

A l'attention de:

Mrs. Rudolph

DEG Independent Complaints Mechanism Office
c/o DEG - Deutsche Investitions- und Entwicklungsgesellschaft mbH
Kämmergasse 22
50676 Cologne
Allemagne
complaintsoffice@deginvest.de

Date: 05.11.2018

Dear Mrs. Rudolph,

RIAO-RDC is submitting this Complaint in relation to the company *Plantations et Huileries du Congo S.A. (PHC)*, Democratic Republic of Congo (DRC), with PHC oil palm plantations located at Boteka, Lokutu et Yalingimba.

This complaint is submitted in the name of the *chefs coutumiers*, Notables and community leaders of the *groupements* from the plantation site of Lokutu and Boteka, listed hereafter:

1. Concessions site *Lokutu*, Province of Tshopo (territories of Basoko, Isangi and Yahuma): Yanongo (I.1), Mwingi (I.3); Mwando (I.3) Lokutu (I.4); Bongemba (I.6); Bokala (I.9);
2. Concessions site of *Boteka*, Province of Équateur (territory of Ingende): Bengale et Bolombo (I.7); Bolombo-Élinga (I.8); Boteka (I.5).

This complaint shall not prejudice other communities affected by PHC's concessions from submitting a complaint to the DEG complaints mechanism at a later stage.

The communities listed above and affected by PHC's occupation of their customary land have mandated RIAO-RDC to submit the complaint on their behalf and represent them where direct communication of the DEG complaints panel with communities submitting the complaint is not feasible. Mandates of Representation from the nine communities are presented in Annex I.1-I.9. RIAO-RDC is registered as not-for-profit in the Democratic Republic of Congo; it is a network of grassroots organisations, including from all three locations where PHC claims concession rights. A list of RIAO's founding member organisations is included in Annex II; today, more than 250 organisations and 300 peasant groups are members of RIAO-RDC. The complainants request that all communication related to this complaint be directed at the director of RIAO-RDC (contact details below).

Name: M. Jean-François Mombia Atuku

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Name of the organisation: RIAO-RDC

Email: jfmombia.at16@gmail.com

Telephone: +221 773469621

Adresse: IMMEUBLE B2 SENEGINDIA
YOFF VIRRAGE



I am filing this complaint on behalf of directly affected people.

Yes

Proof of authority in the form of Mandates of Representation from the 9 communities is included in Annex I, submitted together with this complaint.

All pertinent documentation to support the complaint is included in Annexes I-VI, submitted together with this complaint:

Annex I: Mandates of Representation authorising RIAO-RDC to represent the communities listed on page 1 of this complaint vis-a-vis the complaints mechanism of the DEG

Annex II: Founding Members of RIAO-RDC

Annex III: A) Documents signed by communities at Feronia's different plantation sites that were included in the November 2016 report by RIAO-RDC, AEFJN, Entraide et Fraternité, GRAIN, SOS Faim, UMOYA, urgewald, War on Want and WRM.

B) Minutes taken during meetings facilitated by RIAO-RDC between representatives of the local communities affected by Feronia's plantations and representative of Feronia, between July 22 and August 19, 2017

C) Documents signed by communities at the Lokutu and Boteka plantation sites subsequent to Feronia's attempts to conclude a "Protocol d'accord" with the communities since November 2017

D) Other relevant community documents: Letter addressed to Mr. Derenne, Director of the District of Lever plantations in the Congo from Michel Kisekedi, concerning the statements of Mr. Charles-Louis Ebuwe, son of Mr. Lokutu, 25 August 1966.

Annex IV: RIAO-RDC communiqués, media releases, reports and articles

Annex V: Email sent to Wale Adeosun, CEO of Kuramo Capital Management, from RIAO-RDC, GRAIN, War on Want, urgewald, and the World Rainforest Movement

Annex VI: Have PHC's agricultural concessions been issued in accordance with the 1973 Land Law of the DRC? Key Findings of a Legal Review of the 1973 DRC Land Law

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DEG financing which the complaint relates to

This complaint relates to the **USD 49 million loan facility granted in December 2015 to Plantations et Huileries du Congo SA (PHC)** by a consortium of lenders led by the German development bank DEG. Besides DEG (USD 16.5 million), Dutch FMO (USD 16.5 million), Belgian BIO (USD 11 million) and investment fund EAIF (USD 5 million) contribute to the loan facility.¹ PHC is a subsidiary of Feronia Inc., listed on the Toronto stock exchange. Development banks have provided financing to both PHC and Feronia Inc. The 2015 loan facility provides funding to PHC. For this reason, this text refers to PHC where the loan facility and the complaint to DEG's independent complaints mechanism are concerned and to Feronia Inc. where investments or activities involve Feronia Inc. directly.

The 2015 loan facility remains open, and is backed by shares in PHC. It should be noted that the UK's CDC is a major shareholder of Feronia Inc., and that the AFD and Proparco of France, the AECID of Spain, the African Development Bank, and OPIC of the USA indirectly hold equity positions in Feronia Inc., through their investments in the African Agriculture Fund (AAF).²

PHC claims concession rights over 107,000 hectares of land in the Democratic Republic of Congo (DRC), around 25,000 hectares of which the company manages as industrial oil palm plantation. The remaining ca. 75,000 hectares remain forested. Even though forests are vital to community livelihoods and provide important food items such as mushrooms and caterpillars, communities are denied access to these forests PHC claims are part of its concessions. The PHC plantation sites are located in three provinces: Boteka in Équateur; Lokutu in Tshopo and Yalingimba in Mongala.

When did the problem occur?

The 'problem' at the root of this complaint predates the approval of the loan facility by the consortium of lenders led by DEG in December 2015. It concerns a historical land conflict between PHC and communities living within its concession area, including the complainants. The consortium of lenders led by DEG was aware of this historical and ongoing land conflict at the time the banks approved their USD 49 million loan facility in December 2015. The land conflict was documented in a report published by the organisations GRAIN and RIAO-RDC in June 2015 that Feronia Inc. and the consortium of lenders led by DEG were aware of when they approved the loan facility.³

¹ Deutsche Investitions- und Entwicklungsgesellschaft (DEG), Nederlandse Financierings-Maatschappij voor Ontwikkelingslanden N.V. (FMO), Belgian Investment Company for Developing Countries (BIO), Emerging Africa Infrastructure Fund (EAIF). See: https://www.deginvest.de/DEG-Documents-in-English/About-DEG/Responsibility/Investment-related-information/201512_Feronia_EN.pdf

² CDC Group plc (CDC), Agence Française de Développement (AFD), Promotion et Participation pour la Coopération économique (Proparco), Overseas Private Investment Corporation (OPIC), Agency for International Development Cooperation (AECID)

³ The report *Agro-colonialism in the Congo: European and US development finance bankrolls a new round of agro-colonialism in the DRC* is available at <https://www.grain.org/fr/article/entries/5219-agro-colonialisme-au-congo-les-institutions-financieres-de-developpement-europeennes-et-americaines-financent-une-nouvelle-phase-d-agro-colonialisme-au-rdc>



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As the 2015 GRAIN and RIAO-RDC report and other materials published since⁴ explain, the ongoing land conflict dates back to 1911, when the land was claimed without community consent and under force by the predecessor of the Unilever company, under an agreement with the Belgian colonial administration. The violations and atrocities committed in connection with the company's operations over the ensuing decades are well documented.⁵ Since that time, the company today known as PHC, has continued to assert control over approximately 107,000 ha of land that it claims as concessions, without the consent of local communities. Much of this land claimed by PHC is encumbered with customary rights. In 2009, Unilever sold PHC to the Canadian company Feronia Inc. for USD 4 million. Since that time, tensions between PHC and the communities have risen, as the company has made no serious attempt to resolve the historical and current land conflicts (see Annex III.A.i; III.A.vii).

In its Land Policy, Feronia Inc. "acknowledges that there are issues relating to Legacy Land on some of its concessions"⁶ and the company's December 2015 Social Impact Assessment Report recognises that communities in the area are unaware of the boundaries of PHC's land claims: "The lack of understanding of which land belongs to the Company and which to the non-worker communities has resulted in misconceptions and common belief that the Company is using land that it does not own."⁷

Although the consortium of development bank lenders led by DEG was aware of this historical and ongoing land conflict previous to their loan facility agreement with PHC, they seemingly did not insist that the company pursue a process agreed with customary rights holders to resolve this grave outstanding source of conflict, as described under the IFC Performance Standards – to which the loan facility agreement makes specific reference. Rather, the Term Facility Agreement DEG signed with PHC required that the company acquire new "valid" concession contracts at the PHC plantation sites in Lokutu, Boteka and Yaligimba. Schedule 12 of the Term Facility Agreement lists concessions at Lokutu which are said to be "not yet valid".⁸ The

⁴ See, for example, RIAO-RDC et al (2017): Land conflicts and shady finances plague DR Congo palm oil company backed by development funds. <https://www.farmlandgrab.org/post/view/26662-land-conflicts-and-shady-finances-plague-dr-congo-palm-oil-company-backed-by-development-funds>

⁵ See archival records cited in: Jules Marchal (2008): Lord Leverhulme's Ghost: Colonial exploitation in the Congo, New York: Verso. See also Box 2 in the Land conflicts report cited in footnote 4: "Instead of simply buying palm oil from the local people, Leverhulme reached an agreement with the Belgian colonial administration in 1911 giving him concession rights over a massive 750,000-ha area, encompassing all of the Congo's major oil palm groves. Shortly after, the Belgian government gave Leverhulme's company, Huileries du Congo Belge, a monopoly over the production and trade of palm oil within these areas. The Belgian colonial army enforced the monopoly and the company's horrific working conditions with brutal violence. The groves were eventually converted into plantations and the company was renamed Plantations et Huileries du Congo (PHC) under the ownership of Unilever. Throughout this history the communities never consented to the company's operations on their territories, nor did they approve of the destruction of their palm groves for the establishment of plantations."

⁶ See: <http://feronia.com/sustainability-policies/view/land-policy>

⁷ See: [http://www.feronia.com/uploads2/V2.%20Social%20Impact%20Assessment%20\(Final\).pdf](http://www.feronia.com/uploads2/V2.%20Social%20Impact%20Assessment%20(Final).pdf) From page 117.

