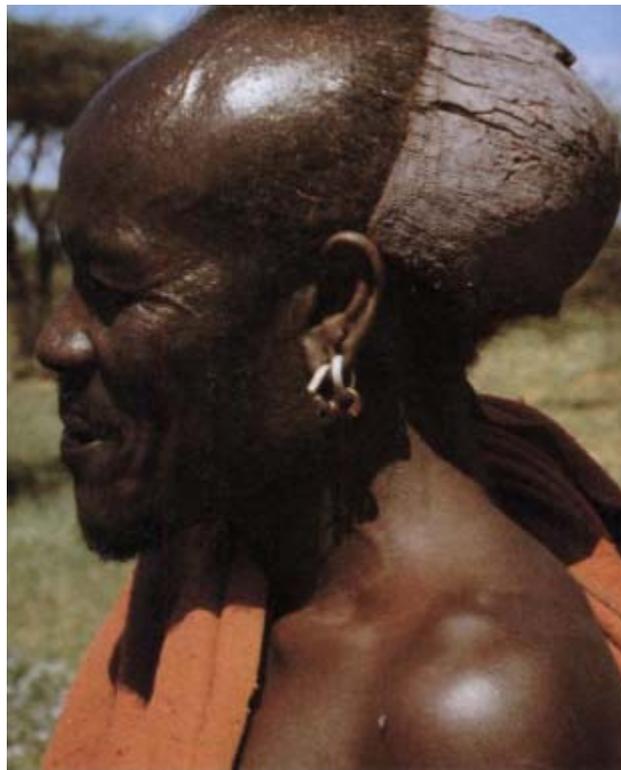


Lake Turkana Wind Project

Indigenous Peoples Policy Framework





Cover Photo

*Photography of a member of the El molo tribe, located
in the northern part of Kenya*



POLICY STATEMENT

This policy statement is a subset of LTWP’s Community Engagement Policy (CEP) directed specifically at those communities that are vulnerable, marginalised or indigenous people.

LTWP is committed to ensure that the development and operation of the Turkana wind farm has minimal impact to the communities within the project footprint and especially those communities that may be vulnerable, marginalised or indigenous and that our Project neither harm nor threaten the sustainability of local communities.

Policy Objectives:

1. Ensure that the development process fully respects the dignity, human rights, economies, and cultures of vulnerable, marginalised or indigenous people;
2. Avoid potentially adverse effects on the vulnerable, marginalised or indigenous people;
3. When avoidance is not feasible, minimise, mitigate or compensate such effects; and
4. Ensure that vulnerable, marginalised or indigenous people receive social and economic benefits that are culturally appropriate and gender inclusive.

Signed: Date:

Mr Carlo Van Wageningen
Managing Director
LTWP

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ACRONYMS

ACHPR	African Commission on Human and Peoples Rights
AIDS	Acquired Immune Deficiency Syndrome
CEP	Community Engagement Policy
GoK	Government of Kenya
HIV	Human Immune Virus
IPP	Indigenous Peoples Plan
IPPF	Indigenous Peoples Policy Framework
kV	Kilovolts
LTWP	Lake Turkana Wind Project
OP	Operational Policy
PME	Participatory Monitoring and Evaluation

PRELUDE

The Government of Kenya (GoK) has requested financial assistance from the World Bank, in the form of security, in support of the development of the Lake Turkana Wind Project (LTWP) and also for the associated transmission line infrastructure project being developed separately by Ketraco. Ketraco is a new formed transmission company, a Kenyan parastatal mandated with developing high voltage network greater than 132kV.

The World Bank following its project screening process and as a precaution measure, given the remote location of the wind farm and the possible presence of marginalised groups in the Marsabit area has triggered its safeguard policy (OP 4.10) Indigenous Peoples Policy (IPP).

The Wind farm proponent, Lake Turkana Consortium has agreed, in line, with its Community Engagement Plan to prepare an Indigenous Peoples Policy Framework (IPPF) to ensure that any marginalised people/communities encountered within the project footprint will be consulted in a culturally appropriate and participatory manner regarding the positive and negative impacts that the wind farm may impact upon them.

The purpose of this IPPF is to define a set of guiding principles which will ensure a consistent approach to community engagement across the development, and various phases of LTWP project. The key objectives of the IPPF are to ensure that the development process fully respects the dignity, human rights, economies, and cultures of indigenous peoples.

