

Green grabbing: Exploring Indigenous inequality in the face of just energy transition in Afghanistan & India

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Abstract:

Climate change is a global emergency, but its effects are unequally distributed. The Indigenous and marginalised communities are among the first and worst hit by the crisis than any other groups due to their close relationship with the environment and reliance on the natural resources. The pledge to achieve 'Net-Zero' goal has sadly widened the inequality chasm and worsened the on-going climate injustices faced by the Indigenous Communities. The transition to a green economy will require extraction of unprecedented quantities of base minerals and rare earth metals- which occur on or near Indigenous land which possesses half of the world's major portion of natural reserves. This current uneven green transition to renewable resources and conservation projects have dispossessed Indigenous Communities of their own land in the name of energy transition to produce biofuels and installation of huge solar panels and wind turbines on their land without their prior consent. This paper will provide evidence on how green energy transition are leading to land grabbing and leading to Indigenous displacement and land dispossession. This paper will further cite case studies of India and Afghanistan to demonstrate unjust energy transition. This paper finally argues the necessity to include Indigenous Communities in global policymaking and build stronger connections with these communities to achieve a just, equitable and meaningful inclusion of Indigenous and local communities in green energy transition. The 2030 Agenda for Sustainable Development pledged that "no one will be left behind" but perhaps those who are leading are left far behind in this race for green energy transition. Surmounting this challenge will require focusing on Indigenous and local communities and harnessing their potential as agents of change and development.

1. INTRODUCTION: UNDERSTANDING GREEN GRABBING AND INDIGENOUS INEQUALITY

Today, the world is witnessing a surge in green transition, marking a paradigm shift towards sustainable solutions. The impact of just energy transition is far from being "JUST" and "EQUAL", with marginalised communities, particularly Indigenous and local communities, bearing a disproportionate brunt of climate change and green transition. Net Zero emissions refer to a state where emissions are reduced as much as possible and any remaining emissions are balanced by measures that absorb or remove an equivalent amount of CO₂ (UNFCCC, 2024). This means cutting carbon emissions to a small amount of residual emissions that can be absorbed and durably stored by nature and other carbon dioxide removal measures, leaving zero in the atmosphere. Today, clean energy technologies such as wind turbines and solar panels use significant amounts of minerals and metals such as steel, copper, and rare earth elements. We need a lot of these natural minerals and resources as these materials

will decarbonise our economy. This reliance on the energy transition to renewable resources and minerals could lead to a massive increase in global demand for mineral and renewable resources.

Another concerning aspect of green energy transition is how it has been intertwined with human rights violations. The lack of legal safeguards to protect human rights of Indigenous Communities have contributed to forced displacement, land grabbing and other systemic human rights violations. Green grabbing has been described as the “*appropriation of land and resources for environmental ends*” and explains that it often leads to exclusion of Indigenous and local communities from their ancestral lands, exacerbating inequalities and leading to socio-economic and cultural impacts (Fairhead, Leach and Scoones, 2012).

Indigenous Peoples who are deeply rooted to their lands and their value intricately interwoven into the social fabric of their ancestral lands, cultures, and spiritual practices, are now witnessing a blatant violation of their human rights (Anaya J., 2005). Their intrinsic fundamental rights to livelihoods, access to resources, housing and sacrosanct connection to nature are today in danger due to the climate crisis and the green energy transition. This “green transition”, often considered as a solution to climate change is paradoxically inducing displacement and widening the inequality chasm (Dowie M., 2009).