⁸ Loan Facility Agreement between PHC and DEG, pg 139. 'Part 2. Concessions'. Available online at: <https://www.sedar.com/GetFile.do?lang=EN&docClass=36&issuerNo=00025224&issuerType=03&projectNo=02436181&docId=3852663>



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acquisition of the new concessions in 2015 and 2016, and particularly the note "not yet valid" in the table on page 139 of the loan facility agreement further substantiate the communities' contention that the original concessions in PHC's possession are not legally valid. A letter dated 1 May 2012 from the Director of the land agency for the Province of Tshopo also informs the "A.O.D" of PHC's Lokutu office of irregularities pertaining to concession contracts at Lokutu, including a large, concession covering over 46,000 hectares (see Annex III.A.ii). The acquisition of the new concessions in 2015 and 2016 was – again - done without the consent or consultation of the affected communities, in violation of the DRC's 1973 Land law⁹ (see Annex VI for key findings of a legal review on this issue) and in contravention of IFC Performance Standards, in particular Standard 1 on Assessment and Management of Environmental and Social Risks and Impacts, Standard 5 on Land Acquisition and Involuntary Resettlement and Standard 7 on Indigenous Peoples.

Directly and through the organisation RIAO-RDC, the affected communities have raised their issues over land with PHC, PHC's various owners Unilever and Feronia Inc. and relevant DRC government authorities on numerous occasions, both prior to and since approval by the consortium of lenders led by DEG of the loan facility in December 2015 (see Annexes III.D.i; III.A.i; III.A.iii; III.a.iv; II.A.vi; III.C.i-iii; III.C.ii; V). However, their requests for conflict resolution have not yielded satisfactory results, and grave conflicts persist between PHC and the communities affected by the PHC concessions. DEG argues that it promotes "high environmental, social and corporate governance standards." The affected communities submitting this complaint contend that this claim is untenable in relation to the DEG client PHC's treatment of legitimate community requests for respect of their customary rights and an end to grave human rights abuses that continue to take place on all three of the locations PHC occupies with its oil palm plantations. Therefore, communities are requesting a dispute resolution intervention from the independent complaints mechanism offered by DEG.

Description of the complaint

The nine communities listed above, from two of PHC's three plantation sites, are requesting that the DEG complaints panel carry out a dispute resolution and mediation process between the DEG client PHC and the complainants. The complainants consider the PHC occupation and activities on their land to be illegitimate and likely illegal, due to land legacy issues *and* the continued lack of community consent to the occupation of land by PHC to which these communities hold customary rights. DEG approved a loan of USD 16.5 million to PHC without requesting that existing land conflicts be resolved and communities' customary land rights be

⁹ 1973 Land Law of the DRC: <http://www.wipo.int/edocs/lexdocs/laws/fr/cd/cd003fr.pdf> Articles 193 outlines key procedural steps in the award of a concession. Article 194 provides further detail on the assessments to be carried out by a surveyor as part of the assessment of a request for concessions under the 1973 Land Law: "The objectives of the inquiry, as specified under Article 194 of the Land Law, are to: a) physically verify the solicited land for the concession; b) document the people using the land and their activities; c) document what exists on the land, for example trees, forest, waterways etc; d) document the views of those who verbally make complaints or observations, and, e) register and study the gathered data"



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respected. This DEG loan has allowed PHC to continue its illegitimate and likely illegal occupation of communities' customary land.

Describe how you are directly affected

As a result of PHC's occupation of their territories, the complainants have been deprived of their use of their customary land, forests, water sources and related natural resources, resulting in deep poverty and extreme food insecurity. 10 Access to their customary land and the natural resources they customarily derive from the land forms a key pillar of the complainants' livelihoods and human rights.

In addition to the land occupation by PHC putting communities' right to food at risk, community members, including residents of communities submitting this complaint, are also subjected to regular harassment, grave physical and human rights abuses by PHC security guards and police (see Annex IV.A.i). Company security guards routinely arrest local people for having a few palm nuts in their possession. In October 2014, for example, company security guards, police and villagers from the communities of Lokutu and Yambi Enene clashed for three days when protests erupted after four villagers were arrested by Feronia's security guards for "theft of oil palm nuts".¹¹ In some cases, this violence has resulted in the death of community members. One such example dates back to 07 March 2015, when Mr. Jeudi Bofete Engambi, a worker in FERONIA's Boteka plantations who lived in the Bokula workers' camp, returned from work. In a dispute between him and Ms. Thethé Mputu Ikeke, his wife, she insisted to have some means for feeding their 7 children. The husband told his wife to be satisfied with the few palm nuts he gave her for cooking, as the company had imposed restrictions to workers against taking any palm nut, an essential ingredient in local cuisine. The company security guards strictly supervise these restrictions. A member of PHC's security guards reported the couple's dispute to the commander of the Congolese National Police (PNC, for its French acronym) for the FERONIA camp. Mr. Jeudi Bofete Engambi was called in at the Boteka PNC post where he was severely beaten because of the palm nuts. Mr. Jeudi Bofete Engambi was taken to the hospital in Boteka as a result of the abuse and died the following day, on March 08, 2015. Ms. Thethé Mputu Ikeke and family members brought the body of the deceased to the PHC company guards in Boteka as a way of protesting. In view of the gathering, the PNC dispersed them with gunfire and Ms. Thethé Mputu Ikeke was shot and died, leaving seven children orphaned. Others were severely wounded.¹²

¹⁰ See, among others, examples cited in the report by the Member of the German Parliament, Uwe Kekeritz, on his recent visit to one of the plantation sites managed by PHC, Uwe Kekeritz, MdB (2018): Reisebericht Einzeldienstreise in die Demokratische Republik Kongo. Vom 26.08.2018 bis 06.09.2018. Available (in German) at: https://www.uwe-kekeritz.de/wp-content/uploads/2018/10/Reisebericht_Einzeldienstreise-DR-Kongo_Kekeritz.pdf

¹¹ Reprise des activités après des accrochages entre policiers et populations à Lokutu", Radio Okapi, 6 October 2010, <http://www.radiookapi.net/actualite/2014/10/06/reprise-des-activites-apres-des-accrochages-entre-policiers-populations-lokutu>

¹² See references cited in GRAIN (2017): Feronia in the Democratic Republic of the Congo: Harassment, violence and oppression. <https://www.farmlandgrab.org/post/view/27490-feronia-in-the-democratic-republic-of-the-congo-harassment-violence-and-oppression>



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The situation is compounded by the absence of social agreements between PHC and the complainants that are accepted by both sides as valid and legitimate, and that would unequivocally describe on which land and under which circumstances PHC can grow its industrial oil palm plantations (see Annex IV.A.iii). Such an agreement ought to specify which parts of customary land PHC can continue to use as part of its concession contracts, and under which conditions PHC can continue to use the land and which portions of customary land currently claimed by PHC must be accessible to communities as they are vital to ensure the communities' right to food as well as respect communities' customary rights.

Communities at all three locations had signed accords with Feronia Inc. / PHC in August 2017 (see below) but PHC has not honoured these accords. Instead, since November 2017 PHC has pressured community leaders to sign a new set of *ad hoc* accords. While these *ad hoc* accords have been signed under pressure for all three sites, they are not recognized as valid by communities who request that PHC honour the accords signed in August 2017 and the process agreed as part of these accords (further detail, see below).

Prior to approving the USD 49 million PHC loan facility in December 2015, the consortium of lenders led by DEG were aware of the findings documented in the report *Agro-colonialism in the Congo: European and US development finance bankrolls a new round of agro-colonialism in the DRC*,¹³ published by RIAO-RDC and GRAIN in June 2015. The report includes information on the unresolved land question and the conflicts this unresolved land conflict is causing.

Describe actions taken so far to address adverse impact

Before PHC was acquired by Feronia Inc. in 2009, the communities submitting this complaint had limited options to resolve these outstanding land issues, due to the context of colonial occupation and the subsequent years of dictatorship and war. Until recently, communities throughout the DRC have been faced with a situation of legal instability and uncertainty relating to the treatment of customary law and customary rights to land in state law, including within the framework of the 1973 Land Law (see Annex VI) and induced by law Law No. 73-021 (known as the Bakajika Law) on the general regime of property, land and property tenure and the system of security rights in the exercise of their rights in land (and in particular their customary rights). This is compounded by the fact that legal advice has been and continues to be largely inaccessible to communities, in particular in relation to the land question. No such access to legal services has been made available to them by Feronia Inc., PHC or the development banks that are financing PHC or Feronia Inc.

Even under these adverse conditions, however, community members did raise their objections to the occupation of their customary land on numerous occasions, as can be seen in a letter from 1966 addressing the situation at Lokutu that is addressed to the management of the

¹³ The report *Agro-colonialism in the Congo: European and US development finance bankrolls a new round of agro-colonialism in the DRC* was published on 02 June 2015. It is available at <https://www.grain.org/article/entries/5220-agro-colonialism-in-the-congo-european-and-us-development-finance-bankrolls-a-new-round-of-agro-colonialism-in-the-drc>



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company today known as PHC (see Annex III.D.i); and as is attested by the oral histories and communiques from the communities (see Annex III.A.ii; III.A.i and III.A.iv; III.A.v).¹⁴

Since Feronia Inc. acquired PHC, the communities submitting this complaint and other affected communities have repeatedly communicated their opposition to the occupation of their customary land by PHC and requested the intervention of the relevant government authorities, including the President of the Republic, in a letter dated 15 September 2016 (see Annex III.A.i). Several of these communications were included in the above-mentioned report issued by RIAO-RDC and GRAIN in June 2015.¹⁵

The communities also took measures to prevent land surveyors from accessing their land without community consent and opposed surveying in their absence (see Annexes III.A.i and III.A.iii). These land surveys were part of Feronia's actions to apply for new concessions in 2015 and 2016.

In August 2017, after relations between PHC and communities had further deteriorated, RIAO facilitated the signing of 'peace accords' between communities at Feronia-PHC's three plantation sites - including the complainants - and the company (see Annexes III.B.i-iii).

