

Annex 3:
**Narrative Summary of Government of India Legal Framework Applicable to
POWERGRID**

1. The Constitution of India provides broad protection for the environment and rights of peoples affected by the economic activities, including parastatal corporations such as POWERGRID. The Constitution clearly mandates the Government to undertake environmental protection and provides that every citizen is duty bound to protect and improve the natural environment.¹ By raising environmental concerns to the constitutional level, India has provided its citizens with a powerful legal tool to protect the environment and maintain health standards by among, other things regulating the activities of government and private actors, including parastatal corporations. The Constitution also contains specific and legally actionable provisions relating to environmental and social rights and obligations.

A. ENVIRONMENTAL FRAMEWORK

2. According to POWERGRID's ESPP, as confirmed by the GoI, there are a number of environmental and social laws and rules that apply to POWERGRID's operations in a mandated fashion. These include provisions of the Environmental (Protection) Act of 1986 (EPA), which authorizes the Central Government "to take all measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution" and provides overall authority to the government with respect to the establishment and mandates of regulatory agencies including the Central and State Pollution Control Boards (CPCB/ (SPCBs), Pollution Control Committees (PCCs) and various other authorities. Specified Rules issued under the EPA, including the Batteries (Management and Handling) Rules, 2001; the Hazardous Wastes (Management and Handling) Amendment Rules, 2003; Ozone-Depleting Substances (Regulation and Control) Rules, 2000² also apply to POWERGRID's activities.

3. The Environmental (Protection) Act of 1986 (EPA) and its subsidiary Rules provide the overall legal framework for environmental regulation in India. The EPA establishes the general powers of the Central Government and its relations with State Governments³ with respect to "the protection and improvement of the environment and the prevention of hazards to human beings, other living creatures, plants and property." (Preamble) The EPA includes within definition of "environment" the water, air, and land and the relationship between these elements and human beings, other living creatures, plants, microorganisms and property. (Section 2(a)). The Act provides the Central Government with the authority to set standards for emissions or discharges of environmental pollutants as defined in the Act (Section 3(2)(iv); restricting areas in which classes of industries or activities may be carried out, subject to certain safeguards (Section 3(2)(v); and setting forth procedures and safeguards for the prevention of accidents and the handling of hazardous substances (Sections 3(2)(vi and vii). The GoI is authorized to initiate closure, prohibition or other regulation of any industry, operation or process and to implement

¹ Article 48-A and 51-A(g)

² ESPP, 2.1.3

³ Under Section 23 of the EPA the Central Government is authorized to delegate its powers and functions under the Act to any officer, State Government or any other authority. Under this provision the Central Government has issued delegations of authority under Section 5 of the Act, providing for the closure, prohibition or regulation of any industry operation or process, or stoppage of supply of electricity or water or any other service to various State Governments.

civil and criminal penalties and procedures for violations of the Act. including both companies and Government Departments. (Sections 5, 15-17).

4. Further general environmental authorities are specified in the Environmental (Protection) Rules of 1986 (EPA Rules) which are designed to give legal effect to Sections 6 of the EPA dealing with prohibitions and restrictions on various the forms of pollution and the location of polluting industries and Section 25 which includes related procedures for establishing threshold emissions and discharge limits; government access to information and samples of air, water and soil, the functions of government laboratories; the qualification of Government Analysts charged with analysis of samples; reporting authorities and complaint procedures.