Log Associates were commissioned to prepare an IPPF for LTWP to guide and ensure that should any marginalised groups be encountered within the wind farm project footprint that an IPP can be quickly implemented in line with LTWP's Community Engagement Plan and the process and procedures outlined in this IPPF.

This IPPF has been prepared for LTWP to ensure safeguards are in place to address and mitigate against potential adverse effects associated with marginalised/Indigenous People. It provides a set of guiding principles which will ensure a consistent approach to community engagement across the project and establishes and discloses the criteria by which all affected people will be consulted and treated where the Project results in adverse effects on these communities.

1. DESCRIPTION OF PROPOSED PROJECT

1.1 Brief Description of the Project

The LTWP comprises the construction of a 300MW wind power plant, situated in the Marsabit district of the northwest Kenya approximately 10km from Lake Turkana, and rehabilitation of approximately 200km road from Laisamis Junction to the wind farm site, the project footprint and extent of this IPPF

1.2 Rationale for IPPF

Project screening and Environmental and Social Impact Assessments 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. The purpose of this IPPF is to ensure that the project fully respects the dignity, rights, economies, and cultures of any marginalised or indigenous communities found within the project areas and excludes any economic migrants.

2. LEGAL FRAMEWORK: CONCEPT OF INDIGENOUS PEOPLE

2.1 International Context: World Bank Group

The OP 4.10 recognise, among other things, *that the distinct identities and cultures of Indigenous Peoples remain inextricably linked to the lands they inhabit and the natural resources they depend upon to survive*. The policy establishes processing requirements: screening, social assessment, consultation with communities involved, preparation of plan or framework, and disclosure. It also requires the proponent to seek broad community support of Indigenous Peoples through a process of free, prior and informed consultation before deciding to develop any project that targets or affects indigenous communities.

OP 4.10, for project operational purposes, suggests using the term “*Indigenous Peoples*” in a generic sense to refer to distinct, vulnerable, social and cultural group possessing the following characteristics in varying degrees:

- i. *Self-identification as members of a distinct indigenous cultural group and recognition of this identity by others;*
- ii. *Collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories;*
- iii. *Customary cultural, economic, social, or political institutions that are separate from those of the dominant society and culture; and*
- iv. *An indigenous language, often different from the official language of the country or region.*

2.2 Regional Context: African Commission on Human and Peoples Rights

The African Commission on Human and Peoples’ Rights (ACHPR), a sub-body of the African Union, has outlined key characteristics, which identify Indigenous Peoples and communities in Africa and emphasises that the African peoples who are applying the term “indigenous” in their efforts to address their particular human rights situation embrace mainly *hunter-gatherers and pastoralists*. The ACHPR emphasises that the overall characteristics of groups identifying themselves as Indigenous Peoples are that:

- i. *Their cultures and ways of life differ considerably from the dominant society;*
- ii. *Their cultures are under threat, in some cases to the point of extinction;*
- iii. *The survival of their particular way of life depends on access and rights to their lands and the natural resources thereon;*

- iv. *They suffer from discrimination as they are regarded as less developed and less advanced than other more dominant sectors of society;*
- v. *They often live in inaccessible regions, often geographically isolated; and*
- vi. *They suffer from various forms of marginalization, both politically and socially.*

2.3 National Context: Constitution of the Republic of Kenya

Kenya has more than 42 ethnic groups which represent a total population of approximately 38.6 million. Each of these groups differs, to varying degrees, from other groups in culture, social organisation, and language. The determination of which of these ethnic groups are recognised as Indigenous Peoples is contained in the Constitution of the Republic of Kenya, which defines a marginal community *as one that out of need or desire to preserve its unique culture and identity from assimilation, has remained outside the integrated social economic life of Kenya as a whole, or an indigenous community that has retained and maintained a traditional lifestyle and livelihood based on a hunter or gatherer economy; or pastoral persons and communities whether they are nomadic or a settled community that because of its relative geographical isolation has experienced only marginal participation in the integrated social and economic life of Kenya as a whole.*

