

A PEOPLE IN THE WAY OF PROGRESS



**Prostitution, alcoholism and a lawsuit
on illegal land acquisition in the Lake
Turkana Wind Power project**

DANWATCH

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BEHIND THIS INVESTIGATION

Green energy is expected to be a significant part of the solution to Africa's energy problems. But what new problems may arise if progress exacts at a high cost?

Lake Turkana Wind Power is the largest private investment ever in Kenya, and Danish and international companies and investors have already sunk millions of euros into the project. But they now await a court decision which will determine whether the land on which the turbines will be built was illegally acquired.

This investigation is the first of two parts of a journalistic investigation carried out in Kenya from March 2-11 2016, where ngo's, politicians, experts in land rights and indigenous peoples' rights and community members have been interviewed by an international collaborative team of journalists. Desk research, including data collection through Freedom of Information Act, research in this field as well as interviews with experts on human and land rights was conducted from December 2015 - May 2016. Partners in Lake Turkana Wind Power project have had the opportunity to be interviewed and furthermore comment on the findings of this investigation prior to the publishing date.

KEY FINDINGS

- Danwatch has conducted 24 interviews with ethnic groups in Sarima and the catchment area, Gatab, Loiyangalani, Kargi and Marsabit. Most communities approve of the wind power project, but claims of no public consultations prior to Lake Turkana Wind Power projects land acquisition in 2007 have been raised. The land rights issue is now in court.
- Prostitution, violence and alcoholism have now come to the resettled community Sarima, because of expectations of jobs, which the project has not been able to fulfill due to an influx of people.
- The consortium does not recognize 3 out of 4 tribes as indigenous people, and therefore they are not given rights as such in the project. The tribes in question, Turkanas, Samburus, Rendile and El Molo are recognized as indigenous peoples by The African Commission of Human and Peoples Rights as well as experts interviewed by Danwatch.
- Experts in IFC Standards, indigenous peoples rights and land rights in Kenya say to Danwatch that the wind power project is not in compliance with neither IFC Performance Standards nor international human rights standards.

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Storm ahead for Vestas as giant Kenyan wind power project is in court

As wind turbines begin to arrive in Kenya by the hundreds, a court case about illegal land acquisition in Northern Kenya drags on between nomadic tribes, an international consortium and the government, while tensions are on the rise in local communities. Danwatch visited Northern Kenya to get a closer look at the impacts of Kenya's largest-ever private investment.

The room was filled to capacity as traditional nomads, lawyers and representatives met at the Land and Environment Court in Meru, March 9. Once again, Judge Peter Njoroge announced a postponement of his decision in a dispute about alleged illegal land acquisition between representatives from local communities and an international million-euro consortium, Lake Turkana Wind Power project. A high profile case which may have serious long-term consequences for Kenya.

The Lake Turkana Wind Power project represents a revolution for renewable energy in Kenya - but in its home region in Northern Kenya, the project is facing obstacles. First of all, the legality of how the consortium acquired the land in 2006/2007 is questioned, second the project has now caused inter-tribal conflicts, and finally, critique of the power purchase agreement (PPA) with the government has been raised.

Lake Turkana Wind Power project is Kenya's biggest private

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The communities just want to know how their land was given away to an international consortium without them being consulted
-plaintiff's lawyer, Amina Hashi

investment ever at a value of approximately 620 million euros. Electricity from the turbines will increase Kenya's energy output by between 15-20%, and according to the project's own calculations, the turbines will bring electricity to 2,5 million additional Kenyans.

Since its inception in 2006, the consortium has leased 150,000 acres of land and resettled a small village, Sarima, in order to build a road and set up 365 wind turbines alongside the windy shores of Lake Turkana.

In 2014, the project faced headwind when residents from Laisamis Constituency and Karare Ward filed a lawsuit, not only against Lake Turkana Wind Power project, but also the county government, the National Government and the National Land Commission for illegal land acquisition.

In her Nairobi-office, Amina Hashi, plaintiffs lawyer with expertise in land rights and land law, says that she cannot comment on the on-going case, however she can inform on the process of



Rendille women observing the court case initiated by representatives from the Rendille tribe on behalf of the residents from Karare and Laisamis, March 9, 2016.

alienation of Land of this nature: “As a Land Lawyer it is public knowledge that legal process of land acquisition are elaborated and contained in statute law and the Constitution. Therefore the framework for alienation of land follows a step by step procedure as enshrined in the various statutes for example the Trust Land Act covers how community land can be acquired through a step by step mandatory process known in law called setting apart”. Hashi adds: “This process of setting apart allows for community consultation and qualitative participation. It even allows the community a right of refusal of the setting apart proposal if they so wish. Now the reality of what happened and the provisions of the law are being tested,” says Hashi:

The process of how the land was set apart was “unconstitutional, unprocedural, illegal and irregular. The Procedure was flawed and made a mockery of and assumption that the provisions of the Repealed Constitution and the Trust Land Act were of mere ornamental status”.

Lawyers representing Lake Turkana Wind Power project do not wish to comment on the ongoing court case. But according to court case files, the question before the court as raised by the Lake Turkana project is that the issue of the land is one, but the project benefit to the community is enormous and they therefore question plaintiffs motives for filing the court case.

Green energy in rural Kenya

The Lake Turkana Wind Power project is financed by a number

of international investors, including Finnfund, Norfund, the Danish Investment Fund for Developing Countries (IFU), the Danish Export Credit Agency (EKF) and Vestas. Vestas is manufacturing

THE STORY IN BRIEF

- Lake Turkana Wind Power project in Northern Kenya is in court over allegations of illegal land acquisition.
- There was no public consultation, before the land was given away, no reservations from the residents and no compensation, which is a violation of Trust Land Act and the Constitution, plaintiffs state.
- The consortium, consisting of international lenders and companies “denies each and every allegation set out in the plaintiff”.
- The consortium claims that local host communities (Samburu, Turkana and El Molo Ed.) are fully in support of the project and do not feel the plaintiffs represent them.
- Lake Turkana Wind Power project is Kenya’s biggest private investment ever at a value of approximately 620 million euros. It is due to be fully operational in 2017.

the turbines and holds a 12.5% share in the project. The wind turbine project was launched in 2006 and seemed like a good idea from the beginning. An increase in sustainable energy, job creation and development of rural Northern Kenya were highlighted by the consortium as positive impacts described in the project's Environmental and Social Impact Assessment (ESIA).

Another benefit from the project is strengthening of the existing 200 km road from Laisamis-South Horr and South Horr-Loiyangalani Road in order to make sure that heavy trucks transporting the enormous wind turbines can access the rough areas around Lake Turkana.

Access to energy is one of the signature initiatives of Uhuru Kenyatta's government, and the president appeared personally at the groundbreaking ceremony of the wind turbine project in July 2015, and lauded it to the invited members of the press.

"Today, we witness the commencement of a great project ... It is my duty today to encourage the local people to open their eyes to the opportunities coming down this way, and to get ready to take advantage of them. Nothing will get in the way of this wind turbine project," Kenyatta said.

In 2014, the project was awarded both the African Renewables Deal of the Year and the African Power Deal of the Year by the media firm Thomson Reuters.

However, allegations of illegal land acquisition and renewed inter-tribal tensions because of the project began to emerge. Two of the pastoralist communities in the area, Turkana and Samburu, which have lived off and fought over cattle for centuries, began accusing each other of being unfairly favored in getting jobs with the consortium and violent attacks increased, say community members that Danwatch has interviewed. Violent attacks are common for this area, but usually due to cattle raids and at this point, people were being attacked and killed without cattle being stolen.

Later on, in 2009, critique was raised from a potential core investor, the World Bank, which disputed the feasibility of the project's power purchase agreement (PPA) with the Ministry of Energy. According to the World Bank, the agreement will eventually make electricity too expensive for Kenyans. Allegedly, the World Bank dropped out of Lake Turkana Wind Power project in 2012 because of the project's feasibility, said former country Director from the World Bank in Kenya, Johannes Zütt, October 2012.

"We believe that the take-or-pay provisions in the PPA between Lake Turkana Wind Power project (LTWP) and Kenya Power and Lighting Company (KPLC) would expose Kenya Power to unacceptably large financial risk given the possible curtailment", Zütt stated.

Who has the right to the land?

In the court case, the process of how the land was given away is contested. There was no public consultation, no notice given of the proposal for setting apart, and no compensation for lost land or alternative settlement was offered, plaintiffs state.

In 2006, the land in question was *trust land*, which means land held in trust by the county government on behalf of the communities. Plaintiffs are part of the Rendille community but they claim to represent all communities in the region which are Rendilles, Samburus, Turkanas and El Molo. These nomadic pastoralists have lived in the region for centuries. They use the land for their livelihoods, cultural, ceremonial and spiritual purposes, "which makes them legitimate owners and occupants of the land in question, Laisamis and Karare", plaintiffs say.

But the original ownership of the land is questioned by the consortium in their Resettlement Action Plan (RAP) from 2014, where they state:

"The nomadic pastoralists have customary rights of use to land pastures, however, have no recognizable legal right or claim to the land other than use and are therefore not eligible for land compensation", the consortium says.

The question of who has the legal right to trust land is not a question at all, according to Liz Alden Wily, an international tenure specialist presently at the Leiden School of Law.

"The Constitution in force at the time was clear that this land is owned by the people although held in trust for them by the County Council. The new Constitution is even clearer: this land is community property," says Wily.

Many land-rights conflicts arise when the government gives away concessions to land that are not theirs to give, says Birgitte Feiring, a senior researcher at the Danish Institute for Human Rights.

"It is not the case that because these people do not have a deed to the land, they have no rights to it or to the surrounding area, because their rights to the area are based on historical rights" Feiring says. A growing demand for green energy projects in developing countries has spurred several court cases of illegal land acquisitions, because foreign investors go for rural areas, where the wind, sun and water is suitable for these types of projects. This is one of the reasons why conflicts of this nature are not uncommon in Kenya, according to Mikkel Funder, a senior researcher in natural resources and development at the Danish Institute for International Studies (DIIS).

"Green energy projects are booming across Africa right now, and governments are eager to access the energy and financing.

TRUST OR COMMUNAL LAND

Trust land or communal land is a territory in possession of a community, instead of an individual or company. Trust land or communal land (after the constitution in 2010) is managed by the government under a National Land Commissioner. It is the responsibility of the commissioner to manage public land on behalf of the national and county governments and make sure that the procedure and manner of setting aside land for investment should respect mechanisms of benefit sharing with local communities.



The law: When land is set apart by a council

Before the new constitution was adopted in 2010, when a local council received an application for land lease, a divisional land board should be established to ensure public participation in the decision process. According to the Land Trust Act, a Divisional Land Board had to consist of:

- a chairman, appointed by the Minister for the time being responsible for land after consultation with the council
- not less than four and not more than fifteen persons appointed by the council;
- not more than two public officers appointed by the council; and
- two persons appointed by the council from amongst its members.”