5. Particular provisions of the EPA Rules that are relevant to this analysis include the prohibitions and restrictions on the location of industries, processes and operations in various areas (Section 5); the furnishing of information to authorities and agencies (Section 12); the prohibition and restriction on the handling of hazardous substances (Section 13); and the requirement for specified industries to submit an annual environmental audit report to State Pollution Control Boards. (Section 1)

6. Section 5(1) of the EPA Rule has particular potential relevance to POWERGRID's operations as a form of linear infrastructure having a narrow but diverse footprint on the natural and human landscape. This provision of the EPA Rules authorizes the government to take the following considerations into account while prohibiting or restricting the location of industries, processes and operations in different areas:

7. However, these EPA provisions are limited in their direct application to POWERGRID, due primarily to the fact that the electrical transmission sector is not subject to the provisions of EIA Notification first issued under the authority of the EPA in 1994 and subsequently amended in the EIA Notification of 2006 (EIA Notification). The EIA Notification is the only legal means by which the Central governing authority in India can require a project proponent to prepare an environmental assessment for purposes of Environmental Clearance. In consequence, with respect to electrical transmission comprehensive environmental clearance of a project by MoEF is limited to those projects located in the environmentally sensitive Aravalli mountain range in specified regions in the states of Rajasthan and Haryana.⁴

8. The stated rationale for the omission of electrical transmission from the list of activities Scheduled under the EIA Notifcaiont this is that POWERGRID's interventions in constructing transmission lines, towers and substations is not land- intensive, and with the exception of the small areas required for the construction and operation of substations, is not particularly intrusive.⁵ POWERGRID does not formally acquire land for the construction of towers and transmission lines; it avoids forested and cultivated land wherever feasible and clears only so much land of tress as required for the safe passage of transmission lines; agricultural land use is generally not affected by this activity. Sub-stations are located on government land wherever feasible, and when located on private land and are fully subject to the provisions of the LAA.

⁴On May 7, 1992 MoEF issued a Notification restricting a number of activities, including "Electrification (laying of new transmission lines)" as well as the cutting of trees, from being undertaken in the Aravalli Range for the purpose of preventing environmental degradation in the region. The Notification required that to prior to undertaking such activities, a special application must be made to the Secretary, MoEF, specifying extensive details of the area and the proposed process for operation. The Notification also requires the applicant to submit an Environmental Impact Statement and an Environmental Management Plan along with such other information as may be required by the Central Government.

⁵ Discussion with MoEF.

9. This rationale ignores the widely accepted view fact that the construction and operation of rights of way for transmission lines (TLs), transmission towers (TTs) and sub-stations (SS) can have a material adverse effect on environment, as well as on the welfare of people living and working in the vicinity of such installations. Electrical transmission lines and substations can have adverse effects on ecosystems both directly through construction of ROWs in ecologically sensitive areas and indirectly by creating and increasing access to such otherwise inaccessible areas.

10. For this reason, electrical transmission is generally subject to the EA process and to other legally-mandated related environmental approval procedures in virtually all developed and many developing countries as well as by multilateral and bilateral development agencies, including the World Bank and the Asian Development Bank. Under World Bank Guidelines for Screening and Classification of projects, power transmission and distribution networks, including rural electrification are always subject to EA and may be considered to be either Category A or B projects, depending on scale and site sensitivity.⁶

11. In this connection it is worth noting that the World Bank Group Environmental, Health and Safety Guidelines for Electrical Transmission and Distribution cites the following potential environmental, health and safety impacts associated with this sector:⁷

- Construction site waste generation;
- Soil erosion and sediment control from materials sourcing areas and site preparation activities;
- Fugitive dust and other emissions (e.g. from vehicle traffic, land clearing activities, and materials stockpiles);
- Noise from heavy equipment and truck traffic;
- Potential for hazardous materials and oil spills associated with heavy equipment operation and fueling activities.
- Terrestrial habitat alteration
- Aquatic habitat alteration
- Electric and magnetic fields
- Hazardous materials.

12. Considering the above, the failure to apply EIA requirements to the electrical transmission sector represents a fundamental gap between Indian legal requirements and the EA objectives of OP 4.00 Table A1. Specifically, exempting electrical transmission from the EA requirements of the EPA and the EIS Notification Act is not consistent with the EA Objective of

⁶ World Bank, "Guidelines for Environmental Screening and Classification," Quality Assurance and Compliance Unit, Operations Policy and Country Services, February 2007.