Going by the definition of the constitution, pastoralists are estimated to comprise 25% of the national population, while the individual largest group of hunter gatherer numbers approximately 30,000. Pastoralists mostly occupy the arid and semi-arid lands in northern Kenya and towards the border between Kenya and Tanzania in the south. The hunter-gatherers include the *Ogiek, Sengwer, Yaaku, Waata, El Molo, Boni, Malakote, Wagoshi and Sanya* while *pastoralists include Turkana, Rendille, Borana, Maasai, Samburu, Ilchamus, Somali, Gabbra, Pokot and Endorois.*

3. INDIGENOUS PEOPLES WITHIN THE WIDER VICINITY OF PROJECT AREA

The Project footprint will affect the district of Marsabit, inhabited by communities such as the *Turkana, Samburu, Rendille, Gabbra and the El Molo*.

According to the 2009 household census, the Kikuyu are the most populous tribe in Kenya accounting for 20% of the total population. The Turkana, Maasai and the Samburu are respectively the 10th, 11th, and 16th largest tribes in the country. The Gabbra and the Rendille though considered minority tribes are the 22nd and 25th largest tribes respectively. The El Molo is not identified in the ethnic table; instead it is classified under ‘other tribes’.

While the Kikuyu tribe does not qualify as an indigenous tribe, most of the ethnic tribes within the project fulfil the general criteria of indigenous people of the World Bank, African Union and Kenya. However, even within these groups, some of the tribes are in a structural subordinate position to the dominating ethnic groups, leading to further marginalisation and discrimination.

It is arguable that certain groups, which are marginalised and discriminated at national level, might at a local level be in a dominant position or at least able to defend their rights, interest and to voice their opinion. For example, the Turkana, Samburu, Gabbra and Rendille are the most dominant tribes in Northern Kenya and are well adapted to the area’s socio-economic and harsh environmental conditions. On the other hand, in the south-west of Kenya, the Maasai are the most recognised pastoral community due to their preserved culture.

Based on the foregoing, it is clear that while most of these tribes are considered marginalised at international, regional and national level, they have the same chance under this project to voice their concerns if their rights, interest, needs, livelihood, culture or desires are affected. Therefore, for the purposes of this IPPF, the concept of Indigenous Peoples has been narrowed down to a special hunter-gatherer community or the El Molo based on the following reasons:

- i. The Northern part of Kenya is dominated by pastoralist communities. The El Molo is the only hunter-gatherer community encountered in the area during the screening*

process. At the moment, the government does not provide for a classification of hunter-gatherers as separate groups.

- ii. The El Molo are marginalised through their way of living and their livelihood patterns, as in Kenya all hunting is illegal and all policies, sector strategies and projects solemnly address the needs and interests of agriculturalists and/or pastoralists.*
- iii. El Molo originally settled on the northern shores of Lake Turkana. Due to boundary insurgence pressure from the Turkana, Samburu and Rendille tribes inhabiting the area, the El Molo have moved to the southern shores of Lake Turkana where they are gathered into only two villages in an area called the 'Island of Ghosts' or 'Island of no Return'*
- iv. Due to their almost constant historical suffering from other tribes, the El Molo opted to remain cut-off from the rest of the world, maintaining a very traditional life.*

4. POTENTIAL IMPACTS ON INDIGENOUS PEOPLES

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. However, if by chance indigenous people are encountered, then the LTWP will fully comply with all the guidelines and implement comprehensive mitigation strategies. This will be done through a comprehensive social assessment plan.

The potential positive benefits of the project include, on a macro scale, increased electricity supply to the national grid; diversification of technology; reduced carbon emissions; and increased business opportunities. At a local level, creation of employment opportunities (both direct and indirect), stimulus to local businesses, improved security, and improved road access.

Provided below are some of the potential negative impacts with proposed mitigation measures.

Table 1: Potential Project Impacts

<i>Possible Impacts</i>	<i>Mitigation Measures</i>
i. Change of land use	i. Community Participation
ii. Loss of resources	ii. Plan land use change and compensation
iii. Public Health	iii. HIV/AIDS awareness and education programme
iv. Noise, dust, soil erosion, construction waste	iv. Sensitise community members on health and safety issues; careful site management during construction; limit speed of vehicles etc.
v. Loss of livelihood	v. Consider alternative sites
vi. Culture	vi. Contractors will make provisions for chance finds of artefacts during construction; increased community engagement.