This research intends to delve deep into interwoven threads of equality, human dignity, Indigenous rights and climate justice. The first part highlights the current state and trajectory of the green energy transition that contributes to land grabbing and illegal land acquisitions which causes human rights violations. The second section traces the historical developments and contemporary shifts to explore evolution, legal frameworks and recognition of Indigenous rights under international regimes that have shaped laws and practices concerning Indigenous Peoples globally. The third section examines two case studies from Afghanistan and India to understand how commitment to green energy transition sidelines justice, equity and fails to respect and protect the fundamental human rights of Indigenous Peoples. The fourth section explores existing legal frameworks, policies and principles of human rights and analyses how these frameworks have been interpreted and implemented to advance equal rights for Indigenous Peoples and ensure climate justice. Lastly, recommendations for incorporating human rights standards into the green energy transition to uphold and protect human dignity.

2. RESEARCH METHODOLOGY

The research uses a qualitative approach to study the impact on Indigenous and local communities in India and Afghanistan due to green energy projects. The study adopts a case-study approach, focusing on Mes Aynak mining project in Afghanistan and the Sardar Sarovar Dam project in India with respect to land grabbing and the exclusion of Indigenous Communities from decision-making processes. This research analyses secondary data sources—i.e., government publications, legal documents, project reports, academic papers and media articles. The research applied thematic analysis to identify key patterns and it provides a comprehensive analysis into how local and Indigenous Communities are affected by land acquisition and displacement. It will also analyse the legal frameworks and national policies, against international standards—i.e., the UN Declaration on the Rights of Indigenous Peoples

(UNDRIP). It will also draw comparisons between two case studies to identify common challenges and best practices in energy transitions.

It is pertinent to mention here that the study does not make strong causal claims, for the methodology cannot be interpreted as a systematic causal analysis, but it aims to offer insights into the implications of energy projects on affected communities. The research seeks to provide information and insights into the nature of these transition projects, rather than providing definitive cause-effect relationships. In doing so, this study attempts to contribute to discussions on more inclusive and sustainable energy policies while protecting and respecting the rights of local and Indigenous Populations.

3. ENERGY TRANSITION AND MINING-INDUCED DISPLACEMENT IN AFGHANISTAN

3.1. AFGHANISTAN'S UNTAPPED MINERALS AND NATURAL RESOURCES

Afghanistan, located in South-Central Asia, is a landlocked country with a rich and complex history shaped by its strategic location and diverse cultural heritage. Afghanistan is a country abundantly rich in natural resources (Gouhari, 2013). As of the latest estimates, Afghanistan's population is approximately 40 million people. The population is ethnically diverse, with major groups including Pashtuns, Tajiks, Hazaras, Uzbeks, and others. Afghanistan which is home to about 30 million tonnes of copper (Afghanistan's Ministry of Mines and Petroleum report, 2019), 2.3 billion metric tonnes of iron ore, and 1.4 million metric tonnes of rare earth minerals and other natural resources (Blumenthal & Bassetti, 2022). USGS announced that Afghanistan's mineral wealth is worth \$1trillion (USGS, 2010). The energy transition is creating a huge demand for minerals like lithium, copper, iron ore and other minerals and natural resources. Extracting such minerals is highly land-intensive, and largely takes place in Indigenous and local Peoples' territories, impacting habitats, environment and populations' health, livelihood, and education. Most countries are expanding on renewable energy capacity to tackle the growing climate crisis and in this process communities in Afghanistan have been neglected for quite a long time.

There has been sharp increase in mining projects in Afghanistan for commodities such as copper, iron, lithium, coal etc. Copper which is a critical component of advanced renewable energy technologies. There is a growing demand for it and as the world goes through its green energy transformation and tries to meet the sustainable development goal of the United Nations to provide clean energy to all (Wiessner, 2011).

Afghanistan now wants the extractive industry to become a substantial revenue generator. It was estimated that 14 major mining projects by 2016 would generate about \$1.5 billion a year. More than 50 per cent of this revenue will come from four projects—copper mines at Mes-Aynak, iron ore mine at Hajigak, oil and natural gas reserves at Amu Dariya and Afghan-Tajik Basin. The Ministry of Mines hopes each of these four projects will generate \$200 million or more revenue per year.