⁷ [http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/gui_EHSGuidelines2007_ElectricTransmission/\\$FILE/Final+-+Electric+Transmission+and+Distribution.pdf](http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/gui_EHSGuidelines2007_ElectricTransmission/$FILE/Final+-+Electric+Transmission+and+Distribution.pdf)

OP 4.00 Table A1 of “help[ing to] ensure the environmental and social soundness and sustainability of investment projects” or to “support[ing] integration of environmental and social aspects of projects into the decision-making process.”⁸

13. Other environmental legislation that is applicable to POWERGRID’s activities include the Wildlife (Protection) Act of 1972, as amended in 2002 the Biological Diversity Act of 2002, the Biodiversity Rules (2003) the Indian Forest Act of 1927; the Forest (Conservation) Act of 1980.⁹ The Forest Conservation Rules, 2003 as amended in 2004 (F and various acts and rules relating to physical cultural resources. including the Antiquities and National Treasures Law of 1972 and the Ancient Monuments and Archaeological Sites and Remains Act of 1958) and accompanying Rules of 1959. The Right to Information Act, enacted in 2005, provides recourse to citizens seeking access to information that is in the public domain and applies potentially to information subject to the relevant and applicable legal requirements..¹⁰

B. SOCIAL FRAMEWORK

14. The GoI does not have a national legal system that corresponds to the Objectives of OP 4.00 Table A1 with respect to Involuntary Resettlement, specifically “to avoid or minimize involuntary resettlement and, where this is not feasible, to assist displaced persons in improving or at least restoring their livelihoods and standards of living in real terms relative to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher.” With the limited exception of affected tribal populations, the only nationally binding legislation that applies to IR in India is the Land Acquisition Act of 1894 as amended in 1984 (LAA), which sets forth detailed procedures for government acquisition of private land. Among other things, the LAA specifies the information that is to be provided to affected parties, the manner of inquiry and the type, amount and timing of compensation that is to be provided. It also provides a recourse mechanism for those who are dissatisfied with compensation to request a greater amount.¹¹ The LAA is directly applicable to POWERGRID as it explicitly provides for land acquisition in the national interest for transmission lines and highways to be carried out by the respective States, in accordance with its provisions. Under the LAA, financial compensation is provided for the loss of land, other productive assets (such as standing crops and fruit and fodder trees), house plots and residences. Restoration of community and household productive assets, or of standard or quality of life, is not covered by the LAA; a policy matter, any form of compensation not provided for under the LAA is determined on a project- by-project basis, unless a State or parastatal company policy applies.¹²

15. With respect to projects affecting Indigenous Peoples, applicable GoI laws include Panchayats (Extension to Rescheduled Areas) Act of 1996 (PESA); the Scheduled Tribes and

⁸ However, as discussed below other laws including, the above-cited Rules issued under the EPA, as well as provisions of the Forest and Wildlife Acts as well as the LAA, as well as laws intended for the protected of tribal peoples and forest dwellers are applicable to POWERGRID and, taken collectively this, legislation provides partial equivalence with Objective of OP 4.00 Table A1 with respect to EA.

⁹ According to the ESPP [citation] the Wildlife (Protection) Act 1972 is not directly applicable to POWERGRID operations because the objective of the Act is conservation of wildlife by stopping poaching and other illegal killing as well as declaration of wildlife rich area as sanctuary and National Park.

¹⁰ The right to Information Act was issued subsequent the ESPP and is not cited in the ESPP as applicable to POWERGRID.

¹¹ The LAA forms the basis for other legislative provisions involving land acquisition such as those contained in the Indian Forest Act of 1927; the National Highways Authorities of India Act of 1956; and the Wildlife Protection Act of 1972.

