

MEMORANDUM

To: JCAP
From: Maya Duvage
Date: July 16, 2016
Re: Summary of report titled *A People in the Way of Progress – Prostitution, alcoholism and a lawsuit on illegal land acquisition in the Lake Turkana Wind Power project*, published by Danwatch on May 30, 2016¹

The Lake Turkana Wind Power project (“LTWP” or the “Project”) is a 365-turbine wind energy project in a preliminary construction phase in Turkana county in Northern Kenya. LTWP will provide energy over 20 years and will increase Kenya’s energy output by 15-20%. 150,000 acres of land have been leased and the small village of Sarima has been resettled to expand an existing access road. The Project affects the Gatab, Loiyangalani, Kargi and Marsabit ethnic groups, as well as the Turkana, Samburu, Rendille and El Molo nomadic pastoralist indigenous tribes. The Project was spearheaded by two Danish investors in 2005, is backed by European and African financial institutions, and is the largest private investment ever made in Kenya, valued at €620 million.

Danwatch is a Denmark-based independent media and research centre that investigates the influence of business on humans and the environment globally. *A People in the Way of Progress* is the first of a two-part investigation in which Danwatch utilizes interviews, publicly available documents, and freedom of information requests to report on the controversial aspects of the Project.

The report outlines current Kenyan land court litigation regarding legal rights to the lands leased for the Project. In 2014 residents filed a lawsuit against LTWP, the county and national governments, and the National Land Commission alleging that the Project’s land acquisition was illegal, and that there was no public consultation or compensation paid to residents. The Plaintiffs claim that the leased land was constitutionally protected trust or communal land, and that the statutorily mandated process of “setting apart” such land, which provides for community consultation and a right of refusal, was not followed. LTWP reply that the nomadic pastoralists have customary rights of use, but no legal right or claim and are consequently not entitled to compensation. Most disputed is whether public consultations were substantive and held before the land was leased. The court decision is due August 30, 2016.

A chronological overview of key milestones in the Project’s history is provided. Notably, the World Bank rescinded its support for the Project in 2012, stating that the

¹ Available online at: <<https://www.danwatch.dk/en/undersogelse/a-people-in-the-way-of-progress/>>.

Power Purchase Agreement between LTWP and Kenya for wind energy would make electricity too expensive for Kenyan consumers.

On-the-ground effects on Sarima are assessed through 24 interviews with ethnic groups in Sarima and surrounding affected areas. Most communities approved of the Project, but allegations about lack of public consultation with regards to the lands leasing were raised. Increased alcoholism, violence and prostitution have resulted from an influx in residents who are unable to find employment with LTWP.

Community benefits from LTWP's CSR programme, Winds of Change, include education, health, boreholes for drinking water, and solar panels. However, because funds derive from in part from profits, the majority of CSR activities will not begin until the Project is running in 2017. There is no guarantee or provision for enforcement for the portion of the CSR funds that derive from Kenyan sale of carbon credits.

Interviewed experts stated that the Project is not in compliance with international standards, including: International Finance Corporation Performance Standards 5 (Land Acquisition and Involuntary Resettlement) and 7 (Indigenous Peoples); the Protect, Respect and Remedy Framework of the UN Guiding Principles on Human Rights (right to make a living, right to land, and right to not be arbitrarily deprived of land); United Nations Declaration on the Rights of Indigenous People (definition of 'indigenous peoples'); and International Labour Organization Convention 169 (free, prior and informed consent). The LTWP Indigenous Peoples Policy Framework does not recognize 3 of 4 tribes as 'indigenous peoples', maintaining that they are not entitled to rights with respect to the Project, despite the recognition of all 4 tribes as 'indigenous peoples' by The African Commission of Human and People Rights.

A reproduction of corporate responses to Danwatch's information requests is included at the end of the report. These appear to be vague, form responses.

The three chapters in *A People in the Way of Progress* are written from different voices, and often repeat information. Although the report seeks to provide a balanced viewpoint by including information on effected CSR initiatives and responses to information requests from the Project proponent, the report could benefit from more hard statistics, and input from more varied sources, including the Kenyan government. The second portion of the investigation may address these deficiencies.

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