The absence of robust legal protections to uphold and defend human rights in mining operations in Afghanistan has led to the forced displacement of local communities from their ancestral lands. The local and marginalised communities, in particular, have been

disproportionately affected by displacement, as their traditional roles in agriculture, gathering forest resources, livestock management, and related activities have been disrupted by the immediate consequences of mining, resulting in the violation of their fundamental human rights as they are compelled to leave their land-based livelihoods behind.

3.2. *MINING INDUCED DISPLACEMENT AT MES AYNAK COPPER MINE*

The Mes Aynak is the world's second largest copper mine in the world situated in Logar province, 40km from Kabul, Afghanistan (Mes Aynak, Ministry of Mines, MoMP). It has copper deposits worth USD 43 billion (Khan et al., 2021). It is 2000 years old ancient Buddhist city which sits on largely preserved under layers of unexploited earth minerals, more specifically copper (Bezhan, 2012).

To achieve this goal, in 2007, the Chinese mining company Metallurgical Group Corporation (MCC) headed a state-owned consortium took on a 30 year lease and signed a \$3 billion contract to mine copper ore in Afghanistan (World Bank, 2013). The mining and extensive extraction operations at Aynak of copper ore have resulted in forced and involuntary displacement of local communities residing in the vicinity of mine site. It is estimated that one in seven villages affected by the project faced 'involuntary relocation (Khan et al. 2021), around 393 families were displaced due to this project (Ministry of Mines and Petroleum [MoMP], 2014). The displacement was primarily due to the need to clear land for mining infrastructure, such as open-pit mining operations, processing facilities, and associated infrastructure like roads and utilities. However, later on the mining project at Aynak got tied up in some contract problems, and it never got past some initial test shafts before it ground to a halt (Kullab, 2022).

More than 10 million people, each year are involuntarily displaced to make way for development projects (Cernea, 2000). While, hydropower generation is mostly responsible for the involuntary displacement of local communities, mining accounts for an undetermined proportion (Downing, 2002).

However, due to mining, displaced communities have lost access to their traditional lands and resources, disrupting their livelihoods that were based on agriculture, grazing, or other local economic activities. This leads to economic hardship, food insecurity, and social dislocation. The mining-induced displacement at Mes Aynak illustrates a complex interplay of cultural loss, social disruption, and economic inequality. Furthermore, mining activities often benefit external investors and government authorities more than local communities, exacerbating inequalities in resource distribution and economic benefits (Deberdt, Buffenoir, and Gholami, 2024).

Now the talks are underway for resumption of mining copper at Mes Aynak, which was earlier put on hold. If the project were to proceed without adequate planning and consideration for the village and its inhabitants, it could lead to further displacement and other adverse effects. Preservation of both cultural heritage and the well-being of local populations should ideally be prioritised in such developments. Also, if the company is allowed to exploit the site for a quick profit, it would most likely hurt the environment. Furthermore, water aquifers near the mine that supply water to Kabul and beyond would also be at risk of severe contamination from mining activity. The mining activities at Mes Aynak, would also affect farming in the

region, killing the livelihoods of local communities in and around the region. However, the current Afghanistan governance does not facilitate fair recognition and community participatory governance processes for the local communities at Mes Aynak (Rickard, 2019).

Mining-induced displacement violates many human rights, such as: inadequate compensation for displacement from their land, lack of participation of local communities in the division of profits from the exploitation of resources, infringement of social and cultural rights (especially Indigenous and tribal people), cultural devastation caused by resettlement; violation of housing rights; and violation of other rights such as economic, social, and cultural ones (e.g. lack of access to education in the new place of residence, lack of access to social facilities). For now Mes Aynak is safe, but for how long?