¹² “Resettlement Policy in India, World Bank, <http://www.his.com/~mesas/resindia.htm>

Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006¹³; and specific provisions of the LAA, the Right to Information Act (RTIA) and the Protection of Human Rights Act (PHRA).¹⁴ The concerns of tribal population also are covered in various sectoral policies and legislations such as land, agriculture, education and health. The Equivalence Analysis of social safeguards also takes account, as a potential source of gap-filling measures, the pending Resettlement and Rehabilitation Bill (R & R Bill), submitted to the Indian parliament in December 2007.

16. Indigenous Peoples are recognized by the Constitution of India as “Scheduled Tribes” (STs) or “tribals.” There is no legally binding definition of STs; however the application of the Constitutional and other legal provisions evidences significant overlap with the defining characteristics of Indigenous Peoples as set forth in World Bank OP 4.00 Table A1.¹⁵ Because many, but not all, of the legal protections applied to STs are identical to those applied to Scheduled Castes (SCs)¹⁶ a number of traits have customarily been seen as establishing tribal rather than caste identity. These include language, social organization, religious affiliation, economic patterns, geographic location, and self-identification. Recognized tribes typically live in hilly regions somewhat remote from caste settlements; they generally speak a language recognized as tribal.

17. Unlike castes, which form part of a complex and interrelated local economic exchange system, tribes tend to form self-sufficient economic units. Historically, the economy of most tribes was subsistence agriculture or hunting and gathering. Most tribes are concentrated in heavily forested areas that combine inaccessibility with limited political or economic significance. For most tribal people, land-use rights traditionally derive simply from tribal membership. Tribal society tends to the egalitarian, with its [leadership](#) based on ties of kinship and personality rather than on hereditary status. Tribes typically consist of [segmentary lineages](#) whose extended families provide the basis for social organization and control.

18. Many tribes practice tribal religions which are distinct from the dominant religions of India (Hinduism, Islam and Jainism) and often resemble practices associated with [Tantric Shivaism](#). During the [19th century](#), substantial numbers of tribals converted to [Christianity](#) and [Brahmanism](#) (a Hindu offshoot). Tribal religion often recognizes no authority outside the tribe.

19. Some of these defining characteristics may not apply in specific instances. Language does not always give an accurate indicator of tribal or caste status, especially in regions of mixed population. Nor do self-identification and group loyalty provide definitive markers of tribal identity; in the case of stratified tribes, the loyalties of clan, kin, and family may well predominate over those of tribe. In addition, tribes cannot always be viewed as people living apart; the degree of isolation of various tribes has varied tremendously.

20. According to the [2001](#) census, Tribal peoples constitute 8.3% of the nation's total population, over 84 million people. A list of officially recognized STs is included in the fifth Schedule of the Constitution. Such tribes are particularly numerous in the Indian [states](#) of [Orissa](#), [Madhya Pradesh](#), [Chhattisgarh](#), [Rajasthan](#), [Gujarat](#), [Maharashtra](#), [Andhra Pradesh](#), [Bihar](#),

¹³ the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 was issued subsequent to the ESPP and is not cited in the ESPP as applicable to POWERGRID.

¹⁴ The Protection of Human Rights Act is not cited in the ESPP.

¹⁵ The literal meaning of the Hindi [?] term Ādivāsīs is "original inhabitants." Indian tribals are also called Atavika (forest dwellers, in Sanskrit texts), Vanvasis or Girijans (hill people). Wiki

¹⁶

[Jharkhand](#), [West Bengal](#) and in extreme northeastern states such as [Mizoram](#). [Wiki]. In the northeastern states of [Arunachal Pradesh](#), [Meghalaya](#), [Mizoram](#), and [Nagaland](#), more than 90% of the population is tribal. However, in the remaining northeast states of [Assam](#), [Manipur](#), [Sikkim](#), and [Tripura](#), tribal peoples form between 20 and 30% of the population.