Once the Divisional Board was established, the Land Trust Act required the following procedure before land could be set apart

- the Divisional Board shall hear and record in writing the representations of all persons concerned who are present at the meeting, and shall submit to the council its written recommendation concerning the proposal to set apart the land, together with a record of the representations made at the meeting;

- the recommendation of the Divisional Board shall be considered by the council, and the proposal to set apart the land shall not be taken to have been approved by the council except by a resolution passed by a majority of all the members of the council:

Provided that where the setting apart is not recommended by the Divisional Board concerned, the resolution shall require to be passed by three-quarters of all the members of the council.”

In other words, a simple majority of the council could approve the setting apart if the Divisional Board supported it, but a three-quarters majority was needed if the Board opposed it. Either majority had to be calculated with respect to the total number of elected council members, not simply those present at the time of the vote.

Once the council approved a proposal to set apart land in accordance with the procedure above, the council was required to publish a notice of the setting apart in the Gazette, which means public announcement of the land being set apart.

Source: *Trust Land Act, 2010.*



Cases like this are worrying, because they show that in practice, existing procedures around public involvement are not sufficient to ensure that communities feel properly heard and involved in green investments. We need more checks and balances and broad social acceptance of these projects," says Funder.

Lack of consultations

It is the responsibility of the county government to make sure that communities were properly consulted before land was privatized, which was not the case with Lake Turkana Wind Power project, Plaintiff's lawyer Amina Hashi says. The technical explanation from Hashi goes like this: "When Marsabit County Council received Lake Turkana Wind Power projects application for the lease of 100,000 acres of land the 20th November 2006, it was the county councils responsibility to establish a Divisional Land Board according to the Trust Land Act".

"The Divisional Board shall hear and record in writing the representations of all persons concerned who are present at the meeting and shall submit to the council its written recommendation concerning the proposal to set apart the land, together with a record of the representations made at the meeting. The recommendation of the Divisional Land Board shall be considered by the council, and the proposal to set apart the land shall not be taken to have been approved by the council except by a resolution passed by a majority of all the members of the council".

Plaintiffs lawyers' legal argument states, that there was never a divisional land board set, says Hashi.

"The only meetings held was attended by town dwellers and fishermen from one area (Loyiangelani), and did not involve the pastoralist community and the project therefore lacks public participation in its establishment. This meeting neither declared the size of land required for the project, nor did it inform the community of the loss of access to their land, but instead concentrated on the benefits to the community".

The Government on the other side has not yet explained whether a divisional land board existed to counter the plaintiffs' argument, instead they state that "town council committee" can be viewed to be the divisional land board, court papers state.

But these are two very different bodies, Hashi Says:

"The trust land act make no mention of the "town planning committee" as a substitute of the "divisional land board." Instead the trust land Act makes it a mandatory requirement for the establishment of the Divisional land board in accordance with its section 5".

According to Lake Turkana Wind Power project, there has been numerous public consultations. The first official consultation allegedly took place 15th November 2007, a year after the land lease application was sent to the county council. Participants, content and minutes from this consultation have not been documented to Danwatch upon request.

Consortium denies all allegations

Not surprisingly, the communities in the court case and the consortium don't agree on much else than the size and location of the land and the dates in question. On the 20th November 2006, the Lake Turkana Wind Power project submitted an application to the Marsabit County Council to lease 100,000 acres of land south of Loyiangelani for a period of up to 99 years, according to leaked documents obtained by Danwatch. The following year, 3rd April 2007, the consortium requested 50,000 additional acres, expanding their application to 150,000 acres in total. On 13th August

2007, Lake Turkana Wind Power's application to lease the land was approved at a meeting in Marsabit County Council.

The consortium denies "each and every allegation set out in the plaint". They also claim that plaintiffs do not represent the communities Rendille, Samburu, El Molo and Turkana. Rendilles, the consortium say, live far away from their traditional community, and therefore they cannot be representing the "project affected communities", the defense statement reads. Furthermore, the consortium contests that the land is being used for spiritual purposes, but should any of the local communities wish to access the land, they can do so, which is why the question of compensation for land is not relevant. The area will not be fenced off after construction, they state.

Finally, the consortium states that the "lawful and proper" acquisition of the land lease was confirmed by the National Land Commission on November 2013. The National Land Commission is also on trial, accused by the communities of illegal land acquisition.

According to the consortium, "numerous" consultations and stakeholder meetings have been held since April 2006, and the project has received "numerous and repeated assurances of support from all the local communities surrounding the proposed wind farm", they state.

The defense statement, however, do not address whether the issue of land lease was mentioned in any of these public consultations.

Danwatch has interviewed 24 members from the Rendilles, El Molo, Turkanas and Samburus, who independently say, when they first heard about the land being given away. Almost all answers vary from 2009-2016. None of them had heard about the land acquisition by the consortium until after 2007. The consortium has to date not been able to document otherwise to Danwatch.

A share of the profits

Back at the Land and Environmental Court in Meru on the 9th of March 2016, the judge has heard arguments from the lawyers for the communities and the consortium and the government representative. Prior to this court case, the Lake Turkana Wind Power project took the Deputy Registrar of the High Court on a site visit using helicopter with two of their lawyers, the lawyers for the county and national government and only one lawyer from the Plaintiff. A couple of grainy photographs of the barren landscape and a question from the judge regarding the ongoing construction of a school for Sarima's children was all that was disclosed in a report to the court and litigants regarding the site visit, however.

Abdi Hassan, the defense lawyer for Marsabit County, which plaintiffs accuse of failing to involve the local population in the decision of setting apart land, offers a different perspective on the case. He suggests re-negotiating the sale of electricity from the consortium to the government so that Marsabit County can secure a percentage of the profits.

"This is in its essence what this case is about. This is not about the right to land – that is just a camouflage. What they (the community Ed.) want is the revenue that is accruing from that land", says Hassan.

The more than two hundred nomads who have come to the court strongly disagree. They protest and begin to shout at Abdi Hassan, who is led away by security personnel.

Recently, May 23, the court convened the parties to announce the date on which it will hand down its final judgment. Lake Turkana Wind Power declined an interview about the court case, while it is in court. The Plaintiff say that they will continue to pursue their rights in this Environment and Land Court and "will wait for the ruling as they are prepared legally for any eventuality".

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*Numerous consultations
 and stakeholder meetings
 have been held since April
 2006*

- Lake Turkana Wind Power project

Highlights from Lake Turkana Wind Power project

Lake Turkana Wind Power project has taken more than 10 years and involves construction of a road, a resettlement of a village and a court case. Here comes an overview based on publicly available and requested information. The consortium has not provided documentation for further public consultations.

2005

The idea is born

The Dutch entrepreneurs and old friends Harry Wassenaar and Willem Dolleman discuss the prospects of building a wind farm near the shores of Lake Turkana in Northern Kenya, where the wind blows more than any place in Europe.



On the way to the Lake Turkana Wind Power project.

2006

The consortium is founded

Lake Turkana Wind Power Ltd. (LTWP) is founded as a company of Wassenaar's renewable energy investment firm, KP&P.



20th November 2006

The request for lease of land

A pre-feasibility study confirms perfect wind conditions and the Lake Turkana Wind Power project seeks permission from Marsabit County Council to lease 100,000 acres of land (later increased to 150,000 acres) for a period of 99 years. The land is *Trust Land*, which means that the county council is holding the land on behalf of the communities. Later, the procedure of how land was set apart ends up in court.

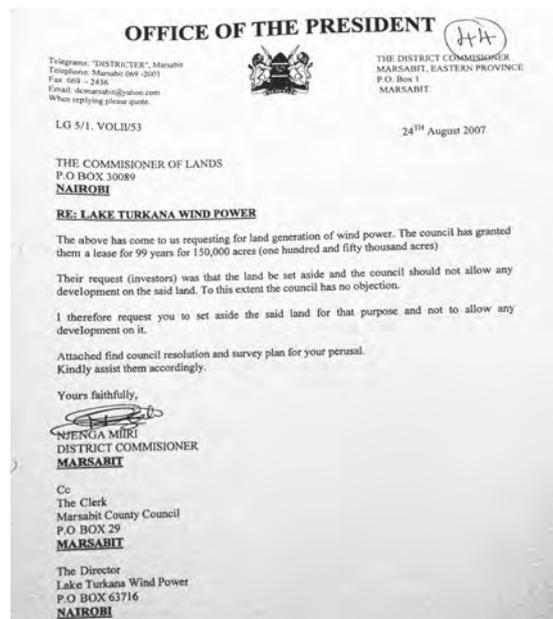


Traditional manyattas used by the nomadic communities in the area with a view over the largest desert lake in the world, Lake Turkana.

13th August 2007

Approval of the consortium's land lease request

The town planning committee in Marsabit County Council agrees unanimously to approve the land lease agreement. In return, the consortium promise: "A health center, schools and two vehicles for Marsabit County Council", minutes from the meeting show. 11 days later, the county council requests the Land Commissioner to set aside the land.



Marsabit County Council requests the ministry of land to set aside the land for the consortium. According to Kenyan law, a county must set up a Divisional Land Board which should include members of the affected communities before approving the lease. But this never happened, plaintiffs claim.

26th May 2007

A meeting between LTWP and community elders

The consortium meets with community elders in Loiyangalani. Information about who attended the meeting or the points discussed are not publicly available and not provided by the consortium upon request from Danwatch.



A view of Loiyangalani town on the shore of Lake Turkana.

31st March 2008

Three weeks of public consultations

During three weeks from March to April, a public hearing of the Environmental and Social Impact Assessment report takes place in Loiyangalani. In the fourth consultation, the consortium presents their findings at a stakeholder workshop during the 21st and 22nd of April. Following the stakeholder meetings the first draft for the Environmental and Social Impact Assessment (ESIA) is compiled.

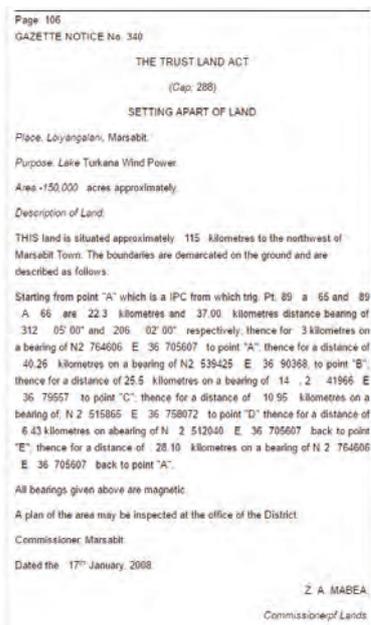


The stakeholder meetings were attended by 54 people, according to the consortium

17th January 2008

The land is set apart for the Lake Turkana Wind Power project

In a Gazette notice published by Commissioner of Lands, Z.A. Mabea, the land is set apart for Lake Turkana Wind Power as requested by the consortium and the county council. The lease officially starts the year after, 1st of March 2009.