Communities signed these agreements on the understanding that they constitute the beginning of a three-step process of reconciliation, peace building and resolution of the long-standing land dispute. To the complainants, the signing signaled the willingness *of all involved* to resolve the long-standing land conflict and enter into a fair and transparent negotiation with the view to agreeing on the terms for future peaceful use of the land to which communities hold customary rights. Communities, including the communities submitting this complaint, expected the signing of the accords to be the first step of negotiation about the root of the dispute between PHC and communities: what areas of land encumbered by customary land use and access rights can PHC in future continue to control and use for growing oil palm plantations and under which conditions can the company continue to operate on customary land and which areas will revert to community use. It should be noted that of the vast concession area claimed by PHC; around 25,000 hectares are used by PHC to grow industrial oil palm in plantation; the remaining ca. 75,000 hectares remain forested land that has not been converted to plantations but to which communities are also denied access despite the importance of forest food, such as mushrooms and caterpillars, for the local diet.

Shortly after signing the accords in August 2017, however, PHC began to take actions to undermine RIAO's work to accompany the communities in their struggle for justice. Actions undertaken to undermine and discredit RIAO's work include: company support for the creation of a local NGO¹⁶ more favourable to the company's interests and employing former RIAO members, defamation of RIAO's staff,¹⁷ physical intimidation and bribes offered to RIAO-RDC

¹⁴ See also examples included in the report referenced in footnote 10.

¹⁵ Ibd. Report available at: <https://www.grain.org/article/entries/5220-agro-colonialism-in-the-congo-european-and-us-development-finance-bankrolls-a-new-round-of-agro-colonialism-in-the-drc>

¹⁶ Initiation, Gestion d'Environnement Durable et Gestion Défense des Droits Human (IGED).



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staff and community leaders (see Annex IV.A.ii). PHC also pressured local chiefs to sign *ad-hoc* social agreements from November 2017. On one occasion, social agreements were presented to the chiefs far from their communities in the presence of armed police. These *ad-hoc* agreements, which do nothing to resolve the long-standing land issues, were subsequently denounced and rejected by community leaders, including from communities that are submitting this complaint, and are not recognized as legitimate by the complainants (see Annexes III.C.i-iii).

After PHC failed to engage in the reconciliation process that was initiated with the joint signing of the August 2017 accords, community leaders, including the claimants, have repeatedly called on PHC to honour the agreed-upon process and engage in honest, good-will and transparent negotiations with communities on the future use of the land encumbered with customary land rights (see Annexes III.C.ii and III.C.iii).

PHC has to date refused to do so. Instead, and despite being aware of the community view of the *ad-hoc* social agreements that were signed by community members under extreme pressure after November 2017, Feronia Inc. promotes these very controversial social agreements in its "Sustainability Report 2017" as a positive example of company engagement with the communities.

Finally, we would like to underline that the communities submitting this complaint have been, and continue to be hampered in the quest for justice and resolution of this long-standing land dispute by the limited access to information and knowledge of community rights and the national as well as international canon of human rights obligations and policies that companies like PHC and Feronia Inc. and the development banks financing them, have signed up to.

We acknowledge that as a result of this knowledge gap on the side of the communities, negotiations with PHC to date have not taken place on a level playing field. Complainants are concerned that this inequality will also affect the mediation between the company and communities that complainants request with the submission of this complaint. Complainants have been informed of the Voluntary Guidelines on the responsible Governance of tenure of land, fisheries and forests in the Context of national food security (hereafter 'Land Tenure Guidelines')¹⁸ which were adopted unanimously by all members to the Committee on World Food Security, including the DRC and Germany.¹⁹ Point 4.6 of the Land Tenure Guidelines confirm that a "lack of legal capacity" leads to discrimination and that this gap should be closed: "States should remove and prohibit all forms of discrimination related to tenure rights, including those resulting from change of marital status, lack of legal capacity, and lack of access to economic resources." Point 5.4 of the Guidelines highlights that legal counsel and other assistance is especially crucial for women to "defend their tenure interest." Finally, Point 6.6 of the Guidelines calls on "States and other parties [to] consider additional measures to support

¹⁷ See for example, the quotation on page 15 in the October 2018 report of the Member of the German Parliament referenced in footnote 9, and available at: https://www.uwe-kekeritz.de/wp-content/uploads/2018/10/Reisebericht_Einzeldienstreise-DR-Kongo_Kekeritz.pdf

¹⁸ <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>

¹⁹ For details, see: <http://www.fao.org/cfs/home/activities/vggf/en/>



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vulnerable or marginalized groups who could not otherwise access administrative and judicial services. These measures should include legal support, such as affordable legal aid, and may also include the provision of services of paralegals or parasurveyors.....”

Complainants, therefore, request that the Independent complaints panel ensure that complainants have access to Independent advice throughout the process of dispute resolution and meditation.

Provide an indication of how DEG’s policies has allegedly have been breached (if relevant)

The communities submitting this complaint are of the view that DEG, as well as other donors and investors, have failed in their due diligence by omitting to ensure their client resolve ongoing human rights abuses and land conflicts rooted in land legacy conflicts with communities affected by their client’s illegitimate and likely illegal concession contracts. Complainants have been made aware of a 'Guidance note on managing land legacy issues in agribusiness investments' co-authored by DEG shortly after approval of their USD 16.5 million loan to PHC.²⁰ Complainants contend that DEG's client PHC has not followed the guidance provided in the land legacy document co-authored by DEG, which the company acknowledges to be "cognisant" of on its website.

The complainants are also of the view that the acquisition of new concession contracts in 2015 and 2016, which was part of the loan facility agreement PHC signed with the consortium of lenders led by DEG, was done without the consent or consultation of the affected communities and was therefore in violation of IFC Performance Standards, in particular Standard 1 on Assessment and Management of Environmental and Social Risks and Impacts, Standard 5 on Land Acquisition and Involuntary Resettlement and Standard 7 on Indigenous Peoples.

The complainants are further of the view that DEG has failed to take appropriate action to ensure that human rights abuses on its client’s plantations end and that its client engages in good-faith, fair, transparent and time-bound resolution of the outstanding land legacy issues that are at the heart of the company’s conflicts with communities before having approved and disbursed the loans to PHC.

For this reason, complainants request a dispute resolution and mediation process with the expressed aim of resolving the long-standing and ongoing land dispute and by doing so, also put an end to poverty as a result of being deprived of the use of their customary land, the recurring human rights abuses within the forests and oil palm plantations that PHC claims as concession.

²⁰ The document 'A guidance note on managing legacy land issues in agribusiness investments' is available at: https://www.deginvest.de/DEG-Documents-in-English/Download-Center/DEG_CDC_Guidance-Note-on-Managing-Legacy-Land-Issues-in-Agribusiness-Investments_2016_en.pdf



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Describe what you hope to achieve with your complaint, what resolution /remedy you are seeking

The complainants are requesting the Complaints Mechanism of the DEG to engage PHC in a fair, transparent and time-bound Dispute Resolution process that involves external mediation with the view of resolving the long-standing and ongoing land conflicts and land legacy issues which are the root cause for the numerous rights abuses and negative social impacts suffered by the complainant communities. As underpinned by the Land Tenure Guidelines mentioned above, this process will require community access to independent advice.

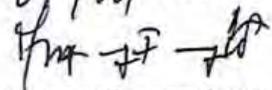
Complainants believe that a mutually agreeable solution is possible. Complainants expect that this dispute resolution and mediation process requested from the DEG complaints mechanism will arrive at mutually acceptable agreement between PHC, relevant government authorities and the complainants whose communities are affected by the PHC concession and that this agreement spells out on which customary land PHC can continue growing its oil palm plantations and the conditions under which it can continue to manage a portion of the land currently under oil palm plantation use, and which land will revert to customary use. The complainants further expect that such a mutual agreement will include a time-bound process to ensure community access and customary use to the ca. 75,000 hectares of forest included in the concession contracts claimed by PHC but which the company is not using as plantation.

The complainants further request that the Independent Complaints Mechanism and DEG commit to transparent monitoring of implementation by PHC with any action plans that might be agreed as part of the dispute resolution and mediation process that complainants are requesting.

We believe that a mere review of compliance with DEG policies and guidelines will not be adequate at this stage and will not contribute to the resolution of the grave outstanding conflicts between the DEG client PHC and the complainants.

The complainants and RIAO-RDC are supported by an international alliance of organisations, members of which have contributed to the elaboration of the complaint and the background document to the complaint, presented in the annexes. Complainants, through RIAO-RDC and the international alliance, have informed other financiers of PHC and Feronia Inc. of this complaint submitted to the DEG independent complaints mechanism. Through the international alliance, RIAO-RDC and the complainants will keep the international public informed about progress on their complaint.

Date et signature RIAO

le 05/11/2018


If you have any documents you deem relevant please send them via e-mail to complaintsoffice@deginvest.de



All relevant documents not listed in footnotes are included in Annexes I-VI, submitted together with this complaint.



A l'attention de :

Mme Rudolph,
Complaints Office
DEG - Deutsche Investitions- und Entwicklungsgesellschaft mbH
Kämmergasse 22
50676 Cologne
Allemagne
complaintsoffice@deginvest.de

Date : 05.11.2018

Madame,

Nous, RIAO-RDC désirons déposer une Plainte relative au projet Plantations et Huileries du Congo S.A. (PHC), République Démocratique du Congo, sites de plantation de palmiers à huile de Lokutu, Boteka et Yalingimba.

Cette Plainte est déposée au nom des chefs coutumiers, notables et leaders communautaires des groupements suivant:

1. District d'exploitation de Lokutu, Province de Tshopo (territoires de Basoko, Isangi et Yahuma): Yanongo (I.1), Mwingi (I.3); Mwando (I.3) Lokutu (I.4); Bongemba (I.6); Bokala (I.9);
2. District d'exploitation de Boteka, Province de l'Équateur (territoire d'Ingende): Bengale et Bolombo (I.7); Bolombo-Elinga (I.8); Boteka (I.5).

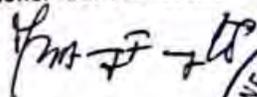
Les communautés affectés par l'occupation de leur territoire par PHC ont mandaté le RIAO-RDC pour déposer une plainte en leur nom et les représenter quand des communications directes entre le panel du mécanisme de la DEG et les communautés ne sont pas réalisables. Les mandats de représentation des 9 (neuf) communautés sont présentés à l'annexe I.1-I.9.

Cette plainte ne doit pas porter préjudice aux autres communautés touchées par les concessions de la société PHC dans le cas qu'elles soumettent une plainte au mécanisme de plainte de la DEG à un stade ultérieur.