21. The welfare and standard of living of tribals have been particularly vulnerable to changes in Government policies on land ownership and on the management of forest reserves. Although the colonial and post-independence regimes belatedly realized the necessity of protecting tribals from the predations of outsiders and prohibited the sale of tribal lands, by the time tribals accepted the necessity of obtaining formal land titles, they had lost the opportunity to lay claim to lands that might rightfully have been considered theirs. In the [1970s](#), tribal peoples came again under intense land pressure, especially in central India. Migration into tribal lands increased dramatically, as tribal people lost title to their lands in many ways – lease, forfeiture from debts, or bribery of land registry officials. Other non-tribals simply squatted, or even lobbied governments to classify them as tribal to allow them to compete with the formerly established tribes. In any case, many tribal members became landless laborers in the [1960s](#) and [1970s](#), and regions that a few years earlier had been the exclusive domain of tribes had an increasingly mixed population of tribals and non-tribals. Government efforts to evict nontribal members from illegal occupation have proceeded slowly; when evictions occur at all, those ejected are usually members of poor, lower castes.

22. Government efforts to reserve forests have precipitated armed (if futile) resistance on the part of the tribal peoples involved. Intensive exploitation of forests has often meant allowing outsiders to cut large areas of trees (which the original tribal inhabitants were restricted from cutting), and ultimately replacing mixed forests capable of sustaining tribal life with single-product plantations

23. The Constitution provides a three pronged framework to improve the situation of both and STs and SCs:.

- Protective Arrangements designed to enforce equality, to provide punitive measures for transgressions, and to eliminate established practices that perpetuate inequities.
- Compensatory Discrimination to provide positive preferential treatment in allotment of jobs and access to higher education, as a means to accelerate the integration of the SCs and STs with mainstream society. Compensatory discrimination is also popularly referred to as Reservation and;
- Development - Provide for resources and benefits to bridge the wide gap in social and economic condition between the SCs/STs and other communities.

24. A number of laws have been enacted to operationalize these Constitutional provisions, of which those most relevant to POWERGRID include the [Scheduled Caste and Scheduled Tribe \(Prevention of Atrocities\) Act, 1989](#), and the Panchayats (Extension to Scheduled Areas) Act of 1996.

25. The 73rd amendment to the Constitution, mandated that resources, responsibility and decision-making be devolved from central government to the lowest unit of the governance, the

Gram Sabha or the Village Assembly. A three-tier structure of local self-government was envisaged under this amendment.¹⁷

26. Under the Provisions of Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA, also known as the Tribal Self Rule Law as it is variously called) the provisions of the 73rd amendment were extended to Scheduled Areas. Scheduled Areas are those, which are under the Fifth Schedule of the Constitution of India where the tribal populations are predominant. The Constitution of India initially envisaged a special scheme of administration in the scheduled areas where general laws would not be applicable unless the Governor deemed it fit to enforce such laws. The rationale [documented] behind this provision was that these areas are inhabited with people who have resided on the basis of their own customary practices and traditional beliefs and culture and thus general laws of the land would be inappropriate with their customary laws and ethos.¹⁸

27. The Draft Tribal Policy assumes ‘displacement’ to be the only type of potential project impact. It stipulates “...displacement of tribals is kept to the minimum and undertaken only after possibilities of non-displacement and least displacement have been exhausted.” There is no mention of social assessment per se.

28. As regards identifying social and economic benefits for Indigenous Peoples that are culturally appropriate, the Tribal sub-plan strategy can be considered to be one document which perhaps takes into account a social assessment type of methodology especially for allocating resources to specific states including the state of West Bengal. The tribal sub-plan approach directs the states to allocate State Plan funds to TSP at least in proportion to the tribal population in the State. These funds are exclusively for the development of the tribal people and are in addition to the benefits from the overall Plan of a State/UT. Such a population - proportion budgetary plan is a part of over all plan of a State or UT, and is therefore, called a ‘sub-plan.’¹⁹ Such a plan can be considered as an out come of a need assessment for scheduled tribes in a given context.