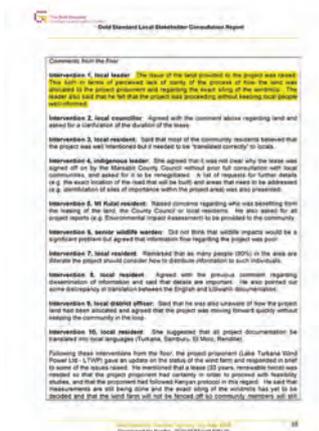


The gazette notice giving ownership of the land to the consortium

17th July 2009

Carbon credits and the 5th public consultation

Lake Turkana Wind Power project will earn carbon credits worth 10 million euros per year, the consortium states. Developing countries can earn carbon credits when they replace fossil fuels with renewable energy. Each credit is equivalent to a reduction of one ton of CO₂, which can then be sold on the global market - the so called "cap and trade" system. To benefit from Carbon Credits, the consortium invites auditors to review and consult local stakeholders. Minutes from the meeting show how people from the communities raised concerns about how the land was privatized and leased to Lake Turkana Wind Power project.



A local stakeholder criticizes the 'lack of clarity' and information available to the local communities in the land lease process. Credit: Gold Standard Local Stakeholder Consultation Report, 2009

July 2009

First Environmental and Social Impact Assessment is published

In the first assessment of the impacts the wind farm will have, the consortium writes: “The most serious negative impact the project is likely to have is the potential for birds’ mortality through collisions with the turbines”. The consortium does not expect any resettlement of the people currently living on the lands they have leased for the wind farm to be necessary.

Environmental Parameters	Intensity of Impact
Socialization of electricity sector	+3
Promotion of economic growth	+3
Contribution to the Government revenue	+3
Potential for carbon market	+3
Increased employment	+2
Improved communication	+2
Visual intrusion	-1
Cultural contamination	-1
Increased incidence of diseases	-1
Labour force management challenges	-1
Increased risk of accidents	-1
Loss of habitat	-1
Disturbance to flora and fauna	-1
Disturbance to livestock	-1
Social erosion and isolation	-1
Population	-1
Poorland conditions (in the quarries and borrow pits)	-1
Increase in noise levels	-1
Birds' mortality through collisions with turbines	-2

Interpretation:

- +3 Highly Positive Impact – Impact with national or international benefits
- +2 Moderately Positive Impact – Likely to impact on quality of life within the region / project area
- +1 Light Positive Impact – Minor impact but of significant local benefit
- 0 No Impact
- 1 Light Negative Impact – Minor negative impact at the local level
- 2 Moderate Negative Impact – A negative impact likely to adversely affect the environment or quality of life in the region / project area if not mitigated
- 3 Severe negative impact with national or international implications

Credit: LTWP, ESIA 2009

2010

Equity partners onboard

As the largest private investment ever in Kenya, an extensive funding effort aims to secure the financial backing necessary to make the project a reality. In 2010, two publicly owned investment funds from Norway (Norfund) and Denmark (IFU) as well as Vestas become shareholders. Vestas is also providing the 365 wind turbines and a range of CSR initiatives.



Wings for the wind farm are delivered in march 2016.

January 2011

Resettlement Policy Framework

Despite previous statements, the consortium decides that resettlement or relocation of Sarima community will be necessary, as “construction hazards” might endanger the health and safety of local communities. The Sarima community is scheduled to move to a new host site approximately 1,5 kilometres south of their existing village in 2012.



A young girl on her way in the relocated Sarima community.

28th September 2012

World Bank: “Not a good fit”

The World Bank drops out of the wind power project. The wind energy will be too expensive for Kenyan consumers, the current country director for the World Bank in Kenya, Johannes Zütt says. A World Bank spokesperson says to Danwatch: “After extensive discussions between the World Bank Group, the project sponsors and the Government of Kenya, the Bank reached the conclusion that the Lake Turkana Wind Power (LTWP) project, as proposed at the time, was not a good fit for the World Bank”.



THE WORLD BANK

24th March 2014

Lake Turkana Wind Power project secures funding

Despite the serious blow that was dealt to the project as the World Bank pulled out, the consortium can finally sign the last loan agreements at a ceremony in Nairobi.



Chairman of LTWP, Carlo van Wageningen and lenders at the signing of the financing agreements. Photo: LTWP

30th January 2012

Lake Turkana Wind Power project makes report on indigenous peoples (IPPF)

The World Bank raises concerns for the rights of indigenous peoples in the project area, which leads the wind power project to produce an Indigenous Peoples Framework (IPPF). It states, there are no indigenous peoples in the area, but El Molo, who live 70 km away and are therefore not affected by the project. This means that the tribes, Turkana, Samburu and Rendille are not entitled to the rights as indigenous peoples, the consortium says. Kenya has not ratified the 169 ILO convention on Indigenous Peoples Rights. But according to the African Commission on Human and Peoples Rights, the communities are in fact recognised as Indigenous Peoples.



Indigenous Peoples or not? Samburu warrior in Gatab. One of the tribes not recognised as indigenous peoples by the consortium.

2nd July 2015

President Uhuru Kenyatta clears the way

Around the same time, when Meru Court orders an injunction to protect indigenous peoples land rights, president Uhuru Kenyatta arrives at Sarima to break ground for the project. At the ceremony, he says: "Today we must ask the people of Northern Kenya to reject and resist outdated and dangerous practises like cattle rustling and really embrace modern opportunities for creating wealth".



President Uhuru Kenyatta driving an excavator to break ground for the LTWP project in violation of Meru Court's injunction to protect indigenous land rights. Photo: LTWP

2016

Fencing in the nomads

Sarima Village today, 10 years later, is populated by about twice as many people as expected because of the influx of people searching for jobs. The effects of this influx so far, are unemployment, alcoholism and prostitution, the communities say. An HIV/AIDS campaign is on the way, according to the consortium. The area outside Sarima is covered in trash. Health facilities have improved, but the construction of the school had stopped in March, so one room is used by approximately 140 pupils. Sarima is - despite previous statements - surrounded by barbed wire, which is by choice of the people, says the consortium.



Despite previous statements to the contrary, Sarima Village was fenced off sometime in 2015. To protect the people from tribal attacks and wild animals, according to the consortium. "It is to keep us from using their property", say several community members. =

October 2014

The legal struggle begins

The communities file a lawsuit against Lake Turkana Wind Power project, Marsabit County Council and the government of Kenya at the Meru High Court for illegal acquisition of land, in other terms, land grabbing. Plaintiffs say, they were never consulted. The consortium claim that the plaintiffs do not represent the rightful owners of the land to begin with.



Meru Court



A village in the way of progress

Poverty, alcoholism and prostitution are part of everyday life in a small, impoverished Northern Kenyan village that was resettled to pave the way for the Lake Turkana Wind Power project. The community expected jobs and benefits, but 10 years after the project's inception, it is shadowed by frustration over unemployment, alcoholism, prostitution and alleged illegal land acquisition. Danwatch went to Sarima.

The cradle of humankind along the shores of Lake Turkana looks like a dump. Beer, soda and liquor bottles have plastered the entrance along with other garbage: the first tangible sign of thriving social protest in the village Sarima. A barbed wire fence is the second sign. The fence was allegedly built to keep wild animals and hostile tribes away, not to keep people in. The entrance is wide open, but still a few child-sized gaps in the fence show the route for children playing with their siblings amidst garbage and boulders in the whirling dust.

Fences or boundaries of any kind are not part of the traditional culture of the Turkana and Samburu tribes who inhabit the corridor between Mt Kulal and Lake Turkana, not always in peaceful coexistence. The first evidence of tribal conflicts between hunter/gatherer communities stems from the early Holocene period, more than 12,000 years ago. Together with the tribes, Rendille and El Molo, the Turkanas and Samburus use the land for their livelihoods, cultural, ceremonial and spiritual purposes. This area is used by the tribes as a traditional site for performing a rite of passage ceremony and for confirmation of the warriors one year after circumcision, but primarily it is used for grazing during dry season. The tribes are nomads who live

wherever their cattle are pastured. Their houses, *manyattas*, are carefully woven with sticks, and are light enough to pack onto a donkey and leave a place within a few days. In many ways, the windy shoreline of Lake Turkana is an unrivaled archive of human history, containing the longest and most complete record of over 27 million years of human ancestry, according to the National Museum of Kenya. These tribes have always struggled to survive and the present is no exception.

Living conditions are harsh in Northern Kenya, where nomadic communities are supported by international and governmental aid and have the very few possibilities for education and jobs. The area is institutionally weak and people are marginalized,

so poverty has prevailed for decades and until now.

In this corridor, the wind blows more than anywhere in Europe, which is why the wind turbines are about to be built here, where they are expected to produce an estimated 15-20% more power for all Kenyans. This is why an international consortium, connected to a number of European, American and African investors, has decided to construct 365 wind turbines and thereby significantly increase the production of power in Kenya. In order to set up the wind turbines, approximately 1180 Turkanas living in Sarima, had

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Communities have much more to lose than to win from this project

- Alba Espinoza Rocca, Programme Officer in CORDAID



Sarima village

to be resettled 1,5 km away from the project site - at least for a while. Once the wind power project is operational, grazing will be possible around the clusters of turbines, the consortium say. This is contested by the ngo CORDAID that works in the area:

"The livestock activities are likely to be disturbed by both construction, presence of wind turbines and operations in the area", says Alba Espinoza Rocca, Programme Officer in CORDAID.

"Communities have much more to lose than to win from this project. Due to the aridity of this area, vegetation is scanty, but the existing sparse vegetation plays an important role in maintenance of life in the project area and its surroundings. This is the resource upon which the pastoralist and their livestock population depend on for their survival", she says.

Danish wind power company Vestas is a part of the Lake Turkana Wind Power project, which came to the area in 2006, promising jobs, education and health care. But the expectations of wage employment in very poor Northern Kenya led to an influx of people, mainly Turkanas, so today, approximately 2000 Turkana people live in Sarima. Today, as the wind turbines are being constructed day by day, the consortium is in court over illegal land acquisition, and the village of Sarima, resettled to pave the way for sustainable development, is flooded with newcomers looking for employment, and the community is suffering from negative impacts such as alcoholism and prostitution. What happens to traditional pastoralists communities, when opportunities knocks? How does an international consortium handle social and environmental impacts, which Kenya's biggest private investment ever might cause?

THE STORY IN BRIEF

- The village of Sarima was resettled by the Kenyan government and the multimillion-euro Lake Turkana Wind Power project to make way for 365 wind turbines constructed by Danish company Vestas.
- Danwatch has conducted 24 interviews with ethnic groups in Sarima and the catchment area, Gatab, Loiyangalani, Kargi and Marsabit. Most communities approve of the wind power project, but allegations about lack of public consultations before their land was leased to Lake Turkana Wind Power project has been raised. The land rights issue is now in court.
- An influx of people with expectations for jobs have led to unemployment, prostitution, alcoholism in Sarima.
- The consortium does not recognize 3 out of 4 tribes as indigenous peoples, and therefore they are not given rights as such in the project. The tribes, Turkanas, Samburus, Rendille and El Molo are however recognised as indigenous peoples by The African Commission of Human and Peoples Rights as well as experts interviewed by Danwatch.
- Experts in IFC Standards, indigenous peoples rights and land rights in Kenya say to Danwatch that the wind power project is not in compliance with neither IFC Performance Standards, nor international human rights standards.



Before, the Turkanas had to walk very far for water. Now, the consortium has made a borehole dedicated borehole for Sarima village. Villagers say, it is not functioning.