RIAO-RDC est enregistré comme association sans but lucratif en République Démocratique du Congo. C'est un réseau d'organisations de base, dont des organisations des trois sites sur lesquels PHC revendique des droits de concession des terres. Une liste des membres fondateurs de RIAO se trouve en annexe II. Aujourd'hui, plus de 250 organisations et 300 groupes paysans sont membres de RIAO-RDC. Les plaignants demandent à ce que toute communication en lien avec cette plainte soit transmise au directeur du RIAO-RDC (contacts ci-dessous).

Nom: M. Jean-François Mombia Atuku
Nom de l'organisation: RIAO-RDC
Courriel: jfmombia.at16@gmail.com
Telephone: +221 773469621

Adresse: IMMEUBLE B2 SENEGINDIA,
YOFF VIRRAGE
D00221 Dakar, Sénégal



Veillez cocher la phrase si elle est pertinente pour votre Plainte :

Nous déposons Plainte au nom des personnes directement affectées.

Les mandats de représentation sont présentés en annexe I.1-I.9

(Si vous cochez cette case, veuillez joindre une preuve de votre habilité à les représenter.)

Nous demandons à la DEG de traiter notre Plainte de manière confidentielle.

Les signatures des autorités sont présentées sur les formulaires des mandats de représentation des 9 communautés villageoises et groupements et soumis conjointement à la plainte.

Liste des documents pertinents appuyant la plainte inclus en annexes I à VI et soumis conjointement à la plainte.

Annex I: Mandats de Représentation pour RIAO-RDC afin de représenter les 9 communautés villageoises et groupements

Annex II: Founding Members of RIAO-RDC

Annex III: A) Documents signed by communities at Feronia's different plantation sites that were included in the November 2016 report by RIAO-RDC, AEFJIN, Entraide et Fraternité, GRAIN, SOS Faim, UMOYA, urgewald, War on Want and WRM.

B) Minutes taken during meetings facilitated by RIAO-RDC between representatives of the local communities affected by Feronia's plantations and representative of Feronia, between July 22 and August 19, 2017

C) Documents signed by communities at the Lokutu and Boteka plantation sites subsequent to Feronia's attempts to conclude a "Protocol d'accord" with the communities since November 2017

D) Other relevant community documents: Letter addressed to Mr. Derenne, Director of the District of Lever plantations in the Congo from Michel Kisekedi, concerning the statements of Mr. Charles-Louis Ebuwe, son of Mr. Lokutu, 25 August 1966.

Annex IV: RIAO-RDC communiqués, media releases, reports and articles

Annex V: Email sent to Wale Adeosun, CEO of Kuramo Capital Management, from RIAO-RDC, GRAIN, War on Want, urgewald, and the World Rainforest Movement

Annex VI: Have PHC's agricultural concessions been issued in accordance with the 1973 Land Law of the DRC? Key Findings of a Legal Review of the 1973 DRC Land Law.



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Nous sommes affecté(e)s par le projet de la manière suivante:

Cette plainte concerne la facilité de prêt de 49 millions de dollars accordée en décembre 2015 aux Plantations et Hulleries du Congo SA (PHC) par un consortium de prêteurs mené par la banque allemande de développement (DEG). En plus de la DEG (16,5 millions de dollars), FMO des Pays Bas (16,5 millions de dollars), BIO en Belgique (11 millions de dollars), et le fond d'investissement EAIF (5 millions de dollars) ont contribué à la facilité¹

PHC est une filiale de Feronia Inc., inscrite à la bourse de Toronto. Les banques de développement ont fourni des financements à la fois à PHC et à Feronia Inc. La facilité de prêt accordée en 2015 a apporté des fonds à PHC. Pour cette raison, ce texte fait référence à PHC en ce qui concerne la facilité de prêt et la plainte au mécanisme indépendant de DEG et à Feronia Inc. lorsque des investissements ou des activités impliquent directement Feronia Inc.

La facilité de prêt de 2015 reste ouverte et est garantie par des actions de PHC. Par ailleurs, la CDC (Grande Bretagne) est un important actionnaire de Feronia Inc., et Proparco (filiale de l'AFD, France), l'AECID (Espagne), la Banque Africaine de Développement, et l'OPIC (USA) détiennent indirectement des actions dans Feronia Inc., au travers de leurs investissements dans le Fonds pour l'Agriculture en Afrique (African Agriculture Fund, AAF).²

PHC revendique des droits de concessions sur plus de 107 000 hectares de terre en République Démocratique du Congo (RDC), dont 25 000 hectares sur lesquels l'entreprise gère une plantation de palmiers à huile. Les environ 75 000 hectares restant sont recouverts de forêts. Bien que les forêts soient vitales pour les communautés et qu'elles participent à leur alimentation avec par exemple des champignons ou des chenilles, les communautés n'ont pas le droit d'accéder à ces forêts dont PHC revendique les concessions. Les sites de plantation de la PHC sont situés dans trois provinces : Boteka en Equateur, Lokutu dans le Tshopo et Yalingimba dans le Mongala.

Indiquez quand le problème est survenu:

¹ Deutsche Investitions- und Entwicklungsgesellschaft (DEG), Nederlandse Financierings-Maatschappij voor Ontwikkelingslanden N.V. (FMO), Belgian Investment Company for Developing Countries (BIO), Emerging Africa Infrastructure Fund (EAIF). Voir: https://www.deginvest.de/DEG-Documents-in-English/About-DFG/Responsibility/Investment-related-information/201512_Feronia_FN.pdf

² CDC Group plc (CDC), Agence Française de Développement (AFD), Promotion et Participation pour la Coopération économique (Proparco), Overseas Private Investment Corporation (OPIC), Agency for International Development Cooperation (AECID).



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Le "problème" à l'origine de cette plainte est antérieur à l'approbation de la facilité de prêt par le consortium d'investisseurs mené par la DEG en décembre 2015. Il concerne un conflit foncier historique entre PHC et les communautés vivant dans les zones des concessions, et en particulier les plaignants. Le consortium mené par la DEG était conscient de ce conflit historique et persistant quand les banques ont accordé la facilité de prêt de 49 millions de dollars en décembre 2015. Le conflit foncier était documenté dans un rapport publié par les organisations GRAIN et RIAO-RDC en juin 2015. Feronia Inc. et le consortium d'investisseurs dirigé par DEG ont été informés du contenu du rapport lors de l'approbation de la facilité de crédit.³

Comme le rapport de GRAIN et du RIAO-RDC et d'autres publiés depuis⁴ l'expliquent, le conflit foncier date de 1911 lorsque le prédécesseur de la société Unilever a revendiqué ces terres sans l'accord des communautés et au moyen de la force, en vertu d'un accord avec l'administration coloniale belge. Les violations de droits et les atrocités commises en lien avec les opérations de la société au cours des décennies suivantes sont bien documentées⁵. Depuis lors, la société, connue aujourd'hui sous le nom de PHC, a continué à revendiquer le contrôle d'environ 107 000 hectares de terres considérés comme ses concessions, sans le consentement des communautés locales. Une grande partie de ces terres revendiquées par la PHC est soumise à des droits coutumiers. En 2009, Unilever a vendu PHC à la société canadienne Feronia Inc. pour 4 millions de dollars US. Depuis, les tensions entre la PHC et les communautés se sont exacerbées, l'entreprise n'ayant pas sérieusement tenté de résoudre ce conflit foncier historique (voir annex III.A.i; III.A.vii).

Dans sa politique relative au foncier, Feronia Inc. «reconnait qu'il existe des problèmes liés à l'héritage foncier sur certaines de ses concessions»⁶ et le rapport d'évaluation de l'impact social de la société publié en décembre 2015 reconnaît que les communautés de la région ne sont pas conscientes des limites des revendications territoriales de la PHC:

³ Le rapport *Agro-colonialisme au Congo : la finance de développement européenne et américaine alimente une nouvelle phase de colonialisme en RDC* est disponible au lien suivant: <https://www.grain.org/fr/article/entries/5219-agro-colonialisme-au-congo-les-institutions-financieres-de-developpement-europeennes-et-americaines-financent-une-nouvelle-phase-d-agro-colonialisme-au-rdc>

⁴ Voir, par exemple, RIAO-RDC et al (2017): Land conflicts and shady finances plague DR Congo palm oil company backed by development funds. <https://www.farmlandgrab.org/post/view/26662-land-conflicts-and-shady-finances-plague-dr-congo-palm-oil-company-backed-by-development-funds>

⁵ Documents d'archives cités dans: Jules Marchal (2008): *Lord Leverhulme's Ghost: Colonial exploitation in the Congo*, New York: Verso. Voir aussi Encadre 2 dans le rapport cité dans note de pied 4 : "Instead of simply buying palm oil from the local people, Leverhulme reached an agreement with the Belgian colonial administration in 1911 giving him concession rights over a massive 750,000-ha area, encompassing all of the Congo's major oil palm groves. Shortly after, the Belgian government gave Leverhulme's company, Huileries du Congo Belge, a monopoly over the production and trade of palm oil within these areas. The Belgian colonial army enforced the monopoly and the company's horrific working conditions with brutal violence. The groves were eventually converted into plantations and the company was renamed Plantations et Huileries du Congo (PHC) under the ownership of Unilever. Throughout this history the communities never consented to the company's operations on their territories, nor did they approve of the destruction of their palm groves for the establishment of plantations."

⁶ Voir ici: <http://feronia.com/sustainability-policies/view/land-policy>



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« le manque de compréhension sur les terres qui appartiennent à la société et celles qui appartiennent aux communautés ont donné lieu à de mauvaises compréhensions et à la conviction commune que la société utilise des terres qu'elle ne possède pas. » 7

Bien que le consortium de banques de développement dirigé par DEG soit au courant de ce conflit foncier historique et actuel avant la signature de la facilité de crédit avec PHC, ils n'ont apparemment pas insisté pour que la société poursuive le processus convenu avec les détenteurs de droits coutumiers afin de résoudre cette grave source de conflit, tel que décrit dans les Normes de performance de la SFI - auxquelles l'accord de facilité de prêt fait spécifiquement référence.