3.3. *DOMESTIC LEGAL FRAMEWORK IN AFGHANISTAN*

The Domestic legislation i.e., the Constitution of Afghanistan, which was adopted in 2004, states that property can only be confiscated in accordance with law and in pursuant to court order (Article 19, The Constitution of Afghanistan). The same article also has reference to the “prior and just compensation within the bounds of law” and limits confiscation to the purpose of securing public interests. However, the Land Expropriation Law is more specific about the expropriation of land, including a short provision on compensation.

In addition to the laws mentioned above, the Land Acquisition law, amended in 2017, according to which the expropriating authority is authorised to expropriate land for mining and extraction purposes (Article 5). The law states for compensation for land acquisition, and provides that the compensation must be paid “prior to the implementation of the project” (Article 37).

While these local laws are generally aligned with international principles, there are some concerns in their legislation and/or implementation. As previously stated, the Afghan government refers to World Bank’s Operational Policies 4.12 (World Bank Policies) in relation to the Aynak project, in the following sub-section, (the details of the Aynak case is explained). When we compare these policies and the Law on Land Acquisition, three discrepancies stand out. First, contrary to the World Bank Policies (III, 6(a) (ii)), the Law on Land Acquisition is developed in a semi-participatory way which means community consultation is not required. Second, the same rule does not apply to resettlement plans and resettlement support, which World Bank policies outline in detail as resettlement measures (Part I. Resettlement Plan). There are no provisions for public monitoring mechanisms, and they are not properly implemented. Third, the grievance procedures, which the World Bank regulations support in informal dispute (Part I, 17), are not mandated under the law.

4. **DISPLACEMENT AND INEQUALITY IN INDIA**

India’s commitment to green transition is evident through its various ambitious projects, such water, solar and hydroelectric projects. The Sardar Sarovar Dam on the Narmada River in India is one such project which further solidifies India’s key position as a player in the green energy movement. Unfortunately, this project is a case of green transition that has caused displacement, both directly and indirectly at a massive scale. Further, the inadequate resettlement and rehabilitation actions have exacerbated inequalities. In spite of multiple

benefits flowing from the dam project, the number of people displaced by it cannot be overlooked.

4.1. *HISTORICAL CONTEXT*

Starting from the central states of India's Madhya Pradesh to flowing west through the states of Gujarat to Maharashtra to the gulf of Khambhat, the Narmada River is the fifth longest river in India. The Sardar Sarovar dam on the Narmada River seeks to harness its potential for electricity generation, irrigation in the arid, economic development and poverty alleviation.

Dams are pivotal to India's green movement since they provide tangible benefits through hydroelectricity and modernised agriculture and irrigation (Savur 1995). The aim of the project is three-fold: (i) to provide drinking water to approximately 40 million people in the drought prone regions of Rajasthan (ii) irrigation facilities to regions in Gujarat and Rajasthan; (iii) provide hydroelectric power. However, the project has further exacerbated inequalities, displacing marginalised communities from their land and cultures. The people to be displaced by this project are "tribal communities who have lands in the steep, rocky and forested areas" (Morse B. and Berger T., 1992)

Development projects in India have resulted in relocation of approximately 50 million people, between 1947 and 1997, with large dams alone causing the displacement of 16 million people (Baviskar, 1995). Although it has its roots in the colonial and post-colonial eras, development-induced displacement in the Indian context became a major issue in the neo-liberal period. Various developmental activities namely dams (Singh, 2020), mining activities (Noy, 2023), Special Economic Zones (Levien, 2013; Paul, 2019) have created displacement in the name of development a recurring phenomenon.

4.2. *FORCED DISPLACEMENT OF THE ADIVASI (INDIGENOUS) COMMUNITIES*

All human rights violations were manifested with the construction of the Sardar Sarovar Dam, the second largest project in the Narmada, both in terms of areas submerged and the number of Indigenous Adivasi's displaced (Baviskar, 1995). As per World Bank, it was estimated that the project once completed would submerge around 37,000 hectares of land; 80,000 hectares of canal routes and will displace 1,00,000 people from 245 villages (Morse and Berger, 1992).