An idea is born

The burning heat of the early afternoon sun matches the intensity of the blowing winds in this barren landscape on which nothing grows except the countably few stunted trees. Surrounded by dark grey volcanic earth, the turquoise water of Lake Turkana – the world’s largest permanent desert lake and Kenya’s biggest salt water lake – reflects the sky and provides a backdrop for hundreds of camels herded by young boys.

The land, the sun and the wind. Natural resources represent what little currency there is in this part of Kenya, and this is the reason foreign direct investors saw opportunities in Lake Turkana in 2005.

In the windy corridors between Lake Turkana and Mt Kulal, a Dutch entrepreneur in wind power projects, Harry Wassenaar, and his acquaintance, Willem Dolleman, had an idea. They ran pre-feasibility studies and found out that wind turbines on the shores of the lake could generate enough clean energy to increase Kenya’s total production of energy by 15 to 20 percent. This means enough renewable energy to power over 900,000 homes annually in a country, where 35 million people have no access to electricity, the consortium says to Danwatch.

The next year, the Lake Turkana Wind Power project was founded, and a few years later, investments worth hundreds of millions of euros started rolling in. The timing was perfect. For decades, green energy plans for Kenya, known as the Vision 2030 strategy, had been on the agendas of several presidents. As political stability and

economic growth increased, foreign direct investors began to pay attention to infrastructure projects in Kenya. In 2012, the LAPSET plan “for a just and prosperous Kenya” was launched by Mwai Kibaki, the former Kenyan president. This infrastructure plan includes a new transport corridor connecting the Kenyan port of Lamu with Ethiopia and South Sudan (LAPSSET) via railways and roads, and an oil pipeline, as well as the establishment of three resort cities. One

of them, the Lake Turkana Resort, will be built within the next few years.

In this political context, the Lake Turkana Wind Power project was a natural flagship project for the Kenyan government, says Amina Hashi, a land rights expert and lawyer. We meet in her office in Nairobi, where Hashi and Roger Sagana are working to represent the plaintiffs in the case of Laisamis Constituency and Karare Ward vs. Lake Turkana Wind Power project, Marsabit County Council and the Kenyan government. This court case, filed years after the project’s inception, is shadowing the great wind energy

plan with allegations of illegal land acquisition.

“We are all moving towards green energy and we know of course that means large-scale acquisition of land,” Hashi says.

“In Kenya as we speak right now, the only land available to host large scale land based investments is on community land (former trust land), since this land is about 60 percent of the land in Kenya. This land is largely held under customary tenure system, and ownership of this land is communal, rights to this land are ancestral and no formal titling has happened to a substantial chunk of this land

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We are all moving towards green energy, and we know of course that means large-scale acquisition of land

- Amina Hashi, plaintiffs lawyer



since independent Kenya. Furthermore, the irony is that now the land is endowed with abundance in resources on the land, under the land and over the land, yet it lags behind in development and provision of basic services by government. Lawyers representing communities are not “getting in the way of development” or objecting these development agendas, all we ask is sobriety and legal compliance in the acquisition of land and qualitative involvement of the communities as they are”.

“Trust land” or “community land” is land held in trust by local counties on behalf of the communities living there. The only way to get your hands on trust land is to begin a formal process of setting the land apart – in short by privatising it, Hashi explains.

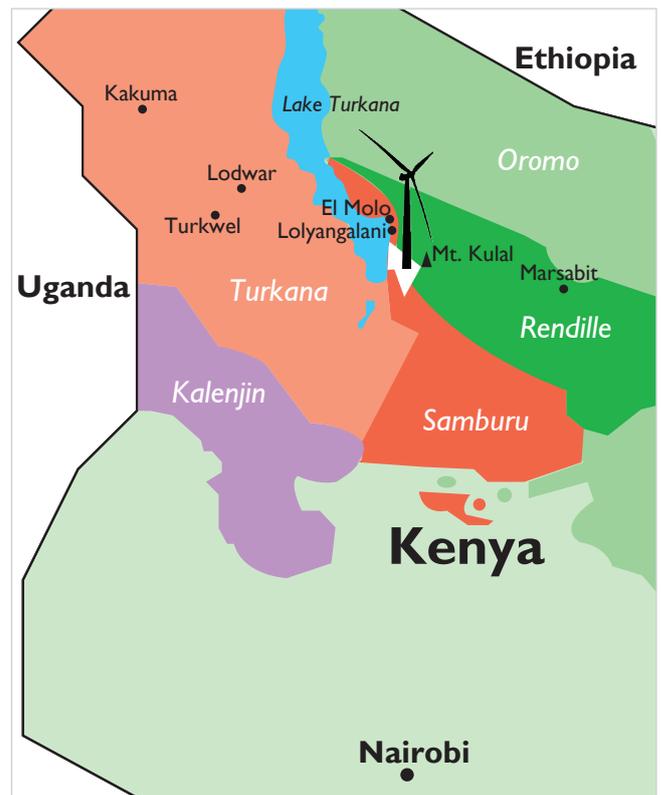
“In community land, the way to acquire this land is through conversion of this land from community land to either private land by setting apart or to public land through compulsory acquisition. We must understand that community land is akin private land to the members of that community”.

This brings us back to Wassenaar and Dollemann’s great idea. On November 20, 2006, the Lake Turkana Wind Power project sent an application for the lease of 100,000 acres of land to Marsabit County Council. The year after, on August 13, 2007, the land lease was approved by Marsabit County Council and needed only final approval from The National Land Commission before it was ready to go.

But not everyone from the affected communities agreed or were even consulted about the deal, says a vocal member of Marsabit County Council Assembly and Chair of the Lands, Energy and Urban Development Committee.

“There was no consultation in the communities before the land was set apart”, he says.

This technicality could prove to be critical a decade later.



Map of the project area and the region used by the tribes for grazing area and ceremonial purposes, they say.



High hopes for jobs

In the village of Sarima, the process of how the communities gave up their land is old news and almost forgotten. A reggae tune comes from one of the manyattas, over which a small sign says “Nightclub and hotel”. Along with manyattas covered in vodka and beer carton boxes. It is noon and already young men are drinking beer and hanging out. There is little else to do here, they say.

“Why are the young men hanging around here all day, drinking alcohol and fighting?” a young man asks rhetorically.

For hundreds of years, pastoralist men in Northern Kenya have been raising cattle to sustain the family from a very young age. The women take care of their siblings and housework, fetching water and firewood from miles away until they get married often at quite a young age to an older man with one or more wives and have their own family.

Today about 60% of the tribes have an income, where 55% keep livestock and only 5% have wage employment. The remaining 40% do not have a source of income according to the consortium Resettlement Action Plan from 2015, which is why the settlement is listed on the government’s ‘Relief Food Register’ as well as USAID and Red Cross and receives aid every month.

This was life along the shores of Lake Turkana until the wind power project came along. Many of the Turkanas now living in Sarima are immigrants, who have come here from far away to apply for jobs with the wind power project.

In many ways, pastoralists are vulnerable to influx from other communities, says Birgitte Feiring, adviser on sustainable development at the Institute for Human Rights in Copenhagen:

“Pastoralists have developed a way of life that is adapted to extreme conditions. Especially in vulnerable areas like Northern Kenya, which is very dry and where climate change is exacerbat-

ing a situation that is difficult already. They are nomadic, and they move around with the animal live off, to exploit the scarce resources in a flexible manner”, Feiring says.

This situation was anticipated by LTWP in a stakeholder engagement plan: “Uncontrolled influx may include: Vulnerable unemployed people, particularly young adults, who are already disadvantaged and whose condition worsens as a result of moving into the area,” the plan says. Around 183 families, which is approximately 1180 people, were scheduled to resettle to the new location for Sarima 1.5 km away according to the consortium’s Resettlement Action Plan from 2014.

The tribes are still allowed to pass the land, which now belongs to Lake Turkana Wind Power project and when construction of the turbines are done in 2017, they can use it for grazing their cattle. But a lot of the Turkanas living in Sarima today don’t raise cattle; they came here for employment and their expectations collide with the consortium’s ability to absorb all job seekers. To many of the Turkanas the situation is getting desperate.

“Michael”, who wishes to remain anonymous, says: “I applied for a job three times last year. If I don’t get one, my daughter will soon have to go to sleep without food. But they don’t give feedback. They just say, we’ll come back if there is a job.”

Ekomwa Benedict, a 20-year-old student at South Eastern Kenya University, now living in Sarima, says:

“They told the community that they would provide them with jobs, but as of now more than 200 youths are languishing in poverty in the village, without any means to get food.”

Today, approximately 2000 men, women and children live here, and as of March 2016, 92 persons from Sarima are employed by Lake Turkana Wind Power project, mainly in security or construction according to the consortium’s job database.



Nightclub and hotel, a new thing in Sarima village.

The pastoralists still survive from what little cattle they have, but the influx from other villages has made it increasingly difficult for both newcomers and original residents to make a living. Frustration is understandable, if you are young and live in rural areas in Kenya a job is hard to get. In these areas wage employment is almost non-existent, according to a 2013 UN Development Programme report. Ironically, frustration over unemployment came with the project, which is the largest employer in the region, they say:

“The number of staff working on a construction project will vary over the course of a project’s implementation. LTWP is the largest employer in the region and has to date employed more than 2,000 people, a substantial portion of whom have come from local communities in the area”, the consortium say to Danwatch.

But the project cannot employ everyone, and as a result new ways of getting food on the table has found its way to Sarima.

“This already vulnerable region and communities will never recover from such a violent intervention”, says Alba Espinoza Rocca from CORDAID, a Dutch ngo working in 43 countries, in Northern Kenya specifically with the pastoralist program and the process of self determination. CORDAID has been following the Lake Turkana Wind Power project for years.

“The influx of people in the project area and the environs is likely to increase the incidences of diseases between Marsabit and Lolyangalai. The entry of commercial sex workers into the project area is creating a risk of contracting sexually transmitted diseases, especially HIV/AIDS of project activities, which will devastate the already fragile communities”, Rocca says.

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Why are the young men hanging around here all day, drinking alcohol and fighting?

- Young man at Sarima

“Prostitution is here now”

Only a few rays of sunlight pass through the ceiling of the carefully woven manyatta. In the dim light, two women are sitting on a bench made of shipping pallets. They are waiting for us in here, hiding from curious eyes and ears. One of the women slowly nods her head.

“Prostitution is here now,” she says.

She looks surprised when asked whether she has heard about a HIV/AIDS awareness campaign sponsored by the wind power project.

“I have never heard about any education in HIV/AIDS or protection ... and so many people are coming from outside, what will happen?”

Lake Turkana Wind Power project anticipated this years ago:

“Sex trade workers are not identified currently within the Project area of influence but may migrate or be trafficked into the area once construction works commence.”

a Stakeholder Engagement Plan states.

And this is what had happened. The men that have jobs now, they have money to pay for sex, and the women with no jobs or cattle have to make a living for themselves and their children.

The second young woman on the bench is “Violet”, who wishes to be anonymous. She is wrapped in orange cloth and wears no beads around her neck or jewelry flashing from her ears, as Turkana woman traditionally do. Violet is 30 years old and the mother of four children. She came here about a year ago, encouraged by the prospects of a job but haven’t been employed yet.