Le contrat de prêt signé par DEG avec PHC stipulait que la société devait acquérir de nouveaux contrats de concession "valables" sur les sites de plantation de PHC à Lokutu, Boteka et Yaligimba. Le tableau 12 de l'accord liste les concessions à Lokutu qui sont considérées comme n'étant « pas encore valides ». 8 L'acquisition des nouvelles concessions en 2015 et 2016, et en particulier la note "pas encore valide" du tableau de la page 139 de l'accord de facilité de prêt, confirme la thèse des communautés selon laquelle les concessions originales en possession de PHC ne sont pas juridiquement valables. Une lettre du 1er mai 2012 du directeur de l'agence foncière de la province de Tshopo informe également le "A.O.D." du bureau de PHC à Lokutu des irrégularités relatives aux contrats de concession à Lokutu, notamment par rapport à une grande concession couvrant plus de 46 000 hectares (voir annexe III.A.ii). L'acquisition des nouvelles concessions en 2015 et 2016 a été - encore une fois - réalisée sans le consentement ou la consultation des communautés touchées, en violation de la loi foncière de 1973 de la RDC9 (voir l'annexe VI pour les principales conclusions d'un analyse juridique sur cette question) et en violation des normes de performance de la SFI, en particulier la norme 1 sur l'évaluation et la gestion des risques et impacts environnementaux et sociaux, la norme 5 sur l'acquisition de terres et la réinstallation involontaire et la norme 7 sur les peuples autochtones.

Directement et par l'intermédiaire de l'organisation RIAO-RDC, les communautés touchées ont fait part de leurs problèmes fonciers à de nombreuses reprises à PHC, aux divers propriétaires de PHC, Unilever et Feronia Inc., et aux autorités gouvernementales de la

7 Voir ici: [http://www.feronia.com/uploads2/V2.%20Social%20Impact%20Assessment%20\(Final\).pdf](http://www.feronia.com/uploads2/V2.%20Social%20Impact%20Assessment%20(Final).pdf) à partir de la page 117

8 Loan Facility Agreement between PHC and DEG, pg 139. 'Part 2. Concessions'. Available online at: <https://www.sedar.com/GetFile.do?lang=EN&docClass=36&issuerNo=00025224&issuerType=03&projectNo=02436181&docId=3852663>

9 1973 Land Law of the DRC: <http://www.wipo.int/edocs/lexdocs/laws/fr/cd/cd003fr.pdf> Articles 193 outlines key procedural steps in the award of a concession. Article 194 provides further detail on the assessments to be carried out by a surveyor as part of the assessment of a request for concessions under the 1973 Land Law: "The objectives of the inquiry, as specified under Article 194 of the Land Law, are to: a) physically verify the solicited land for the concession; b) document the people using the land and their activities; c) document what exists on the land, for example trees, forest, waterways etc; d) document the views of those who verbally make complaints or observations, and, e) register and study the gathered data"



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RDC compétentes, à la fois avant et depuis l'approbation de la facilité de prêt par le consortium mené par la DEG en décembre 2015 (voir annexes III.D.i; III.A.i; III.a.iv; II.A.vi; III.C.i-iii, III.C.ii; V).

Cependant, leurs demandes de résolution de conflits n'ont pas donné de résultats satisfaisants et les graves conflits persistent entre PHC et les communautés touchées par les concessions de PHC.

La DEG fait valoir qu'elle favorise « des normes élevées en matière d'environnement, de société et de gouvernance d'entreprise ». Les communautés touchées listées au début de ce document soutiennent que cette affirmation est intenable au regard du traitement réservé par les clients de DEG aux demandes légitimes de respect des droits coutumiers des communautés et des violations graves des droits de l'homme qui continuent de se produire dans les trois lieux occupés par les plantations de palmiers à huile de PHC. Par conséquent, les communautés demandent une intervention en résolution de litige du mécanisme de plainte indépendant de la DEG.

Description de la plainte

Les 9 communautés énumérés ci-dessus, situés dans deux des trois sites de plantation de PHC, Lokutu et Boteka, demandent au panel d'experts du mécanisme de plaintes de la DEG de mettre en place un processus de résolution des différends et de médiation entre le client de DEG, PHC, et les plaignants.

Les plaignants considèrent que l'occupation et les activités de PHC sur leurs terres sont illégitimes et probablement illégales, en raison de problèmes liés à l'héritage foncier et à l'absence persistante de consentement des communautés à l'occupation de terres par PHC, pour lesquelles ces communautés détiennent des droits coutumiers. La DEG a approuvé un prêt de 16,5 millions USD à PHC sans demander que les conflits fonciers existants soient résolus et que les droits fonciers coutumiers des communautés soient respectés. Ce prêt a permis à PHC de poursuivre son occupation illégitime et probablement illégale des terres coutumières des communautés.

Décrivez la façon dont le projet affecte directement les personnes que vous représentez

Conséquence de l'occupation de leurs territoires par la PHC, les plaignants ont été dépossédés de l'usage de leurs terres coutumières, forêts et des ressources naturelles liées (ce qui a engendré une extrême pauvreté et une insécurité alimentaire réelle). 10

¹⁰ Voir, entre autres, les exemples cités dans le rapport du Membre du Parlement en Allemagne, Uwe Kekeritz, rédigé suite à sa visite sur le site de la plantation de Lokutu, géré par PHC. Uwe Kekeritz, MdB (2018): Reisebericht Einzeldienstreise in die Demokratische Republik Kongo. Vom 26.08.2018 bis 06.09.2018. Disponible en allemand: https://www.uwe-kekeritz.de/wp-content/uploads/2018/10/Reisebericht_Einzeldienstreise-DR-Kongo_Kekeritz.pdf



Yma

L'accès aux terres coutumières et aux ressources naturelles (et donc à leur usage) constituent un pilier essentiel de leurs conditions d'existence et de leurs droits.

En plus de l'occupation des terres par la PHC et de ses conséquences sur le droit à l'alimentation des communautés, les membres des communautés, y compris les résidents des communautés soumettant cette plainte, sont régulièrement victimes d'un harcèlement, de graves abus physiques et de violations des droits humains par les agents de sécurité de PHC et par la police (voir Annex IV.A.i). De manière récurrente, les agents de la compagnie de sécurité ont procédé à des arrestations de membres des communautés sous l'accusation de vol de noix de palmes. Par exemple, en octobre 2014, des agents de sécurité et la police congolaise se sont affrontés durant trois jours aux villageois de Lokutu et de Yambi Enene après que quatre villageois aient été arrêtés par les agents de sécurité de Feronia pour « vols de noix de palmes ».¹¹ Dans certains cas, ces violences ont abouties au décès de membres des communautés. Pour exemple, le cas de M. Jeudi Bofete Engambi, travailleur au sein de la plantation Feronia de Boteka. Le 07 mars 2015, une dispute l'oppose à son épouse, M Thethé Mputu Ikeke, qui se plaignait de ne pouvoir nourrir ses sept enfants. A cette occasion, il lui oppose qu'ils doivent se contenter des quelques noix qu'il lui a apporté alors que les gardes de sécurité ont imposé des restrictions strictes aux travailleurs afin qu'ils ne puissent prendre des noix (un élément essentiel du régime alimentaire local). Un garde de sécurité de la PHC a par la suite rapporté au commandement de la Police nationale congolaise (PNC en sigle). M. Jeudi Bofete Engambi a ensuite été convoqué au siège de la PNC de Boteka où il a été accusé de vols de noix de palmes et sévèrement battu. Transporté à l'hôpital de Boteka M. Jeudi Bofete Engambi est décédé le 8 mars 2015 des suites de ses blessures. Son épouse, Mme Thethé Mputu Ikeke, et des membres de sa famille ont transporté son corps à la PHC en signe de protestation. Là, ils furent dispersés par les gardes de la PHC qui ont usé à cette occasion de tirs à balles réelles qui ont occasionné la mort de Mme Thethé Mputu Ikeke et plusieurs blessés graves. Mme Thethé Mputu Ikeke laisse derrière elle 7 enfants orphelins.¹²

Cette situation découle de l'absence de cadre d'accord commun et légitime entre la PHC et les plaignants; cadre qui identifierait les terres concernées par l'exploitation et qui stipulerait les conditions de développement de l'activité de plantations de la PHC (voir Annex IV.A.iii). Un tel cadre d'accord spécifierait quelles portions des terres communautaires peuvent être exploitées au titre de la concession accordée à la PHC et quels espaces (actuellement convoitées par la PHC) doivent restés accessibles aux communautés, afin de garantir la réalisation leur droit à l'alimentation et le respect de leurs droits coutumiers.

¹¹ Reprise des activités après des accrochages entre policiers et populations à Lokutu", Radio Okapi, 6 October 2010, <http://www.radiookapi.net/actualite/2014/10/06/reprise-des-activites-apres-des-accrochages-entre-policiers-populations-lokutu>

¹² Voir aussi: GRAIN (2017): Feronia in the Democratic Republic of the Congo: Harassment, violence and oppression. <https://www.farmlandgrab.org/post/view/27490-feronia-in-the-democratic-republic-of-the-congo-harassment-violence-and-oppression>



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En août 2017, les communautés des trois sites d'exploitation concernés ont signé un cadre d'accord avec Feronia / PHC mais cette dernière n'en a pas respecté les clauses et, depuis Novembre 2017, elle exerce des pressions sur les leaders communautaires pour qu'ils acceptent de signer de nouvelles dispositions *ad hoc*. Ayant été signés sous la contrainte sur les trois sites concernés, ces accords *ad hoc* ne sont pas reconnus comme légitimes par les communautés qui réclament que les dispositions prévues par les accords d'août 2017 soient honorées (plus de détail ci-après).

En décembre 2015, en amont de la facilité de crédit de 49 millions de dollars US accordé à la PHC, le consortium dirigé par DEG était en possession des informations relatives aux conflits fonciers non résolus et à leurs conséquences (documentées dans le rapport « L'agro-colonialisme au Congo: le financement du développement par l'Europe et les États-Unis -colonialisme en RDC », publié par RIAO-RDC et GRAIN le 02/06/2015).¹³

Décrivez les mesures prises jusqu'à présent pour remédier à ces effets négatifs

Avant l'acquisition de la PHC par Feronia en 2009, les communautés plaignantes n'avaient, en raison du contexte colonial puis de la dictature et enfin des conflits armés successifs, que des options limitées pour la résolution des litiges fonciers. De plus, et encore actuellement, les communautés (à travers la RDC en général) subissent les conséquences de l'insécurité légale induite par la loi Loi n° 73-021 (dite loi Bakajika) portant régime général des biens, régime foncier et immobilier et régime des sûretés relative à l'exercice de leurs droits fonciers (et notamment de leurs droits coutumiers). Cet état de fait est encore aggravé en raison de l'inaccessibilité des populations locales à ces dispositions et aux services administratifs concernés. Aucune voie de facilitation n'a cependant été proposée aux communautés que ce soit par Feronia Inc., la PHC ou les agences de développement parties prenantes.