5. SOCIAL ASSESSMENT PLAN

The main purpose of the social assessment is to evaluate the project’s potential positive and adverse impacts on the affected Indigenous Peoples. It ensures that the project activities are culturally appropriate and enhances benefits to the Indigenous Peoples.

Once it is determined that Indigenous Peoples are present in the project area, an assessment of the circumstances of affected indigenous communities would be undertaken based on consultations with the affected communities. The scope of the assessment would include the following elements:

- ✓ *A review and description, on a scale appropriate to the project, of the legal and institutional framework applicable to Indigenous Peoples;*
- ✓ *Baseline information on the demographic, social, cultural and political characteristics of the affected indigenous communities, and the land and territories which they traditionally owned, or customarily used or occupied and the natural resources in which they depend;*
- ✓ *Description of key project stakeholders and the elaboration of a culturally appropriate process for consultation and participation during project implementation;*
- ✓ *An assessment, based on free, prior, and informed consultation with the affected Indigenous Peoples' communities, of the potential adverse and positive effects of the project. Critical to the determination of potential adverse impacts is an analysis of the relative vulnerability of, and risks to, the affected indigenous communities given their distinct circumstances, close ties to land, and dependence on natural resources, as well as their lack of opportunities relative to other social groups in the communities, regions, or national societies they live in;*
- ✓ *Identification and evaluation based on free, prior, and informed consultation with the affected Indigenous Peoples' communities, of measures to ensure that the Indigenous Peoples receive culturally appropriate benefits under the project and measures necessary to avoid adverse effects, or if such measures are not feasible, identification of measures to minimise, mitigate, or compensate for such effects.*

6. CONSULTATION AND PARTICIPATION

The project has and will continue to engage in a process of free, prior and informed consultation with all the affected community members throughout the project life cycle so as to inform them about the project, identify their views, and obtain their broad community support to the project. The project will continue to ensure that the consultations are conducted in good faith; are culturally appropriate; gender sensitive; voluntary, free of interference and non-manipulative.

Since project initiation, ongoing consultation with the affected community members has taken place. At a local level, the different tribal communities within the Project area have not been identified as marginalised; it has also been established that the El Molo are not affected by the project. Nevertheless, should the project encounter Indigenous Peoples and vulnerable groups within the project footprint, a more elaborate community engagement and consultation process in accordance with this IPPF with the affected communities will be undertaken. Consultations will include:

- ✓ *Informing the affected indigenous communities about project objectives and activities;*
- ✓ *Discussing and assessing possible adverse impacts and ways to avoid or mitigate them;*
- ✓ *When avoidance is not feasible, minimise, mitigate or compensate such effects;*
- ✓ *Discussing and assessing potential project benefits and how these can be enhanced;*
- ✓ *Discussing and assessing land and natural resource use and how management of these resources may be enhanced;*
- ✓ *Identifying customary rights to land and natural resource use and possible ways of enhancing the same;*
- ✓ *Identifying and discussing potential conflicts with other communities and how these might be avoided;*
- ✓ *Discussing and assessing food security issues and how it might be enhanced through project interventions;*
- ✓ *Eliciting and incorporating indigenous knowledge into project;*
- ✓ *Facilitating and ascertaining the affected communities' broad support to the project; and*
- ✓ *Developing a strategy for indigenous participation and consultation in all phases of the project.*

All the project information provided to indigenous peoples will in a form appropriate to local needs. The project will at all times use local representative(s) to reach to the community members. Again, efforts will be made, where possible to include all community members including women in the consultations.

7. INDIGENOUS PEOPLES PLAN AND IMPELENTATION ARRANGEMENTS

7.1 Indigenous Peoples Plan

The Indigenous Peoples Plan (IPP) is an instrument that addresses the concerns and needs of the Indigenous People. If Indigenous Peoples are encountered an IPP will be prepared based on the findings of community consultations and social assessment. This plan will help LTWP in ensuring avoidance of adverse impacts and/or for mitigation and compensation measures, as well as for ensuring culturally appropriate economic and social benefits.