“Yes, there is prostitution here, and I don’t blame the people who



“Violet”

engage in that,” she says. “There are a lot reasons why people would do that. I am a parent to four children. My husband was a police officer, but he left me for another woman, so I live by myself. I came here because the wind power project promised jobs. When I came, they were living in another village, and when they were resettled, I moved with them. Many people here are from other places as far away as Mombasa and Nairobi; they have come here for jobs. Now I have applied three times, but I still haven’t got a job. I would do anything, waitress, cleaning, whatever comes up,” she says, fiddling her hands. She speaks in hushed tones, clearly affected by her desperate situation. Then her voice becomes stronger and her words toughen as she describes the unbearable aspects of parenthood and poverty.

“Every day is survival. The stress you get, when you know that every call is about a child that needs something to eat. Some people deal with it with alcohol, some with prostitution, so at least you get some money. That is the stress young people are facing. Some people don’t care about their life anymore, you see them just lying on the ground.”

In a statement to Danwatch, the consortium write: “LTWP acknowledges that alcoholism and prostitution also impact the community negatively. We are committed to working with the government and the local community to address them. To date LTWP has supported the provision of HIV awareness training and testing within the communities and the workplace. Discussions are also underway with the county to increase access to health services”.

Promises from the consortium

In the summer of 2014, thousands of kilometres away from Sarima in the Danish capital of Copenhagen, Lake Turkana Wind Power project was invited to make a presentation at a seminar on sustainable energy at the Danish Ministry of Foreign Affairs. The project represents the largest single private investment in Kenya to date, valued at the time of this seminar at approximately EUR 622 million.

In Copenhagen, the consortium presented the development banks and investors from Africa, Europe and the United States with an ownership stake in the Lake Turkana Wind Power project: KP&P BV from Africa, Aldwych International Limited, Vestas and Sandpiper. Investment funds from Norway, Denmark and Finland are also a part of the owner group according to the consortium’s presentation.

They also presented a CSR programme, Winds of Change (WoC), in which a combination of revenue from carbon credits and profits go into a trust fund to pay for benefits like education, health, boreholes for drinking water, solarpanels for the local communities, since they won’t benefit from the wind power generated by the project.

Furthermore, the project said that it will provide approximately 2500 jobs during the construction period and 200 full-time positions when it is done.

As of February 2016, 624 community members have been hired by the wind power project, of which 92 are locals from Sarima, according to the consortium’s own records. The rest of the jobs

are occupied by locals from the surrounding areas of Mt Kulal, Loiyangalani, South Horr and Kargi as part of the consortium's "fair and equal work programme".

The Danish Export Credit Agency, which have provided loan guarantees for EUR 138 million, points out that since the CSR foundation is tied to the income from the wind farm, the largest part of CSR activities will not begin until the wind power park is done and running in 2017, 11 years after the project began. According to the consortium's official statement to Danwatch, the CSR Foundation: "Is not possible until the project have received sufficient financial support to make it a reality. This is because funding for WoC will principally come from Lake Turkana Wind Power, through the transfer of a portion of the wind farm's revenue. It is expected that the project will contribute about 10 million euro over its 20-year operational life", they state and go on:

"Part of the revenue from the carbon credits earned by the project will be passed to the Ministry of Energy via Kenya Power and Lighting Company (KPLC). It is our understanding that these funds will be applied to benefit the communities living near the wind farm and along the power transmission line, however this will be the responsibility of national and local government".

Ethical guidelines for Lake Turkana Wind Power

At the seminar, the Lake Turkana Wind Power project representatives in Copenhagen also promised that: "The Project has been developed in compliance with all relevant local and international legislation and standards, including the IFC Performance Standards and Equator Principles."

The International Finance Corporation (IFC) is the private sector arm of the World Bank Group with a 50 billion dollar portfolio in more than 100 countries, where they "support the private and public sectors' efforts to create businesses and jobs in the fight against poverty", their website says.

If a company or a state wants funds from the World Bank Group, they usually have to demonstrate that they are aware of their projects social and environmental impacts.

States must first and foremost protect human rights and businesses must respect human rights; this is the core of the Protect, Respect and Remedy framework in the UN Guiding Principles on Business and Human Rights, according to Bas Rombouts, ass. professor at Tilburg University and an expert on indigenous peoples and human rights.

Basic human rights in this case include the right to make a living, the right to land and the right to not be arbitrarily deprived of land.

Who has provided capital for the wind farm?

Lake Turkana Wind Power is the single largest private investment in the history of Kenya, and lenders from Europe, the United States and Africa have collectively raised millions of EUROS.

1. African Development Bank (AfDB) - has provided a loan of EUR 115 million. In addition, the AfDB Group is processing an ADF Partial Risk Guarantee for EUR 20 million to cover the risk related to the completion of the transmission line, which is crucial for the project.
2. German Investment Corporation (DEG) - has invested EUR 20 million. (EUR 37 million according to No.1 WTO...)
3. European Investment Bank (EIB) - Proposed investment of approximately EUR 225 million
4. Dutch Development Bank (FMO) - EUR 35 million in senior debt and up to EUR 8.5 million in (partly stand-by) equity through shareholder Aldwych Turkana Investments Ltd. In addition, the Dutch Government provided a EUR 10 million grant for the rehabilitation of the access roads to the project site.
5. French Development Finance Institution (PROPARCO) - senior loan of EUR 50 million (with an Interact Climate Change Facility (ICCF) sub-participation of EUR 30 million)
6. Overseas Private Investment Corporation (OPIC) - investment guarantee of up to EUR 223.89 million (USD 250 million)
7. Eksportkreditfonden (EKF) - investment guarantees of EUR 138 million (DKK 1030 million), split between a EUR 23, 04 million guarantee to AfDB and a EUR 114.95 million guarantee to EIB
8. Triodos Groenfonds – has provided a small loan to African Development Bank and is the only financial institution involved that permits retail clients to directly engage with the Lake Turkana project.

Source: Document obtained by Danwatch: All share sizes from "No. 1 WTO Ministers visit", appendix, PTA Bank: Senior & mezzanine debt of EUR 20 million

Who is behind the Lake Turkana Wind Power Project?

The consortium consists of four private companies and three state-run development funds.

1. Aldwych International Ltd (UK) - 30.75%
2. KP&P Africa BV (NL) - 25.25%
3. Finnish Fund for Industrial Cooperation (FI): 12.5%.
4. Norwegian Investment Fund for Developing Countries (NO): 12.5%
5. Vestas (DK) - 12.8%
6. Danish Industrial Fund for Developing Countries (IFU): 6.25%
7. Sandpiper - 0.25%

Once the wind turbines are constructed in 2017, Google has agreed to buy Vestas' 12,8% share for approximately 40 million dollars.

Source: Document obtained by Danwatch. All share sizes from "No. 1 WTO Ministers visit" p. 62



Water borehole provided by the consortium, which is not fully functioning, according to the community. The alternative is walking miles for drinking water.

“It is the core responsibility of companies to respect human rights. And companies should do so by performing a so-called human rights due diligence. Briefly, this means that companies must first examine the current and potential effects of their actions on human rights, and that they must then take action to measure these effects. Finally, it means that they must be transparent about their approach, for instance publicising what they have done,” Bas Rombouts says.

If a state or a company wants to resettle a community from their land, a variety of established procedures exist. Lake Turkana Wind Power project says their project is in compliance with the World Bank’s IFC Performance Standards, which cover eight issues. In this case, mainly Performance Standard #5, Land Acquisition and Involuntary Resettlement, and #7, Indigenous Peoples, are interesting to take a closer look at.

At a first glance of the chapter, “Land Acquisition and Involuntary Resettlement,” it is apparent that, whether voluntary or involuntary, if a state and a company plan to remove people from their land, acquiring it through eminent domain or other powers of the state, it cannot be stopped.

According to Standard 5, “Resettlement is considered involuntary when affected persons or communities do not have the right to refuse land acquisition or restrictions on land use that result in physical or economic displacement. This occurs in cases of (i) lawful expropriation or temporary or permanent restrictions on land use and (ii) negotiated settlements in which the buyer can resort to expropriation or impose legal restrictions on land use if negotiations with the seller fail”.

An important point about land acquisition and resettlement

is how and when the communities are informed or consulted. Among other things, it is important to avoid or minimise adverse social and economic impacts from land acquisition or restrictions on land use and to compensate for loss of assets:

Ensuring that resettlement activities are implemented with appropriate disclosure of information, consultation and the informed participation of those affected”, according to Performance Standard 5. This means proper consultation with and participation of everyone affected by the wind power project.

8 IFC Performance Standards

1. Environmental and Social Risks
2. Labour and Working Conditions
3. Resource Efficiency and Pollution Prevention
4. Community Health, Safety, and Security
5. Land Acquisition and Involuntary Resettlement
6. Biodiversity Conservation and Sustainable Management of Living Natural Resources
7. Indigenous Peoples
8. Cultural Heritage

Source: IFC Performance Standards

In Sarima, the Turkana moved voluntarily, and while most of the residents Danwatch interviewed, appreciate the project, many were dissatisfied with the number and the content of public consultations that occurred before the land was leased to the consortium.

CSR projects as of May ’16, according to Lake Turkana Wind Power project

- Distribution of books and pens to schools located along the access road from Laisamis to Loiyangalani
- Construction of a community store and chief’s office, Illaut
- Installation of solar pump to a borehole and construction of livestock troughs, Mt. Kulal
- Installation of a water filtration system, construction of a pump house
- Construction of two water troughs for livestock
- Upgrading of Burri-Aramia dispensary, to include solar power system, refrigerator, installation of shelves for storage of medicines, construction of toilets, construction of an incinerator, supply of a maternity bed and ward beds, provision of carts to carry medicine, installation of reserve water tank fitted with a pump, supply of racks for storing bags of food and installation of pipping of water to rooms in the clinic.
- Upon request from the community, erection of a fence along the side of the market that runs parallel to the access road in order to mitigate against the risk posed by increased traffic
- Assembly and distribution of 500 desks to schools located in communities along the access road from Laisamis to Loiyangalani
- Construction of police accommodation units and offices Loiyangalani
- Donation of printer to Kulal Girls Sec. School Mt. Kulal
- Handover of an LTWP office to the community of Kurungu, to be used as a maternity ward.
- Rehabilitation of a football pitch Namaeri
- HIV/AIDS awareness raising campaign in all communities located between Laisamis and Loiyangalani
- Construction of a 7 km water pipeline to transport water directly into Arge Arge
- Road safety awareness raising campaign in all communities located between Laisamis and Loiyangalani

Documentation from the consortium shows many public meetings and consultations about the project, benefits and consequences. Danwatch has asked the consortium and the lenders for documentation for public consultations prior to November 26, 2006, when Marsabit County Council received the land lease application from Lake Turkana Wind Power project. This documentation has not yet been provided. In a statement from the consortium, they say:

“The National government through the Ministry of Lands and Housing provided the regulatory framework all through the land acquisition process. Lake Turkana Wind Power project undertook thorough feasibility studies that entailed extensive consultations with the local communities over a nine-year period with the goal to ensure that broad community support was in place. This process involved the local county administration as well as the community members and leaders in the area covered by the land lease”.