Interestingly, as per independent on-ground reports, the Sardar Sarovar Dam project has presently displaced Adivasis and farmers in massive numbers. It has displaced approximately 244 villages and one township, which includes communities from states of Maharashtra, Madhya Pradesh and Gujarat in India i.e., 192 villages in Madhya Pradesh, 33 villages in Maharashtra, and 19 villages in Gujarat (Modi, 2004).

Under some circumstances, displacement could be justified if communities displaced are properly consulted and then sufficiently rehabilitated and compensated. Michael Cernea has argued that development induced environmental displacement can be justified only when displaced people are not left worse off than they were before the project (Cernea, 1993). It is the moral responsibility of the states and international institutions to ensure proper rehabilitation, resettlement and compensation of people displaced as a result of the environmental project.

It is, unfortunately, neither the case that the displaced communities of the Sardar Sarovar Dam project were fully compensated and rehabilitated, nor were the different social groups equally sharing in the costs and the benefits of the project. The Justice Jha Commission's investigation highlighted severe irregularities and corruption in the rehabilitation process, with many resettlement sites lacking basic amenities, such as schools, water and healthcare (Justice Jha Commission report, 2008). This is typical of the pattern of environmental displacement in which the communities deemed "in the way" of national development are often the most vulnerable members of society (Bodley 1990; Penz 2019).

4.3. *DOMESTIC LEGAL FRAMEWORK IN INDIA*

The Domestic legal framework in India i.e., The Forests Rights Act, 2006 (FRA) recognises the right of local communities to manage their lands and forests and mandates consent from Gram Sabhas (village assemblies) for any land diversion, including green energy projects. However, many projects bypass this requirement and there is inconsistency in implementation with delay in recognising forest rights of Indigenous Communities. Also, The Land Acquisition, Rehabilitation, and Resettlement Act (LARR), 2013 governs the acquisition of land for public purposes which also includes green energy projects. The act provides for fair compensation, rehabilitation and resettlement procedures. However, wind, farm, solar and water projects come under public projects and often exempt them from the above-mentioned requirements.

Apart from the two local laws, India also has The Environment Protection Act, 1986 which includes provisions, such as Environmental Impact Assessment (EIA) which are assessments to be carried out mandatorily to assess the impact of any green project on forest lands, biodiversity and local communities' rights. However, the EIA is sometimes exempted in certain green energy projects. In some cases, it is also fast-tracked, leading to bypassing of community consultations and environment assessments.

5. POLICY AND LEGAL RESPONSES

While interpreting Article 6 of the International Covenant on Civil and Political rights (ICCPR), the human right committee under its general comment no. 36 states that "right to life" shall be understood broadly to include individuals to enjoy their lives with dignity (UN Human Rights Committee, General comment no. 36). It implies that states must take appropriate steps in situations that give rise to threats to lives or prevent individuals from enjoying their lives to live with dignity (ibid, para 26). The committee explicitly states that these also include the 'deprivation of Indigenous Peoples territories, lands and resources'(ibid).

Further reflecting on international human rights laws and understanding human rights as the core value, the rights provided under United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) provides comprehensive rights for the Indigenous Peoples and lays down minimum standards for the dignity and survival of Indigenous Peoples (UNDRIP

Art. 43). Albeit a non-binding instrument, the UNDRIP elaborates on existing human rights obligations and fundamental rights which applies to the specific situations of Indigenous Communities.

Another international legal framework which addresses the protection Indigenous Peoples human rights is the ILO Convention on Indigenous and Tribal Peoples (ILO C169). Article 2 of the said convention puts states under obligation to develop coordinated and systematic action, with participation of Indigenous Communities to ensure protection and guarantee respect of these peoples.