The following outline for the IPP is suggested:

- ✓ *Legal and institutional framework applicable to Indigenous Peoples in the area and a brief description of the demographic, social, cultural, and political characteristics of the affected Indigenous Peoples' communities, the land and territories that they have traditionally owned or customarily used or occupied, and the natural resources on which they depend;*
- ✓ *Key findings of social the social assessment report;*
- ✓ *Findings of results of the free, prior, and informed consultation with the affected Indigenous Peoples' communities that was carried out during project preparation and that led to broad community support for the project;*
- ✓ *A framework for ensuring free, prior, and informed consultation with the affected Indigenous Peoples' communities during project implementation;*
- ✓ *An action plan of measures to ensure that the Indigenous Peoples receive social and economic benefits that are culturally appropriate, including, if necessary, measures to enhance the capacity of the project implementing agencies;*

- ✓ *When potential adverse effects on Indigenous Peoples are identified, an appropriate action plan of measures to avoid, minimise, mitigate, or compensate for these adverse effects;*
- ✓ *The cost estimates and financing plan for the IPP;*
- ✓ *Accessible procedures appropriate to the project to address grievances by the affected Indigenous Peoples' communities arising from project implementation. When designing the grievance procedures, the Applicant takes into account the availability of judicial recourse and customary dispute settlement mechanisms among the Indigenous Peoples; and*
- ✓ *Mechanisms and benchmarks appropriate to the project for monitoring, evaluating, and reporting on the implementation of the IPP. The monitoring and evaluation mechanisms should include arrangements for the free, prior, and informed consultation with the affected Indigenous Peoples' communities.*

7.2 Implementation Arrangements

LTWP will be responsible for the implementation of IPP and ensure that the following requirements of this Framework are honoured:

- i. *That if identified, the Indigenous Peoples will be adequately consulted and benefit in culturally appropriate ways;*
- ii. *That the project will avoid adverse impacts on Indigenous communities, or where this is not possible develop with the participation of affected communities measures to mitigate and compensate for such impacts; and*
- iii. *That the project will, through appropriate community engagement mechanisms, report to both affected Indigenous communities and other stakeholders' project progress and any unexpected and unintended events that may affect the Indigenous Peoples.*

7.3 Grievance Mechanism

Grievance redress mechanisms are essential tools for allowing affected people to voice their concerns, such as regarding resettlement and compensation, as they arise and, if necessary, for corrective action to be taken in a timely manner. Such mechanisms are fundamental to achieving transparency in the community engagement process.

Through meetings with the local community leaders and barazas with the community members the project will provide avenues for indigenous groups to raise any concerns or grievances without the fear of retribution. For matters that will not be resolved through a public forum, the matter should be resolved through the local chief's office. However, if the matter cannot be resolved, it should be referred to the LTWP Project Management Team. Most of the issues will be resolved at this level; however, if the matter is unresolved, the petitioner has the right to refer the matter to a court of law.

8. MONITORING, EVALUATION AND REPORTING

In case Indigenous Peoples are encountered within the Project area and an Indigenous Peoples Plan is prepared, then monitoring and evaluation will be undertaken to provide information to verify progress towards achievement of results. For implementation of the IPPs, Participatory Monitoring and Evaluation (PME) will be used. This will involve project representatives, representatives of affected Indigenous Peoples groups, and community based organisations. This approach will assist to maximise culturally appropriate benefits and will provide space for the Indigenous Peoples' communities to voice their concerns.

Quarterly monitoring reports will be prepared by the project outlining issues affecting the Indigenous Peoples. Through these reports, LTWP will determine if any follow up actions are require. Results of monitoring will be reported to the Project Management Team on a quarterly basis. LTWP will develop monitoring indicators based on the findings of the social assessment.

9. DISCLOSURE

The final version of this framework will be disclosed in the appropriate form, manner and language. Later on, if Indigenous people are encountered within the project footprint, the prepared Indigenous Peoples Plan will also be made available to the affected persons as pamphlets in appropriate local language.

10. OUTLINE OF A PLAN

General principles for LTWP to be considered following screening survey; social assessment and input from World Bank or other financial institutions specialists.

An Outline Plan:

- *Gives objectives, activities, timelines taking cognisance of any special consideration deemed appropriate*
- *Establishes grievance procedure for settlement of disputes arising from project implementation*
- *Indicates sources of funding*
- *Defines institutional arrangements, often with capacity building*
- *Monitoring and evaluation arrangements, input from social scientists or similar experts*