The public consultations were mainly about impacts of the project, not the land lease, the consortium statements says:

“Consultation and discussions primarily focused on what the project is and what potential positive and negative impacts it could have. It also included measures that would be put in place to enhance the benefits of the positive impacts and mitigate against negative impacts”.

Danwatch has asked the Ministry of Lands and Housing and

the consortium, whether consultations about land acquisition took place before the land lease application was sent to Marsabit County Council in 2006. The consortium says their first official consultation was 15 November 2007, but does not comment on whether communities were informed/consulted about the lease of the land, which was initiated a year earlier. The Ministry of Lands and Housing has not been available for an interview despite several inquiries.

Indigenous Peoples or not?

Central to all investor and company activities is “do no harm,” according to the IFC Performance Standards, especially if investments or activities are involving communities in developing countries, which can be marginalized and vulnerable or define themselves as indigenous peoples. So what is behind the term indigenous peoples?

There is no specific definition, but characteristics. According to United Nations Declaration on the Rights of Indigenous Peoples, Indigenous peoples are mainly small populations relative to the dominant culture in their country, they usually have their own language and distinct cultural traditions, which are still practiced. They have (or had) their own land and territory, to which they are tied in myriad ways, and what is more important they define themselves as indigenous peoples.

IFC Performance Standard 5: Land Acquisition and Involuntary Resettlement

Right to land

Displaced persons may be classified as persons (i) who have formal legal rights to the land or assets they occupy or use; (ii) who do not have formal legal rights to land or assets, but have a claim to land that is recognized or recognizable under national law; or (iii) who have no recognizable legal right or claim to the land or assets they occupy or use. The census will establish the status of the displaced persons.

Cash compensation

In the case of physically displaced persons under paragraph 17 (i) or (ii), the client will offer the choice of replacement property of equal or higher value, security of tenure, equivalent or better characteristics, and advantages of location or cash compensation where appropriate. Compensation in kind should be considered in lieu of cash. Cash compensation levels should be sufficient to replace the lost land and other assets at full replacement cost in local markets.

Housing

In the case of physically displaced persons under paragraph 17 (iii), the client will offer them a choice of options for adequate housing with security of tenure so that they can resettle legally without having to face the risk of forced eviction. Where these displaced persons own and occupy structures, the client will compensate them for the loss of assets other than land, such as dwellings and other improvements to the land, at full replacement cost, provided that these persons have been occupying the project area prior to the cut-off date for eligibility.

Source: IFC Performance Standards 5



Turkana women in Sarima

Kenya does not recognize the concept of indigenous peoples, but it does specifically include minorities and marginalized communities in the 2010 Constitution.

In 2006, the African Commission on Human and Peoples Rights identified the Turkanas, Samburus, Rendille and El Molo people as indigenous peoples.

Internationally, indigenous peoples have specific rights according to UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and ILO Convention 169. This means, that wherever a company wants to do business it has to pay special attention to indigenous peoples. And this why the consortium drafted an Indigenous Peoples Policy Framework in 2011, which says:

“Project screening and Environmental and Social Impact Assessments (ESIA) have been undertaken and Indigenous Peoples as defined in Section 4 have not been identified within the footprint of the Project. However, due to the proximity of the project to the pastoral areas of these communities, it has become necessary to prepare an IPPF as a precautionary measure in case marginalised groups are encountered during project implementation”.

And it continues specifically about the Turkanas, Samburus, Rendille and El Molo: “It is clear that while most of these tribes are considered marginalised at international, regional and national levels, they have the same chance under this project to voice their concerns if their rights, interest, needs, livelihood, culture or desires are affected. Therefore, (...), the concept of Indigenous Peoples has been narrowed down to a special hunter-gatherer community or the El Molo ... So far there is no indication that the Project will adversely impact the El Molo as they are located approximately 70km to the north of the Project footprint. As such the nature and extent of the likely impact is unknown.”

If by chance indigenous peoples are encountered, then the

consortium will “fully comply with all the guidelines and implement comprehensive mitigation strategies”, the Indigenous Peoples Policy Framework states.

“This is a bit strange,” says ass. professor and expert in human rights and indigenous peoples, Bas Rombouts of Tillburg Law University.

“It is certainly remarkable that the El Molo are considered indigenous, while the other three groups are not. I am very curious how that qualification was made. Especially, how did they involve the communities? These are very important questions, in my opinion.”

The quality and character of the consortium’s Indigenous Peoples Policy Framework is inadequate, according to Marianne Wibben Jensen, Africa Programme Coordinator for the International Work Group for Indigenous Affairs (IWGIA).

“A company cannot claim that certain peoples are not to be considered indigenous if these peoples themselves both self-identify as being indigenous peoples and meet the international criteria set out by the UN and by the African Commission for Human and Peoples’ Rights (ACHPR) for identification of indigenous peoples. The claim of the consortium’s Indigenous Peoples Policy Framework that has been approved by the Kenyan government is therefore very questionable and not in line with the conceptualization of the ACHPR.

The Samburu, Rendille and Turkana people are generally considered to be indigenous peoples by the indigenous peoples movement in Kenya as well as by the ACHPR, which is the main authoritative human rights body in Africa”.

Birgitte Feiring, senior adviser at the Institute for Human Rights and former senior adviser for the International Labour Organisation on the Rights of Indigenous Peoples, agrees.

“First of all, it is not a company’s responsibility to identify who

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Project screening and Environmental and Social Impact Assessments (ESIA) have been undertaken and Indigenous Peoples as defined in Section 4 have not been identified within the footprint of the Project

- Lake Turkana Wind Power project, IPPF (2012)

are indigenous people or not. Instead, we have a system of internationally recognized objective and subjective identification criteria. The objective criteria are whether a people have a historic presence in the area, predating the creation of a state, colonisation or conquest. I don't think anyone would question that in this case. These peoples have their own institutions, languages, and ways of life, as well as an independent identity, which is another objective identification criteria. The third international criteria is whether they identify as indigenous peoples, which they have confirmed that they do," Feiring says.

When dealing with land acquisition by a state or a company, IFC Performance Standards are absolute "minimum standards," Feiring adds:

"Many land-rights conflicts arise when the government gives away concessions to land that are not theirs to give. The government is obliged to examine both what resources they are giving away to others, and whether there may be existing ownership of the land. It is not the case that because these people do not have a deed to the land, they have no rights to it or to the surrounding area, because their rights to the area are based on historical rights."

Bas Rombouts, Tilburg Law University, agrees: "It is often a major problem that the formal ownership of the State or private persons overlaps with the customary rights of indigenous peoples. Very often, indigenous and local communities with customary rights or usage rights can easily be put aside".

Danwatch asked the consortium, how a consultancy firm can define, who are indigenous peoples or not, when this is a matter of self-determination according to ILO 169 and UNDRIP?

The consortium says in a written statement: "LTWP has and will continue to engage in a consultation process with all the affected communities within the wider Project area. Throughout the Project's lifecycle we aim to inform the affected communities about the Project, identify their views, and obtain their broad community support".

The Danish Export Credit Agency says to Danwatch: "The question about indigenous peoples have been assessed by several independent consultants, CSR-specialists with Mott MacDonald have made this assessments for the lenders, which EKF are a part of. The conclusion is that the project meets international standards,

also when it comes to the consideration of indigenous peoples. EKF pays attention to the fact that the projects stakeholder- and consultation process includes all tribes, whether directly or indirectly affected by the project".

In a recent report by Business and Human Rights Resource center, *Renewable Energy and Human Rights: An Outreach to Companies*, Lake Turkana Wind Power is asked about their consultation procedure concerning indigenous peoples (FPIC). FPIC is short for *free, prior and informed consent*, which is a specific right for indi-

genous peoples. In this report, the consortium answers: "FPIC is required when indigenous peoples may be adversely impacted by the Project. As mentioned, the LTWP Project underwent rigorous feasibility studies and it was determined that there are no indigenous people adversely impacted by the Project. Therefore the Project was not required to undertake FPIC". A statement, which clearly contradicts the Export Credit Agency and the consortiums other statements about indigenous peoples.

There were not free, prior and informed consent, says Alba Espinoza Rocca, Programme Officer with CORDAID:

"A critical violation is the project's failure to obtain Free, Prior and Informed Consent (FPIC) from local indigenous communities. FPIC requires full, meaningful and comprehensive information on the project and its alternatives to the affected communities,

upon which the communities then make a final decision about it. LTWP held meaningless self-promotion meetings, where no information was given, the few critical voices were ignored, and the people who were invited to attend the meetings were approached in advance. Such meetings do not constitute FPIC", Rocca says.

No compensation for lost land

Eventually, representatives from the communities - how many and on whose behalf is disputed - agreed to give up the land for a certain compensation, and later, in 2014 a memorandum of understanding (MoU) was signed that allowed the consortium to resettle the village of Sarima, despite the fact that not everyone agreed with the decision.

The 1180 Turkana people were resettled and entitled to compensation according to the consortium's Resettlement Action Plan (2012). Some of them say, they received approximately 13,000

”
LTWP held meaningless self-promotion meetings, where no information was given, the few critical voices were ignored, and the people who were invited to attend the meetings were approached in advance.

- Alba Espinoza Rocca, Programme Officer with CORDAID

Free, Prior, and Informed Consent (FPIC) by the International Labor Organisation (ILO 169)

The concept of free, prior and informed consent in the ILO applies to the Indigenous and Tribal Peoples Convention of 1989 (No. 169). The Convention deals primarily with the concepts of consultation, participation, free and informed consent, appropriate procedures, and prior consultation in specific circumstances.

Article 7:

The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.

The improvement of the conditions of life and work and levels of health and education of the peoples concerned, with their participation and co-operation, shall be a matter of priority in plans for the overall economic development of areas they inhabit. Special projects for development of the areas in question shall also be so designed as to promote such improvement.

Governments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities.

Kenya has not ratified ILO 169.

Source: ILO, article 7



Chief of Gatab, Hosea Lemuni, Samburu

Kenyan shillings (EUR 113) in compensation for taking down, moving and rebuilding their 306 manyattas in the new location.

“We were given 13,000 Kenyan shillings per household. It lasted for a few days after budgeting for food and other things,” says Edapal Losike.

He is 39 years old and derives his livelihood from tending livestock in Sarima village. As one of the village elders, Losike is involved in all decisions on behalf of Sarima.

According to the consortium’s official statement, the size of compensation is 49,000 KES per household, which translates into 12,250 KES per person in an average household of four for disturbance allowance and the costs of moving and restoring their manyattas. This was in compliance with the IFC Performance Standards and the Environmental and Social Sustainability Policy in place at the time (2009), they say.

During 2013, other representatives from the communities started wondering how the communities lost their rights to the land, which was now privatized and leased to the Lake Turkana Wind Power project under a 33 year term, renewable up to 99 years, the resettlement action plan from 2015 states.

The communities were not entitled to compensation for lost land, according to the consortium Resettlement Action Plan.

“The nomadic pastoralists have customary rights of use to land pastures, however, have no recognizable right or claim legal right or claim to the land other than use and are therefore not eligible for land compensation”.