Malgré ces conditions défavorables à l'exercice de leurs droits, les membres des communautés se sont adressés à la direction de l'entreprise aujourd'hui connue sous le nom de PHC, comme en témoigne une lettre de 1966 faisant référence à la situation à Lokutu (voir annexe III.D.1). Ces démarches sont également attestées par des témoignages oraux de membres des communautés et des communiqués (voir annexes III.A.iii; III.A.i and III.A.iv; III.A.v).¹⁴

¹³ The report *Agro-colonialism in the Congo: European and US development finance bankrolls a new round of agro-colonialism in the DRC* was published on 02 June 2015. It is available at <https://www.grain.org/article/entries/5220-agro-colonialism-in-the-congo-european-and-us-development-finance-bankrolls-a-new-round-of-agro-colonialism-in-the-drc>

¹⁴ Voir entre autre les exemples inclus dans le rapport cité en référence dans la note de bas de page numéro 9 et les annexes III.A.i et III.A.v.



[Signature]

Depuis l'acquisition de la PHC par Feronia, les communautés plaignantes ont, de manière répétée, communiqué leur opposition à l'occupation de leurs terres coutumières par la PHC et ont requis l'intervention des autorités compétentes, y compris l'intervention du Président de la République, avec une lettre du 15 septembre 2016 (voir annex III.A.i). Plusieurs de ces interpellations ont été incluses dans le rapport susmentionné publié par RIAO-RDC et GRAIN en juin 2015.¹⁵

Les communautés ont également pris des mesures pour limiter l'accès de leurs terres aux experts fonciers, mandatés par Feronia, pour délimiter les nouvelles concessions en 2015 et 2016 sans présence de membres des communautés (voir annexes III.A.i et III.A.iii).

En août 2017, après que la situation se soit dégradée encore plus, RIAO a facilité la mise en place d'accords visant à l'apaisement de la situation entre les communautés riveraines des trois sites de la PHC et l'entreprise (voir annexes III.B.i-iii).

Les communautés ont signé ces accords en les considérant comme des éléments constituant un premier pas dans un processus de réconciliation, de restauration de la paix sociale et finalement de résolution d'un vieux conflit foncier.

Aux yeux des plaignants, l'engagement de la signature témoignait d'une volonté de l'ensemble des parties prenantes de résoudre un conflit foncier ancien et d'entrer dans une nouvelle phase de négociation caractérisée par l'équité et la transparence avec pour enjeu d'établir les termes d'une utilisation concertée des terres sur lesquelles les communautés exerceraient à nouveau leurs droits coutumiers.

Les communautés, incluant les plaignants, attendaient que la signature des accords constitue la première étape de négociations qui traiteraient des causes premières du contentieux entre la PHC et les communautés, à savoir : sur quelles portions de terres s'exercent les droits coutumiers et quelles portions peuvent être exploitées par la PHC pour le développement des plantations d'huile de palme ? Quelles portions de terre doivent être rétrocédées à l'usage et contrôle coutumier et sous quelles conditions la compagnie peut exploiter des terres coutumières ?

Il est à noter que parmi les vastes concessions réclamées par la PHC, moins de 30 000 hectares sont effectivement exploités dans le cadre de leurs activités agro-industrielles ; les environ 75 000 hectares restant n'ayant pas été convertis en plantations agro-industrielles et sont couverts par des forêts auxquelles les communautés n'ont toutefois pas accès notamment pour leurs activités de cueillettes (et ce alors que les champignons et les chenilles constituent par exemple une part importante de leurs régime alimentaire).

¹⁵ Ibid. Report available at: <https://www.grain.org/article/entries/5220-agro-colonialism-in-the-congo-european-and-us-development-finance-bankrolls-a-new-round-of-agro-colonialism-in-the-drc>



A handwritten signature or set of initials, possibly "Jm", written in black ink.

Cependant, peu après la signature des accords, la PHC a commencé à prendre des initiatives pour entraver le travail d'accompagnement des communautés effectué par le RIAO-RDC. Les actions entamées pour discréditer le travail du RIAO incluent la création d'associations locales plus favorables aux intérêts de la compagnie, la diffamation contre des membres du RIAO,¹⁶ l'intimidation physique et des tentatives pour soudoyer des membres du RIAO et des chefs coutumiers (voir annex IV.A.ii).

La PHC a par ailleurs poursuivi ses pressions pour inciter les chefs coutumiers locaux à signer des accords sociaux *ad hoc*. A au moins une occasion, des accords sociaux *ad hoc* ont été présentés aux chefs locaux volontairement isolés de leurs communautés et en présence de la police congolaise. Ces accords qui ne proposent pas de solutions concrètes et durables aux conflits fonciers ont été dénoncés par la suite et rejetés par les chefs coutumiers (y compris par des chefs des communautés plaignantes) et n'ont finalement pas été reconnus comme légitimes par les plaignants (voir annexes III.C.i-iii).

Après que la PHC ait failli à poursuivre un processus de réconciliation initié par la signature des accords d'août 2017, les leaders communautaires, incluant les plaignants ont, de manière répétée sollicité la PHC pour que soient menées, de manière honnête et transparente, des négociations avec les communautés sur l'usage future des terres en conformité avec les droits coutumiers (voir see Annexes III.C.ii and III.C.iii).

Jusqu'à présent, la PHC a exprimé son refus de s'engager dans une telle démarche. Au contraire, et ce malgré qu'elle est été informée par les communautés du climat d'extrême pression qui régnait lors de la signature des accords de novembre 2017, Feronia Inc. continue à promouvoir ces accords sociaux *ad hoc* controversés et les présente comme des exemples d'avancées positives dans son « rapport de durabilité 2017 » comme des engagements positifs envers les communautés locales.

Finalement, nous souhaitons souligner que les communautés plaignantes ont été, et continuent, à être limitées dans leur recherche d'une résolution juste et durable à ce conflit ancien par leur accès limité à l'information et à la connaissance des obligations relatives aux droits humains et aux règlements tant nationaux qu'internationaux que les entreprises multinationales (comme PHC et Feronia Inc.) et les institutions de développement s'engagent pourtant à respecter.

Nous considérons que, en conséquence de cette lacune, les négociations qui ont eu lieu avec la PHC n'ont pu se dérouler de manière équitable et loyale. Les plaignants considèrent également que les médiations entre l'entreprise et les communautés (dont les plaignants) sont également affectées par ce manque d'information et de compétence.

¹⁶ Voir, par exemple, la citation à la page 15 dans le rapport du Membre du Parlement en Allemagne de Octobre 2018, cité à la note 9, et disponible sur: https://www.uwe-kekeritz.de/wp-content/uploads/2018/10/Reisebericht_Einzeldienstreise-DR-Kongo_Kekeritz.pdf



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Cette inégalité de fait qui a affecté les médiations successives avec la société doit ainsi trouver une solution dans la formulation de cette plainte. Les plaignants ont été informés du contenu et de la portée des Directives volontaires pour une gouvernance responsable des régimes fonciers applicables aux terres, aux pêches et aux forêts dans le contexte de la sécurité alimentaire nationale (ci-dessous, Directives), adoptées à l'unanimité par les membres du Comité de la sécurité alimentaire mondiale, dont l'Allemagne et la RD Congo.

L'alinéa 4.6 des Directives souligne d'ailleurs que « Les États devraient supprimer et interdire toute forme de discrimination relative aux droits fonciers, y compris les discriminations découlant d'un changement de situation matrimoniale, **de l'absence de capacité juridique ou d'un accès insuffisant aux ressources économiques.** »¹⁷ L'alinéa 5.4 des Directives souligne également que l'accès aux conseils juridiques et autre assistance sont particulièrement déterminants pour les femmes dans leurs droits à « défendre leurs intérêts fonciers ». Enfin, l'alinéa 6.6 de ces mêmes Directives appelle « les États et les autres parties devraient envisager des mesures supplémentaires visant à apporter un soutien aux groupes vulnérables ou marginalisés qui sans cela ne pourraient accéder aux services administratifs et judiciaires. Ces mesures devraient comprendre une aide juridique (par exemple, une assistance judiciaire d'un coût abordable), et pourraient aussi comprendre des services d'assistants juridiques ou de géomètres auxiliaires et des services mobiles à l'intention des communautés éloignées et des peuples autochtones itinérants. »

Les plaignants demandent que, durant le processus de médiation et de résolution du conflit, ils aient accès à des avis indépendants.

La politique de la DEG prétendument violée par celle-ci

Les communautés plaignantes considèrent que la DEG, ainsi que les autres bailleurs et investisseurs, ont failli à leur devoir de diligence responsable en omettant de s'assurer que leur client cherche à résoudre les violations de droits humains et les conflits fonciers découlant de contrats de concession illégitimes voir illégaux.

Les plaignants ont été avisés de l'existence du document « Note d'orientation sur la gestion des problèmes liés à l'héritage foncier dans les investissements agroalimentaires »,¹⁸ co-édité par la DEG peu après l'approbation de la facilité de crédit de 16,5 millions d'euros à la PHC. Les plaignants soutiennent que le client de la DEG n'a pas

¹⁷ FAO: Directives volontaires pour une gouvernance responsable des régimes fonciers applicables aux terres, aux pêches et aux forêts dans le contexte de la sécurité alimentaire nationale. Disponible sur: <http://www.fao.org/3/a-i2801f.pdf>

¹⁸ 'Guidance note on managing land legacy issues in agribusiness investments', disponible seulement en Anglais. https://www.deginvest.de/DEG-Documents-in-English/Download-Center/DEG_CDC_Guidance-Note-on-Managing-Land-Issues-in-Agribusiness-Investments-2016_en.pdf



[Signature]

respecté les procédures proposées par ce guide en matière de normes foncières (et ce alors qu'il est porté à la connaissance de tous sur le site internet de la DEG).

