, there are no national policies or regulations in place that would establish a framework for sharing renewable energy project financial benefits with affected communities as exists for sharing mining royalties. The Corporate Social Responsibility (CSR) funds and District Mineral Fund established by states can provide models for benefit-sharing; however, renewable energy projects do not fall within the defined scope of these funds. There are renewable energy projects that state they will provide 'local employment' or 'community funding'; however, these benefit-sharing agreements are being established on an ad hoc basis. A good example of how corporate compensation to local communities may not come close to making up for losses incurred due to development is provided in Brazil, where Enel spent millions of dollars on cultural funds. Establishing a formalised benefit-sharing framework (e.g., a percentage of power sales designated for community development or share ownership of the renewable project by Tribally established Cooperatives, as seen in some regions of Canada) will help align interests.

Resettlement and Rehabilitation (R&R): R&R is covered in Chapter VI of the LARR Act; thus, it rarely applies to 'voluntary' transactions of land for generating renewable energy. A dedicated R&R law is not in place for renewable infrastructure projects (e.g. wind/solar), so families displaced by renewable projects are left with the option of negotiating a lump sum for damages. The establishment of an expert panel could develop a Renewable R&R Policy that mandates restoration of income, land-for-land and integration of culture (i.e. indigenous customary farming patterns cannot simply be 'moved').

Judicial Remedies: Affected communities may be able to pursue legal recourse through both the courts and NGT (National Green Tribunal). Some petitions have challenged responsibilities under FRA/PESA in renewable projects; results have been mixed: although the courts have recognised rights of affected communities (i.e., the wildlife tribunal nullifying the issuance of clearances without the Gram Sabha), compliance with court orders is delayed; therefore, access to legal aid and costs of litigation often disadvantage the marginalised communities.

Policy Forums: Various agencies, e.g. NHRC and state Adivasi commissions, can accept complaints or grievances from affected communities. Depending upon the nature of the complaint, civil society groups have advocated creation of a ‘green tribunal’ for resolving disputes over renewable energy; no such tribunal currently exists.

We need to adopt a more proactive system; for example, in many nations, consultation is a legal requirement when it comes to developing green projects. In Canada, the requirement to ‘consult and accommodate’ (as established in cases such as *Haida Nation v British Columbia* (2004))⁶⁶ means that if a government fails to carry out this type of consultation on proposed green projects, it can be held liable. The United States also provides for direct government-to-government consultations between state and federal governments (as permitted by the Act or through a tribal compact). Indigenous Land Use Agreements (ILUAs) in Australia provide a way for tribes and developers to negotiate the terms and scope of their consultation and benefit-sharing arrangements. Countries like Australia may provide India with examples of how to formalise the way in which companies and governments are required to engage with tribal communities before a project is undertaken, rather than relying on interpretation of state and federal statutes and administrative rules for what constitutes ‘consent.’

POLICY GAPS AND REFORM RECOMMENDATIONS

Although India has a legal framework that includes numerous barriers to protect tribal lands, there remains a breakdown in India’s legal framework for protecting tribal lands. Below are the main points of concern:

⁶⁶ *Haida Nation v British Columbia (Minister of Forests)* [2004] 3 SCR 511

FPIC and Consent: Currently, there is no uniform national legislation that provides for the explicit provision of the concept of FPIC for renewable energy projects on tribal lands, with the current laws (LARR §41 / FRA) only implying that there be consent for such types of projects and the enforcement of these laws being weak. To rectify this issue, it is our suggestion to amend the Land Acquisition Act (or other related regulations) to include the requirement of FPIC for ALL energy projects located on usable community lands. To date, the draft Electricity (Amendment) Bill 2021⁶⁷ proposed no such requirement and should be changed to require that tribal consultative processes be established before Energy Project approval.

Enforcement of PESA/FRA: Good faith laws should be adhered to. The states should have defined rules under FRA and PESA, as exhibited in Odisha and have established DLCs/SDLCs as intended. Odisha's FRA rules (2019), for example, created timelines under which Gram Sabhas must meet. All state FRA rules should be mandatory for the SLMC (State Level Monitoring Committee) to ensure consistency between states. The Central Government should withdraw or modify any FCA regulations that defeat the purpose of FRA (including draft 2023 rules that permit post-consultations),⁶⁸ and legislators should consider modifying FCA to acknowledge the FRA's rights explicitly and to modify the Land Acquisition Act to increase thresholds and strengthen consent for RE developments on commonly owned lands. Current on-the-ground implementation of these acts leaves much to be desired, and thus States need to be directed (through MoTA/MoEF guidelines) to utilise independent monitors to ensure Gram Sabha Resolutions and/or the implementation of the FRA process are doing as intended. In addition, Tribes require improved access to legal representation, including legal aid to secure their rights.