In September 2014, representatives of some of the communities

in the region filed a lawsuit against the Lake Turkana Wind Power project for illegal land acquisition.

Questions about land rights remain

On the windy slope of Mt Kulal, Simon Lenarokishu, the former chief of the Samburu in the Gatab community, clearly remembers being consulted before the land was given away.

“They asked us about the land. They said they would provide jobs, and therefore a land lease was signed in Marsabit County,” he says. Lenarokishu is very pleased with the wind power project, which he says has brought development into the Marsabit region, one of Kenya’s poorest areas.

The current chief of Gatab, Hosea Lemuni, agrees with him.

“Actually, we appreciate the wind power project, because it has created job opportunities for our local community, and we are very happy. The work has started. It has employed most of our people in casual, even in semi-skilled, jobs. It has employed a large number of people – more than 100 people from this locality – even from Loiyangalani and South Horr. So income generating has at least come up, and the community has really benefitted”.

In Gatab on Mt Kulal the temperature is cooler and green plants and trees dominate the landscape. People here keep cattle, goats and sheep, unlike in Loiyangalani and Sarima, where they mainly herd camels and goats. The way to Gatab is a winding dirt road: hard to access in dry weather, and nearly impossible when the rain comes because of the risk of mudslide. Water has an impact on Mt Kulal in many ways.

Mr Lendany, Samburu Elder, says he was never consulted before the land was given away. He is contradicted by Leaders of the Samburu community in Gatab.

An old man sits under a tree, observing our interviews with the current chiefs with a hidden smile on his face. Mr Lendany is an elder from the Samburu tribe on Mt Kulal and any important decisions over the last many years should have gone through him.

“I was not a part of it, the land had already been given away. If they had called me, I would never have agreed to give it away, because that place serves a purpose. If it rains, we go there (the project site, ed.),” he says.

“About ten years ago, they came in, and we talked about the project. They said they would make a health clinic, schools and roads, but the roads is the only thing that has happened. This is the truth,” he says. “Then the leaders sold the land and our elected leaders are the only ones who benefitted. The people never benefitted”.

On our way out of Gatab, we meet a young Samburu man watering his goats at a well. Kollom Ogam is 20 years old, and he is familiar with the wind power project. Three years ago, he applied for a job there, but he wasn't hired. When asked when he heard that the land had been given away, he says, “I hear about it now.”

In Loiyangalani, a nearby village by the shores of Lake Turkana, Paul, an environmentalist, who belongs to the El Molo tribe and lives in Loiyangalani, is fine with the project, although not how the land was given away, he says. Paul is a part of Sarima Indigenous Peoples' Land Forum (SIPLF), the network that is trying to join communities in the lawsuit against Lake Turkana Wind Power project.

“There was no participation for the communities and consultation was done in Nairobi, far away from the local man. Even today, people don't have all the information about how the land was given away,” he says.

The right of the communities to the land is beyond question, says Odenda Lumumba, Chief Executive Officer of the Kenya Land Alliance, an umbrella organisation for more than eighty NGOs and individuals defending land and human rights.

“First, the community land constitutionally belongs to the community members, severally as individuals and collectively as groups. They are eligible owners of those lands as per the Constitution, which recognizes and places the obligation on the state to recognize, protect and register community land.”

Lumumba elaborates, “secondly, the Constitution provides for compensation to be paid to occupants in good faith of land being acquired under Clause 3 of the same article, who may not hold title to the land. This very article can apply to the case in question

and hence their eligibility to compensation is not in question,” says Lumumba.

Liz Alden Wily, an international tenure specialist presently a visiting scholar at the Leiden School of Law also points to the new constitution:

“The government is obliged to fully identify existing rights to the land. If the project is genuinely for a public purpose then compensation has to be sufficient. Nor can lands taken be expanded without further consultation. Constitutionality also has to be borne in mind. The Constitution in force at the time was clear that

this land is owned by the people although held in trust for them by the County Council. The new Constitution is even clearer: this land is community property. The forthcoming Community Land Act will guide communities how to secure evidential title of this fact and to sort out their complex tenure among themselves towards this registration. This is the kind of inclusive economic development strategy that communities all over Africa expect today”, says Wily.

The Plaintiff through their Lawyer Ms. Hashi, in her submission to court emphasizes that: “The communities have only one question before this court: Was procedure of allocation and/or alienation of 150,000 acres of community land, as mandatorily set out in the repealed Constitution Section 117 and section 13 of the Trust land Act,

complied with? If any non-compliance in the process is found this negates the validity of the final document (title).

The matter of the illegal acquisition of land has been in court since October 2014, and now a ruling will be delivered on the 30th day of August 2016.

The Lake Turkana Wind Power project did not wish to comment on the ongoing court case, but in their written defence to the court, they deny all allegations of unlawful land acquisition and lack of public consultation.

“We have consulted everyone”

In short, the defence rests on the fact that the National Land Commission confirmed the process on November 29, 2013 in accordance with the new constitution (2010), according to the consortium's defence.

In an interview on November 9, 2015, for the purpose of this report, the Chief Operations Officer of the Lake Turkana Wind Power project, Nick Taylor, said:

“When we first started, we went and spoke to every single community. That is documented, there is no doubt about it. We've

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One would also ask why the consortium has not offered the communities limited liability shareholding if their project is going to be so beneficial to them as they claim?

- Liz Alden Wily, international tenure specialist, Leiden School of Law



come a long, long way from where we started. If you were to go to the field today and visit all those communities, you would find that the majority of the people in that area would be fully on board with the project”.

According to the consortium, their first public consultation was on 15th November, 2007. More than a year after, the consortium applied for the land lease, official records obtained by Danwatch show. In Gatab, Shadrack Lengayiap, a teacher who is also Samburu, is very pleased about the progress the wind power project has brought to the region. He clearly remembers the day he heard about the project. It was at a public meeting in July, 2009. That was also the day he learned that the land had already been given away - in 2007.

“I was concerned, because how and to whom was the land given? What were the terms of the lease? Could we as a community have gotten more out of this land lease agreement? But we decided not to make any problems,” he says.

According to the consortium, there have been extensive and meaningful public consultations on the project, including the land use and requirements. It is still unclear though, if the first consultations were prior to the land lease application from the consortium, November 20th, 2006.

The consultation process around how the land was given away is the main reason, why the Lake Turkana Wind Power project is not in compliance with IFC Performance Standards, says Rajiv Maher, PhD and former researcher at the Institute for Human Rights, who has done multiple human rights impact assessments in his career.

He is backed by Liz Alden Wily, international tenure specialist from Leiden School of Law:

“Given the level of disputation the project has generated, it is apparent that the consultative process has not met compulsory acquisition standards past or present,” Wily says.

Rajiv Maher elaborates: “Furthermore, their payments of EUR 113 per family for resettlement are tragically low, and disappointing considering the amounts of money being invested in the Lake Turkana Wind Power project. The project had – and still has – a golden opportunity to generate a genuine, positive, life-changing

opportunity for the affected local communities. Unfortunately, based on Danwatch’s research, the Project’s impact on the local communities to date has been a net negative one”.

IFC Performance Standard 5 is not only about compensation, says Rasmus Hundsbæk, Postdoc in natural resources and development at The Danish Institute for International Studies (DIIS):

“It is even more importantly about the objective: ‘To improve or restore the livelihoods and standards of living of displaced persons’. This is not necessarily an easy task, a lot can go wrong and the result completely depends on how well planned the process have been. It becomes even more difficult, when the process has been going on for almost a decade, such as in this case, and where plans have been changed along the way and many other dynamics have come up, which are beyond anyone’s control. Then, a lot can go wrong”.

The projects compliance with international principles regarding the rights of indigenous peoples is also in question, says Africa Programme Coordinator for The International Work Group for Indigenous Affairs (IWGIA), Marianne Wiben Jensen.

“According to the international human rights principle of Free, Prior and Informed Consent (FPIC), the FPIC of affected communities should be sought right from the design stage, when we talk about projects that may affect land access and use rights of these communities. This is for instance the policy of UN organizations such as the International Fund for Agricultural Development (IFAD). It is thus not in accordance with FPIC principles to lease out community lands for investment purposes before any consultations with the affected communities have taken place.”

The consortium maintains that the project is in compliance with IFC Performance Standards:

“As a result of the involvement of Development Finance Institutions, the Environmental and Social (E&S) approach and process followed by LTWP was also subject to a comprehensive due diligence and assessment by a reputable international consulting company. An E&S action plan was also agreed between LTWP and its Lenders to ensure compliance with IFC Performance Standards”.

WHAT IS IFAD?

The International Fund for Agricultural Development (IFAD), a specialized agency of the United Nations, was established as an international financial institution in 1977 as one of the major outcomes of the 1974 World Food Conference. The conference was organized in response to the food crises of the early 1970s that primarily affected the Sahelian countries of Africa. It resolved that “an International Fund for Agricultural Development should be established immediately to finance agricultural development projects primarily for food production in the developing countries.”

IFAD is dedicated to eradicating rural poverty in developing countries. Seventy-five per cent of the world’s poorest people – 1.4 billion men, women and children – live in rural areas and depend on agriculture and related activities for their livelihoods.

Source: www.ifad.org



HOW TO OBTAIN FREE, PRIOR AND INFORMED CONSENT

Free implies no coercion, intimidation or manipulation.

Prior implies that consent has been sought sufficiently **in advance of any decision point or commencement of activities** and respect is shown to time requirements of indigenous consultation/consensus processes.

Informed implies that information provided covers (at least) the following aspects:

- The nature, size, pace, duration, reversibility and scope of the proposed project/activity;
- The rationale or purpose of the project/activity;
- The geographical areas that will be affected;
- A preliminary assessment of the likely economic, social, cultural and environmental impact, including potential risks and fair and equitable benefit sharing;
- Personnel likely to be involved in the execution of the proposed project/activity
- Procedures that the project or activity may entail.

Consent is the expected outcome of the consultation, participation and collective decision-making process by the local communities. It is the mutual agreement reached, documented and recognized by all parties. Consultation and participation are crucial components of a consent process and require time and an effective system for communicating among interest holders. Consultation should be undertaken in good faith, and local communities must be able to participate through their own freely chosen representatives and customary or other institutions. In general, communities would first consent to discuss the idea of the project that will affect their land, territories and resources. They would further participate in the consultation process leading to consent by contributing to the design of the project, including its implementation and monitoring mechanisms.

Source: www.ifad.org

Company statements ...



Date : 27 May 2016

Ref. : LTWP Company Statement on draft Danwatch Report

- Danwatch has asked the organizations involved with the Lake Turkana project to respond to a series of questions and to provide other inputs to the report. We have each done our best to provide meaningful, substantive inputs in the limited time made available to do so. We are however obliged to note that important inputs were not included in Danwatch's final report, which detracts from the objective to provide the public a balanced picture of Lake Turkana Wind Power project.
- Lake Turkana Wind Power (LTWP) Limited believes that community relations and good governance are closely linked to the long-term success of the project and as a result takes social, environmental and governance issues into serious consideration in how we do business.
- It is important to note that the project reached financial close in late 2014. One and a half years later the project has improved access for the local community to the rest of Kenya through an upgraded 207 km road, it is creating employment opportunities and better living conditions for the local community. The Winds of Change Foundation has also supported local communities during the construction phase; this will continue during the 20-year operational period.
- LTWP remains committed to fostering strong, mutually respectful and beneficial relationships with the local communities that we interact with.