Les plaignants considèrent également que l'acquisition des nouvelles concessions en 2015 et 2016, qui découlent de la facilité de crédit accordée à la PHC par le consortium de bailleurs piloté par la DEG, a été fait sans consultation et le consentement libre, préalable et éclairé des communautés affectées et, qui plus est, en violation des normes de performance de l'SFI (Société Financière International), et en particulier du standard numéro 1 relatif à la gestion des risques sociaux et environnementaux et des impacts relatifs, du standard numéro 5 sur les acquisitions de terres et réinstallation involontaire et du standard numéro 7 sur les peuples autochtones.

Les plaignants soutiennent que la DEG a failli à prendre les mesures appropriées pour s'assurer que les violations des droits humains par ses clients sur ses plantations prennent fin et que son client s'engage effectivement, de bonne foi, en toute transparence et dans des délais raisonnables à prendre des initiatives pour régler les conflits fonciers en suspend avant d'approuver et de décaisser les crédits alloués à la PHC.

Pour cette raison, les plaignant réclame, par la médiation, la résolution de l'ensemble du contentieux et, par-là, que soit mis fin aux violations récurrentes des droits humains liées aux plantations que la PHC désigne comme ses concessions.

Décrivez ce que vous espérez obtenir avec votre Plainte – la solution ou réparation demandée

Les plaignants demandent que le mécanisme de plainte de la DEG engage la PHC dans un processus de résolution équitable, transparent et limité dans le temps (délai raisonnable) qui implique une médiation extérieure (tiers partie) afin de résoudre les conflits fonciers hérités et en cours qui sont la cause profonde de nombreux abus et qui génèrent les impacts sociaux dont sont victimes les communautés plaignantes. Comme préconisé par les Directives mentionnées plus haut, le processus appelle un accès des communautés à un expertise indépendante.

Les plaignants croient qu'une solution acceptable pour chaque partie est possible. Ils attendent que la médiation demandée par le mécanisme de plainte de la DEG aboutisse à un accord commun entre la PHC, les autorités compétentes et les communautés plaignantes affectées qui indiquerait explicitement sur quelles terres coutumières et sous quelles conditions l'exploitation de palmiers à huile par la PHC pourrait se poursuivre alors qu'ils recouvreraient l'usage d'une portion des terres actuellement exploitée. Les plaignants attendent en outre que l'accord mutuel soit trouvé dans des délais accordés entre les communautés et PHC pour permettre aux communautés l'usage des 75 000 hectares de forêts incluant les contrats de concessions réclamées par PHC mais non mises en exploitation.



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Les plaignants attendent en outre que le mécanisme indépendant de plainte et la DEG s'engagent à effectuer un suivi transparent de la mise en place, par la PHC, des mesures arrêtées et qui pourraient résulter de la résolution des conflits et du processus de médiation que les plaignants réclament. Nous croyons qu'un simple exercice d'examen de conformité avec les politiques et normes de performance de la DEG ne constitue pas une réponse adéquate et ne contribuera pas à la résolution des graves conflits entre les plaignants et le client de la DEG.

Les plaignants et le RIAO-RDC sont appuyés par une alliance internationale d'organisations qui ont contribué à l'élaboration de la plainte (présentées en annexe). Les plaignants, à travers le RIAO-RDC, ont informé les autres bailleurs et partenaires financiers de la PHC et de Feronia de cette procédure auprès du mécanisme indépendant de plainte de la DEG. A travers cette alliance internationale, RIAO-RDC et les plaignants souhaite maintenir l'opinion internationale informée de cette démarche.

Date et signature RIAO-RDC

16/05/11/2018
[Signature]



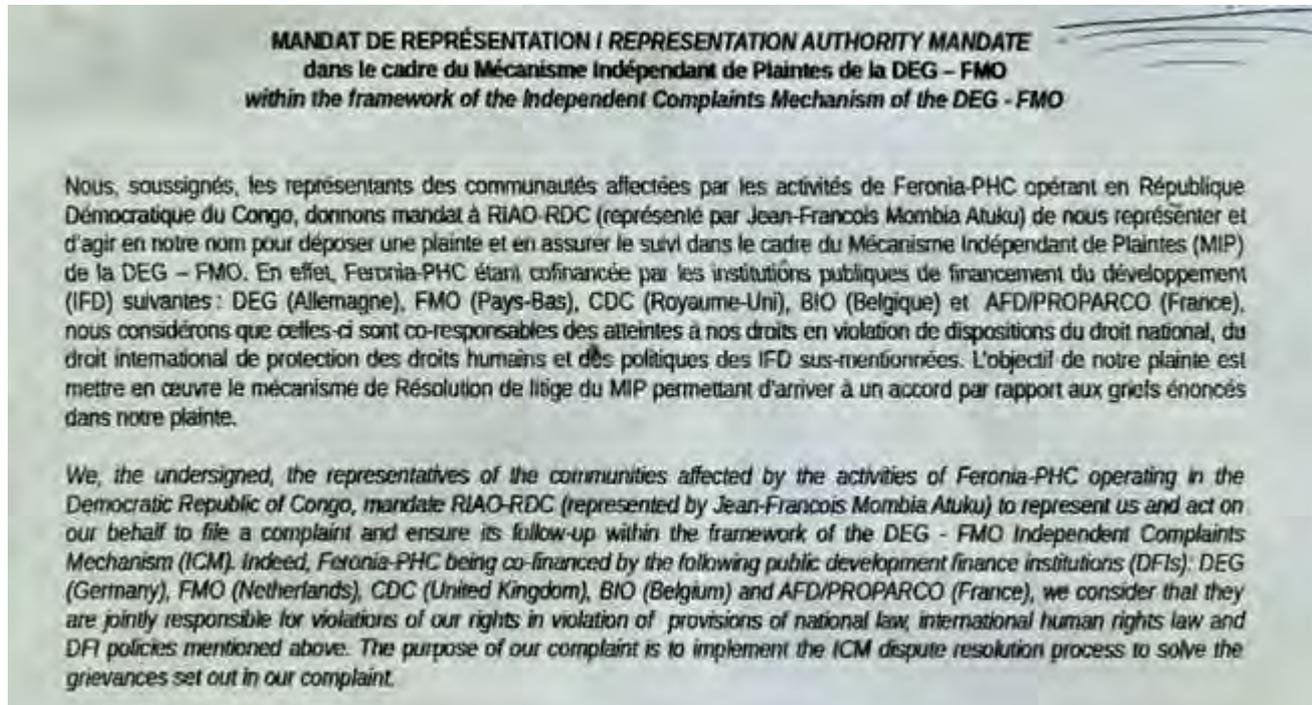
If you have any documents you deem relevant please send them via e-mail to complaintsoffice@deginvest.de

Les documents pertinents se trouvent en annexe I-VI, soumis conjointement à la plainte.

Annex I

Documents authorising RIAO-RDC to represent the undersigned villages of the DR Congo in their complaint to the complaints mechanism of the DEG have been redacted from the original to protect identities of the signatories.

Mandates of representation from the nine communities



I.1 Yanongo - District d'exploitation de Lokutu

I.2 Mwingi - District d'exploitation de Lokutu

I.3 Mwando - District d'exploitation de Lokutu

I.4 Lokutu - District d'exploitation de Lokutu

I.5 Boteka - District d'exploitation de Boteka

I.6 Bongemba - District d'exploitation de Lokutu

I.7 Bengale et Bolombo - District d'exploitation de Boteka

I.8 Bolombo – Elinga - District d'exploitation de Boteka

I.9 Bokala - District d'exploitation de Lokutu

Annex II

Founding Members of RIAO-RDC

Redacted from the original version to protect the identity of the signatories

Annex III

A) The following documents signed by communities at Feronia's different plantation sites were included in the November 2016 report by RIAO-RDC, AEFJN, Entraide et Fraternité, GRAIN, SOS Faim, UMOYA, urgewald, War on Want and WRM. They can be accessed here: <https://www.grain.org/e/5560>

A.i) "Plainte contre la société PHC/FERONIA à Lokutu," letter addressed to the President of the Republic, as well as PHC-Feronia, by over 551 representatives of the communities of Basoko, Yahuma and Isangani, 15 September 2016.

A.ii) "Avis sur la conversion des titres de propriété foncière couvrant les SR86, SR709 et 12 à Basoko/PHC/Lokutu," Letter addressed to Monsieur l'A.O.D de la Société PHC/ Lokutu, from the Director of the land agency for the Tshopo 1, May 2012.

A.iii) "Accusé de réception de la lettre N. 304/2013/APM, AHO/LTU/FC", letter addressed to the Administrator of the Territory of Yahuma from the Bolombo Chief Bolonga Batikalaki Koyasai Michel, September 2013.

A.iv) "Desiderata de la population de Yahuma face à la société PHC/Feronia area Lokutu", signed in Mosité, 8 March 2015, and presented to GRAIN.

A.v) "Memo conflit entre la société PHC-Feronia, les ONG (RIAO-IHA) et les populations dans le territoire d'Ingende", memo addressed to the President of the National Assembly by the customary chiefs of the Territory of Igende, 20 August 2013.

A.vi) "Pétition contre société PHC/Feronia: Lokutu", Petition addressed to the President of RIAO-RDC by civil society organisations of Basoko, 8 March 2016

A.vii) "Analyse réponse CDC et Feronia", statement signed by 13 community leaders from Feronia's three plantation areas (Lokutu, Yaligimba, Boteka), October 2016, Kampala, Uganda.

A.viii) "Memo", Memo written and signed by village leaders of Monkoso, 15 April 2016.

B) The following three documents are the minutes taken during meetings facilitated by RIAO-RDC between representatives of the local communities affected by Feronia's plantations and representative of Feronia, between July 22 and August 19, 2017.

B.i) Minutes from the meeting between representatives of the communities of Lokutu, Mosite and Lokumete and Feronia, 10 August 2018

https://drive.google.com/file/d/1ME5ix_1-857rqpX6MuLwMIJBWRO22DYK/view?usp=sharing

B.ii) Minutes from the meeting between representatives of the communities of Boteka and Feronia, 22 July 2018:

https://drive.google.com/file/d/1r9JphPFicQT_cPrH8ZRqFPJaJPz6IUo0/view?usp=sharing

B.iii) Minutes from the meeting between representatives of the communities of Yaligimba and Feronia, 19 August 2018:

https://drive.google.com/file/d/1YllkNrWC_sMsp0U-Kl8oV5DEfIZ5kR_A/view?usp=sharing

C) The following documents were signed by communities at the Lokutu and Boteka plantation sites subsequent to Feronia's attempts to conclude a "Protocol d'accord" with the communities.