29. Under the Constitution, the Tribes Advisory Council has been constituted in West Bengal, which is mandated to look into the administration and the control of schedule tribes which can advise on any measure regarding the welfare and advancement of schedule tribes in the state on matters which are referred to it by the Governor. Note that the TAC has no *suo motu* power to take on welfare issues of schedule tribes.

30. There are no provisions for legal recognition of customary rights of tribals in the draft tribal policy.

31. The draft tribal policy aims at making legal and institutional arrangements to protect the intellectual property rights of STs and curtail the rights of corporate and other agencies to access and exploit their resources.

32. The draft NEP proposes to “Formulate and adopt an internationally recognized system of legally enforceable *sui-generis* intellectual property rights for ethno-biology knowledge, to enable

¹⁷ Sanjay Upadhyay, “Tribal Self-Rule Law and Common Property Resources in Scheduled Areas of India- A New Paradigm Shift or another Ineffective Sop?” Paper presented at the Tenth Biennial Conference of the International Association for the Study of Common Property (IASCP), Oaxaca, Mexico, 2004.

¹⁸ Udaypay, op cit

¹⁹ Evaluation Report on the Integrated Tribal Development Program at www.planningcommission.nic.in

local communities to realize significant financial benefits from permitting the use of such knowledge.”

33. These laws and rules are supported by a number of national government policies, which, although not mandatory in their direct application, often serve as a framework for state laws that are mandatory. These include the National Conservation Strategy and Policy Statement on Environment and Development, 1992; the National Forest Policy, 1988, the Policy Statement for Abatement of Pollution, 1992 and the Wildlife Conservation Strategy 2002-15.²⁰ Policy Statement on Environment and Development, National Resettlement and Rehabilitation Policy, 2007 and the Draft Tribal Policy, 2006.²¹ Some of these national level policies are also intended to guide legislation enacted at the state level that is binding on POWERGRID’s operations in various states in which it operates. (Due to the large number of states and territories in which POWERGRID operates a review of individual state legal systems and associated policies are beyond the scope of this Equivalence Analysis.) Because state laws are required to be no less stringent than central laws²² by excluding state-level legislation this Equivalence Analysis may under-state the extent of equivalence between the Indian legal system and the Objectives and Operational Principles of OP 4.00 Table A1, in particular with respect to social safeguards.²³

34. The above cited Acts and Rules are supported by numerous amendments, or “Notifications” under Indian law as well as Orders of the Supreme Court that have the force of law. These Notifications and Court Orders are also cited in the matrix of this report.

35. In addition, the government has issued a number of formal guidance documents that, while not legally enforceable, are sometimes useful in interpreting how certain laws and rules are to be implemented by competent authorities at the national and state levels. In addition, the laws and policies are often supplemented by formal “guidances” that are intended to guide national and state governments in the implementation of the policies, laws and regulations that comprise the legal framework. Although these guidances are not legally enforceable, they are sometimes useful in interpreting the intended meaning of various legal provisions. A prime example is the EIA Manual issued under the Environmental Notification Act of 2006.

36. Relevant provisions of this legislation are cited verbatim in the Equivalence Matrices in Annex and full texts of the above-cited legislation and other legislation cited in the text and footnotes of this report may be accessed via the [links included in the References at the end of this report.](#)

²⁰ ESPP 2.3.2.

²¹ The Policy seeks to bring Scheduled Tribes into the mainstream of society through a multi-pronged approach for their all round development with out disturbing their distinct culture. The concerns of tribal population also are covered in various sectoral policies and legislations such as land, agriculture, education, health, etc. While these policies do not exclusively deal with the tribals yet, in addition to their general provisions, they often have special provisions applicable to the tribal population

²² [need citation to support this point]

²³ Lands which belong to scheduled tribes either on an individual or collective basis are generally covered by the respective state legislations on land such as the Land Revenue Codes or Land Reforms Act. The alienation of tribal land is typically provided under a special provision in the land laws of the state. For example, the West Bengal Reforms Act clearly prohibits the alienation of tribal lands.