About the Project:

Lake Turkana Wind Power Limited is the single largest private investment in Kenya's history and will deliver 310 MW of cleaner, cost effective renewable electricity to Kenya's grid and over 900,000 households as well as bring much needed economic activity to a remote part of Kenya.

Winds of Change Foundation is set up by LTWP and focusses on improving access to clean water, better educational opportunities and enhanced health services for local communities.

For further information, please visit our website; <http://ltwp.co.ke/>



26. of May 2016

Regarding Danwatch's questions on Lake Turkana Wind Power project

Vestas has received a list of questions from Danwatch as part of its report on Lake Turkana Wind Park. Vestas has answered the questions below according to our best understanding of the issues raised, although certain references and documentation are either missing or outdated and haven't been corrected notwithstanding Vestas having highlighted the deficiencies on several occasions.

Additionally, to create a more complete context, Vestas wishes to highlight some of the benefits that the Lake Turkana Wind Power project will bring to region. To this end, Vestas notes that the Lake Turkana Wind Power project is the single largest private investment in Kenya's history and will deliver 365 MW of clean, cheap electricity to Kenya's grid as well as bring much needed economic activity to a remote part of Kenya. This includes but is not limited to connecting the community to the rest of Kenya through a more than 200 km long road; project activity for at least 20 years through the service contract; community payback through the associated Winds of Change foundation; local job creation; access to clean water; better educational opportunities, and access to medical assistance. The Lake Turkana Wind Power Project is also mitigating negative impacts the project may have on the local community, which are common for projects of this magnitude.

The questions were provided to Vestas in Danish, but as Danwatch's report is in English and thus has an international audience, we choose to respond in English (and have thus also translated the questions into English).

For further information on Vestas' engagement in Lake Turkana Wind Power project, please reach out to:

Anders Riis
Specialist, External communications and media relations
Tel: +45 41 81 39 22
ANPRR@Vestas.com

Question	Answer
1. a) Vestas is mentioned as equity partner in 2010/2011. Is that in accordance with reality?	The project was created in 2006 while financial closure wasn't until 2014. As part of the financial closure Vestas obtained an ownership stake of 12,5 percent. Throughout the project's development phase there has been several different constellations in play – financially and contractually.
1. b) When did Vestas initiate its due diligence process regarding being an owner of the project?	Throughout Vestas' participation in the project, documentation has continuously been developed, updated and finalised. Vestas has reviewed this documentation as it has been developed, updated and finalised.
1. c) Were there any irregularities in that due diligence and/or in Lake Turkana Wind Power project's existing due diligence that Vestas commented on and asked to be improved/mitigated?	To Vestas' knowledge there have not been any irregularities in the due diligence of LTWP, which is also supported by the project's broad lender- and ownership group, which includes international financial organisations with extensive experience with projects in emerging markets.



<p>2. Today, the population of Sarima village is almost double of what was expected in the project's resettlement action plan (2012). Already in 2008 (draft ESIA) LTWP was aware of the risk of an influx of Turkanas from other regions. What has been done to mitigate the negative impact of the influx?</p>	<p>From the question, Vestas cannot determine to which numbers Danwatch is referring.</p> <p>Vestas wishes to highlight that there are publicly available, updated ESIA's that provide more current information than the one to which Danwatch refers.</p> <p>There will always be some negative consequences of large infrastructure projects. LTWP has developed action plans to mitigate these, and a range of projects have already been completed. Additionally, there's a business plan for how this can continue throughout the entire lifetime of the project.</p> <p>The mitigating activities are described by LTWP and questions around that should therefore be directed to them.</p>
<p>3. According to IFC PS, which LWTP claims to be in compliance with, Vestas' commitment to UN Global Compact, UN Guiding Principles on Business and Human Rights and OECD's Guidelines for Multinational Enterprises, how will Vestas as a co-owner mitigate/improve negative impacts, like influx from other tribes, alcoholism and prostitution?</p>	<p>It's a well-known challenge across the world (including the Western world) that large infrastructure projects create an influx of people in terms of jobs, for example, which may create the problems Danwatch describes.</p> <p>Vestas contributes to mitigating these issues through its ownership of the project and therefore also the Wind of Change Foundation, which includes HIV/AIDS awareness and education among other things.</p> <p>In this regard, it is important to highlight that it is standard procedure that initiatives like the aforementioned are initiated after financial closure and thus when funds flow to the project.</p> <p>As a contractor to the project Vestas has also initiated its own community engagement program, which focuses on creating local jobs, supporting education, improving the medical facilities in the area, and improving access to clean drinking water – all of which will improve the living conditions in the community long-term.</p>
<p>4. Already in 2008, the ESIA foresaw that negative impacts from the project could be influx, too high expectations for jobs, unemployment, prostitution and associated STDs.</p> <p>Influx, alcoholism and prostitution have been confirmed by LTWP. In regards to Vestas' CSR-policy how does this comply with IFC PS, which specifically focuses on improving sustainability in private sector projects and create progress?</p>	<p>Vestas wishes to highlight that there are publicly available, updated ESIA's that provide more current information than the one to which Danwatch refers.</p> <p>It's a well-known challenge across the world (including the Western world) that large infrastructure projects create an influx of people in terms of jobs etc., which may create the problems Danwatch describes.</p> <p>Vestas contributes to mitigating these issues through its ownership of the project and therefore also the Wind of Change Foundation, which includes HIV/AIDS</p>



	<p>awareness and education among other things.</p> <p>In this regard, it is important to highlight that it is standard procedure that initiatives like the aforementioned are initiated after financial closure and thus when funds flow to the project.</p> <p>As a contractor to the project Vestas has also initiated its own community engagement program, which focuses on creating local jobs, supporting education, improving the medical facilities in the area, and improving access to clean drinking water – all of which will improve the living conditions in the community long-term.</p>
<p>5. Has Vestas done any due diligence in regards to the land acquisition before it became co-owner of the project? And did Vestas find any irregularities in regards to the consultations of the local community up to the land acquisition?</p>	<p>Vestas has conducted due diligence of the project according to the international standards and Vestas' own standards at the time.</p> <p>To Vestas' knowledge there have not been any irregularities in the due diligence of LTWP, which is also supported by the project's broad lender- and ownership group, which includes international financial organisations with extensive experience with projects in emerging markets.</p>
<p>6. LTWP refers to IFC Performance Standards. In PS 5 it says that compliance depends of: Extent of public information and consultation in advance of land acquisition , and adequacy of ongoing consultation.</p> <p>a) Has Vestas made any claims in regards to the land acquisition complying with IFC PS?</p> <p>b) What documentation does Vestas have for the consultation process of the communities regarding the land acquisition before the application for leasing the land was send to Marsabit County Council in 2006?</p>	<p>As a principle, Vestas doesn't comment on ongoing court cases.</p> <p>Vestas notes, however, that the question about a court case touches upon initial hearings that are currently underway to determine whether there actually is a case to pursue or not.</p>
<p>7. Lake Turkana Wind Power project which Vestas is both owner of and contractor to is now in a court case about illegal land acquisition</p> <p>a) What Vestas' comment on that?</p> <p>b) What went wrong in regards to stakeholder engagement?</p>	<p>A) As a principle, Vestas doesn't comment on ongoing court cases.</p> <p>Vestas notes, however, that the question about a court case touches upon initial hearings that are currently underway to determine whether there actually is a case to pursue or not.</p> <p>B) Danwatch has not presented any material or information to Vestas to support its "conclusion" that anything has gone wrong in terms of stakeholder engagement.</p> <p>For further information on stakeholder engagement we refer you to LTWP's answers and description of the stakeholder engagement.</p>



<p>8 a) How does the above comply with LTWP consortium's indigenous people policy framework which build on African Commission on Human and People's Rights definition? B) Does Vestas acknowledge that the mentioned tribes Rendile, Samburu, Turkana and El Molo ARE indigenous people, because they define themselves as such and also is acknowledged by African Commission on Peoples and Humans Right?</p>	<p>Part of Vestas' engagement in this project was to review the relevant documentation for the aspects in question, which was found to be satisfactory.</p>
<p>9 a) LTWP says that consent has been achieved through the process for the land acquisition and that local tribes have been involved and informed. FPIC (and aforementioned IFC PS 5) does, however, require that the local community is involved BEFORE the land acquisition. As co-owner of Lake Turkana Wind Power project: Has Vestas made any demands of FPIC? b) Has Vestas in this process found reason to doubt the local community which is impacted by the project, considering that there are reports that counter their conclusion when IPPF was published in 2012? c) Does Vestas agree to the consortia's conclusion (insert link B&HR) that "Free, prior and informed consent" isn't relevant for the initiation of the project? d) Two Danish experts say to Danwatch that the tribes in question without a doubt are indigenous even in conservative definitions because they define themselves as such AND that a company can't define who's indigenous and who's not. It's a question of self-definition (according to UNDRIP ILO 169). Does the experts' comments give Vestas a reason to reconsider its stance on these tribes' status and if not, why?</p>	<p>Part of Vestas' engagement in this project was to review the relevant documentation for the aspects in question, which was found to be satisfactory.</p> <p>Vestas refers Danwatch to LTWP and the relevant Kenyan authorities for detailed information about the process.</p> <p>Vestas continuously reviews and adjusts its engagement in projects and influence where possible.</p> <p>As a contractor to the project Vestas has also initiated its own community engagement program, which focuses on creating local jobs, supporting education, improving the medical facilities in the area, and improving access to clean drinking water – all of which will improve the living conditions in the community long-term.</p>

Appendix

<https://www.danwatch.dk/wp-content/uploads/2016/05/2009-GS-LSC-report-310-MW-wind-farm-Lake-Turkana-Kenya-Carbon-Africa-FINAL-2.pdf>
<https://www.danwatch.dk/wp-content/uploads/2016/05/141201-LTWP-Stakeholder-Engagement-Plan-3.pdf>
<https://www.danwatch.dk/wp-content/uploads/2016/05/ADDENDUM-ON-ROAD-RE-ALIGNMENT.pdf>
<https://www.danwatch.dk/wp-content/uploads/2016/05/Aldwych-Presentation-on-LTWP-final.pdf>
<https://www.danwatch.dk/wp-content/uploads/2016/05/Aldwych-Presentation-on-LTWP-2014.pdf>
<https://www.danwatch.dk/wp-content/uploads/2016/05/First-draft-ESIA-from-ltwp-2008.pdf>
<https://www.danwatch.dk/wp-content/uploads/2016/05/Freedom-of-Information-request-No.-1-WTO-ministers-visit-Radisson-blu-launch-event.pdf>
<https://www.danwatch.dk/wp-content/uploads/2016/05/Freedom-of-information-request-No.-16-Invitee-list-invitation-cardsconfirmations-etc.pdf>
<https://www.danwatch.dk/wp-content/uploads/2016/05/Kenya-Power%E2%80%99s-deal-that-forced-World-Bank-out-of-wind-farm-Politics-and-policy.pdf>
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