The Fundamental principle of Indigenous rights is the right to free, prior and informed consent (FPIC) and the state parties are obligated to respect and follow the principles of FPIC as contained within both UNDRIP and ILO. Article 10 of UNDRIP states that Indigenous Communities shall not be forcibly removed from their territories and lands. Without Free, Prior, and informed consent of Indigenous Peoples, no relocation shall take place and must take place only after agreement on just and fair compensation. The principles of FPIC are pivotal for preserving the Indigenous livelihoods and culture. Such projects, without checks and balances, challenge the legitimacy of ‘Green’ transition. As a result, projects implemented through green grabbing as explained above threatens the Indigenous way of life.

The Indigenous identities are central to their values and culture which is intertwined with their ancestral lands, and therefore, another relevant international legal framework is the International Covenant on Economic, Social and Cultural Rights (ICESCR) which provides for the right to take part in cultural life and is guaranteed under Article 15(1)(a). Therefore, forced displacement and land grabbing threaten their livelihoods, including access to natural resources, means of subsistence which also leads to loss of their cultural identities(Mazel O., 2009).

International treaties and frameworks have made it clear that the right to live with dignity is violated when Indigenous Peoples are forcibly displaced from their ancestral lands. This has also been made clear by international courts and tribunals. The Inter-American Court of Human Rights (IACtHR) in the case of *Yakye Axa v Paraguay* has held that states must make every endeavour to respect and protect the right to life by taking measures towards fulfilment to the right to decent life, particularly in cases where people are vulnerable and mostly at risk (para 162). The court has further interpreted that forced displacement of members of *Yakye Axa* Community from their ancestral lands was incompatible with their human dignity (para 168). The right to life is significant as it is considered as a “supreme right” (UN Human Rights Committee).

6. CONCLUSION: ADDRESSING BARRIERS FOR A JUST AND INCLUSIVE GREEN ENERGY TRANSITION

The complex relationship between Indigenous rights and energy transition has become an increasingly prominent issue worldwide. With the increasing demand for minerals and renewable resources, the regions rich in these resources often overlap with territories inhabited by Indigenous and local communities. These communities have unique rights and cultural ties to their land which must be respected and protected at all times. However, this does not mean

that mineral extraction must cease completely. Rather, a careful balance must be struck to ensure that both parties' needs and rights are met.

To truly address these issues, a human rights-based approach is imperative.

Firstly, there is an urgent need to adopt a human rights based approach in the mining sector, which fully incorporates the UN Declaration on the Rights of Indigenous Peoples. This approach must recognise the importance of land rights as well as ensuring meaningful engagement, equitable benefit-sharing and providing fair compensation for any adverse impacts and establishing transparent mechanisms for resolving conflicts. Ensuring accountability across scales is important, from different layers of responsibility in local/national institutions to operating companies and their shareholders.

Secondly, it is important to create an inclusive community consultation with the local and Indigenous Communities. Consulting them ensures their rights are respected and their voices heard in decisions that affect their lives and environment. Inclusive community consultation, particularly with Indigenous and local communities, is essential for ensuring that the energy transition is fair, equitable, and sustainable. Also, Indigenous and local communities possess valuable knowledge about their environments, including biodiversity, traditional practices, and sustainable resource management. Integrating this knowledge into project planning can lead to more sustainable outcomes.

In the context of extractive industries and renewable energy projects, an unsettling reality emerges that perpetuates the exploitation, marginalisation and exacerbates inequalities of Indigenous and local communities. The transition to green energy and efforts to combat climate change are gaining importance, yet the encroachment imposed by extractive industries and renewable energy projects challenges the notion of a truly sustainable and just transition. Merely categorising these projects as part of the green energy transition is inadequate and insufficient unless there is recognition, inclusion, equity and involving, and obtaining FPIC principles discussed earlier. This raises questions about the authenticity of the "greenness" of the green energy transition. Energy transition to the "Green Economy" cannot happen without the participation and leadership of Indigenous and local communities. Transformative action is indispensable in realising a just transition that upholds sustainability, equality, and human rights for all.

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