Pre-Approval Level: Early Engagement with Gram Sabha - When companies engage Gram Sabhas per FRA/PESA protocol for project proposals, some type of Mermaid Decision Flow would have the following 6 factors. The following is the process for how Gram Sabha Processes Consent and Clearance for Forests:

- Triggering of Project Plan under FRA/PESA
- Processing of Claims by Village Forest Rights Committees

⁶⁷ Electricity (Amendment) Bill 2021

⁶⁸ Draft Forest (Conservation) Rules 2023

- Verification by DLC/SDLC
- Approval or Rejection by Gram Sabhas of affected villages with representation from all Adults.
- Input from State Forestry/Tribal Department of Forests, and
- MoTA & MoEF Review must occur after Rights and CA conditions are met.

The existence of the Free, Prior and Informed nature of consent must also be upheld in practice. Prior, in this instance, refers to all irrevocable decisions (i.e MC & GC) and how prior consultation must be taken to obtain the full range of information associated with a project, including: a description of the full project; possible project alternatives; potential impacts; benefit-sharing arrangements; and so on. For any Tribal Resolutions supported by Majorities shall have the same effect as shown in Niyamgiri. The enforcement of True Gram Sabha Consultation can also be accomplished through Courts by filing Public Interest Litigations (PIL).

Land-use planning refers to an approach by the central and state governments to develop ‘renewable energy zones’ in locations outside of core forest and agriculture areas. They can do this by identifying possibly available land (e.g., unused land, wastelands, or ‘brownfields’ such as former mine sites) where a preference can be given to these land types for future renewable energy development. Some of the states (like Haryana)⁶⁹ have initiated some mapping of their land for these purposes. This will help reduce the likelihood of land conflicts, as well as simplify the siting process. A default presumption should be that any proposed renewable energy project located in areas with significant land use conflicts will hurt the environment and/or society.

Benefit-Sharing Frameworks: A statutory requirement should be in place, which provides for a minimum percentage of revenue (or capacity) from each renewable energy project to be set aside for local community development, and the local communities or tribal groups should have the option to purchase equity in new renewable energy projects in the same way that the First Nations in Canada do. A national policy could also require projects above a

⁶⁹ *Haryana Solar Power Policy 2023* (Department of New and Renewable Energy, Government of Haryana, 2023)

designated volume/size to enter into Community Development Agreement(s) (like Indigenous Land Use Agreements) before environmental clearance.

Grievance Redressal: The National Green Tribunal (NGT) should either have its mandate modified to include social justice issues, especially those related to renewable energy projects, or a new bench established within the NGT to handle fast-track petition processes for local communities. States should also be required to have an independent ombudsman or mediation agency to address land acquisition disputes and/or compensation disputes associated with renewable energy projects so that disputes can be resolved promptly without needing the involvement of the court system.

Building Capacity: Many Tribes' Gram Sabhas need project information and do not have enough information about resources available from the government. They would benefit by receiving assistance from an NGO/individual expert provided by the government to educate and provide support to facilitate decision-making (similar to what the U.S. DOI's Office of Indian Energy Policy does for Tribes).

CONCLUSION

The implementation of India's climate commitments vis-à-vis land rights of Indigenous Peoples requires law and policy protections to be taken in earnest. Although Section 2(1)(d), Article 244 of the Constitution, PESA, FRA and LARR provide a basis to support the legal rights of Scheduled Area Communities, they need to be enforced both in terms of letter and spirit. As there is a proliferation of renewable power generation capacity, by committing to the principles of free, prior and informed consent for new projects, fair compensation for displacement and genuine involvement by local communities, we can ensure there will not be a 'dark side' to this growth (i.e., creating conditions for marginalisation of traditional owners of land) through green growth. Learning from other countries that have worked to incorporate Indigenous partnerships into the development of clean energy through legislative and commercially negotiated agreements will ensure a smoother transition to cleaner energy for India. India can learn from its own jurisprudence (examples such as the Samata and Niyamgiri cases where the Supreme Court of India upheld tribal land rights) and from international best practice by implementing a variety of institutional frameworks for consent, land use planning and benefit sharing. This is the only way for India to achieve

its renewable energy targets with a high degree of fairness and in accordance with both its constitution and obligations to uphold human rights.