C.i) DECLARATION DES COMMUNAUTÉS RIVERAINES DE PHC/FERONIA LOKUTU: BASOKO, YAHUMA ET ISANGI (JANVIER 2018)

<http://farmlandgrab.org/uploads/attachment/Lokutu1.pdf>

C.ii) MEMORANDUM DES COMMUNAUTÉS RIVERAINES DE PHC/FERONIA BOTEKA (JANVIER 2018)

<http://farmlandgrab.org/uploads/attachment/Boteka.pdf>

C.iii) MEMORANDUM DES COMMUNAUTÉS RIVERAINES DE PHC/FERONIA BOTEKA (DECEMBRE 2017)

<http://farmlandgrab.org/uploads/attachment/igende.pdf>

D) Other relevant community documents

D.i) Letter addressed to Mr. Derenne, Director of the District of Lever plantations in the Congo from Michel Kisekedi, concerning the statements of Mr. Charles-Louis Ebuwe, son of Mr. Lokutu, 25 August 1966.

Available at: https://drive.google.com/file/d/1Wc7bFYOc9J6_RX71rrce7uHH8wOu6lZC/view?usp=sharing

Annex IV

A) RIAO-RDC communiqués and media releases

A.i) RIAO-RDC, "Les nouvelles forces de gardiennage de Feronia harcellent les communautés locales en RDC", 13 June 2018: <https://www.farmlandgrab.org/post/view/28225>

A.ii) RIAO-RDC, "Threats on Feronia's plantations in the Democratic Republic of Congo (DRC)", 2 November 2017: <https://www.farmlandgrab.org/post/view/27698>

A.iii) RIAO-RDC and GRAIN, "DR Congo communities pressured to cede land rights by plantation company controlled by development banks," 24 July 2016: <https://www.farmlandgrab.org/post/view/26379>

B) RIAO-RDC reports and articles

B.i) RIAO-RDC, GRAIN and WRM, "Feronia in the Democratic Republic of the Congo: Harassment, violence and oppression," 21 September 2017. <https://wrm.org.uy/articles-from-the-wrm-bulletin/section1/feronia-in-the-democratic-republic-of-the-congo-harassment-violence-and-oppression/>

B.ii) RIAO-RDC, AEFJN, Entraide et Fraternité, GRAIN, SOS Faim, UMOYA, urgewald, War on Want and WRM, "Land conflicts and shady finances plague DR Congo palm oil company backed by development funds," 2 November 2016: <https://www.grain.org/article/entries/5564-land-conflicts-and-shady-finances-plague-dr-congo-palm-oil-company-backed-by-development-funds>

B.iii) RIAO-RDC and GRAIN, "Agro-colonialism in the Congo: European and US development finance bankrolls a new round of agro-colonialism in the DRC", 2 June 2015, <https://www.grain.org/e/5220>

Annex V

Email sent to Wale Adeosun, CEO of Kuramo Capital Management, from RIAO-RDC, GRAIN, War on Want, urgewald, and the World Rainforest Movement

From: Devlin Kuyek [<mailto:devlin@grain.org>] **On Behalf Of** Devlin Kuyek | GRAIN

Sent: Friday, November 3, 2017 1:18 PM

To: Wale Adeosun <wadeosun@kuramocapital.com>

Cc: Mobolaji Adeoye <madeoye@kuramocapital.com>; Shaka Kariuki <skariuki@kuramocapital.com>; Sarah Ngamau <sngamau@kuramocapital.com>; Xavier Decarniere <xavier.decarniere@feronia.com>; nodonohoe@cdcgroup.com; communications@cdcgroup.com; ltaffe@cdcgroup.com; Luuk.Zonneveld@bio-invest.be; bruno.wenn@deginvest.de

Subject: Concerns regarding Feronia

3 November 2017

To: Walé Adeosun, Founding Partner & CIO, Kuramo Capital wadeosun@kuramocapital.com

CC:

Mobolaji Adeoye, Managing Director, Kuramo Capital madeoye@kuramocapital.com

Shaka Kariuki, Partner & Co-CIO, Kuramo Capital skariuki@kuramocapital.com

Sarah Ngamau, Vice President, Kuramo Capital sngamau@kuramocapital.com

Xavier Decarniere, CEO of Feronia Inc <xavier.decarniere@feronia.com>

Nick O'Donohoe, CEO, CDC Group, nodonohoe@cdcgroup.com, communications@cdcgroup.com

Lyndsay Taffe, Director of Communications, CDC Group, ltaffe@cdcgroup.com

Luuk Zonneveld, Director BIO, Luuk.Zonneveld@bio-invest.be

Bruno Wenn, DEG, bruno.wenn@deginvest.de

Dear Sir,

We, the undersigned organisations, are writing to you to express our concerns about the operations of Feronia Inc. According to public information provided by the company and its largest shareholder, the CDC, Straight KKM 2 Ltd of Mauritius, a newly created Mauritius company that you are said to manage, is in the process of acquiring a large number of common shares, which, upon completion will give your company a 37.86 % share of Feronia Inc.

We have read the subscription agreement between Straight KKM 2 Ltd and Feronia Inc. for the purchase of common shares. Given that this agreement references a 2014 report written by two of the undersigned organisations (GRAIN and RIAO), in which allegations of land conflicts and labour and human rights violations are detailed, we assume that you are already aware of the conflicts that persist between Feronia Inc and the communities where it operates in the DRC.

However, the subscription agreement contains a sub-section, "Group Leases", on pp.21-22, in which Feronia Inc makes several assertions for which we have serious concerns that you may not be fully aware of. The assertions of particular concern are:

- *Each Group Lease has been validly issued or granted, complies with all applicable laws and regulations and whenever capable of registration has been registered, is in full force and effect and the relevant Group Company has fully complied with its obligations under it.*
- *There are no claims, demands, actions, suits, governmental inquiries or proceedings pending, or to the Company's or the Group Company's knowledge, threatened in relation to any Group Lease.*
- *All consents, approvals and licenses necessary for the valid grant of every Group Lease have been obtained.*

We would first like to point out that the communities living within Feronia-PHC's concessions have issued numerous memos and letters clarifying that they have never provided what can be considered their free, prior and informed consent to Feronia's occupation of their territories. They have also repeatedly insisted that, in their view, Feronia's land claims are illegal and that they will not tolerate the company's ongoing presence in their territories if the company does not negotiate in good faith memorandums of understanding (cahiers de charge) with each community that would provide them with considerable improvements (social service, wages, management level employment) and the retrocession of the lands that Feronia does not have under production. See for instance the letter from the communities of Basoko, Yahuma and Isangani, from 15 September 2016 that is attached. We have also provided the URL for a website that has several other letters and memos, which you can find at the bottom of this email.

We hope that you have been informed of the most recent tensions between the communities and Feronia, which occurred between October 23-October 31, when a delegation composed of representatives of Feronia and some of its investors visited the company's three DRC plantation areas. The delegation was met with protests by the local communities and strong and clear demands for reparations, for the restitution of lands, for the negotiation of memorandums of understanding for Feronia's use of any of their lands, and for an independent international investigation. Several community leaders are now facing intimidation and harassment for their involvement in these protests. A communique from RIAO-RDC providing more information about these recent confrontations between Feronia and the local communities is available here: <https://farmlandgrab.org/27599>

The absence of free, prior and informed consent is a violation of the guidelines of the development finance institutions that currently have a controlling stake in Feronia. It is also a violation of international law, for which the African Commission and the African Court on Human and Peoples' Rights have recently issued rulings requiring the restitution of lands.

We would also like to draw your attention to a further concern about the legality of Feronia's land documents. According to Article 183 of Land Law No 73-021 of 20 July 1973 (updated in July 1980 by law 80-008) the procedures for obtaining a land title in the DRC depend on the size of the area (Table 1).

Table 1 : required land titles authorisations (Article 183, Law No 73-021)

Required authorisation	Area range in rural zone (ha)
Special law	2,000 or more
Presidential Order (<i>ordonnance du Président de la République</i>)	1,001 - 1,999
Order of the State Commissioner (<i>Arrêté du Commissaire d'Etat</i>)	201 – 1,000
Decision of the Governor provincial (<i>par contrat signé par le Commissaire de région</i>)	10 – 200
Registration certificate Registrar of Land Titles (<i>Conservateur des titres immobiliers</i>).	Less than 10

There is evidence that Feronia may be evading these legal obligations by dividing its concessions into smaller fragments. For example, below is a sample of ten contracts established between the Tshopo Provincial Governor and Feronia-PHC on Sep 20, 2016, which reveal Feronia-PHC obtained a total of 1,536 ha of land for the same concession, Lokutu, in Yahuma and Isangi territories (Table 2). The division of this part of the Lokutu concession into smaller parcels may have been done to avoid the Presidential Order or, at the very least, Orders of the State Commissioner, which are explicitly required according to article 183 of Land Law No 73-021 of 20 July 1973.

Table 2 : Sample of ten 25-year leasehold contracts between the Tshopo Provincial Governor and PHC. All contracts are for the Lokutu concessions and were signed on September 20, 2016.

Contract ID	Territory	Cadastre	Area (ha)
D8/E/TSHO.I/151	Yahuma	SR 709	153
D8/E/TSHO.I/149	Yahuma	SR 708	149
D8/E/TSHO.I/149	Yahuma	SR 707	115
D8/E/TSHO.I/148	Yahuma	SR 706	173
D8/E/TSHO.I/147	Yahuma	SR 705	174
D8/E/TSHO.I/146	Yahuma	SR 704	181
D8/E/TSHO.I/145	Yahuma	SR 703	180
D8/E/TSHO.I/134	Isangi	SR 656	133
D8/E/TSHO.I/133	Isangi	SR 655	114
D8/E/TSHO.I/132	Isangi	SR 654	164
		Total	1,536

The land documents we have seen indicate that this is common practice for much of the land occupied or claimed by Feronia, putting into question the legal basis for Feronia's land claims.

We strongly advise you to ensure that the information we have presented be reviewed by whomever is conducting the due diligence process for your investment with Feronia. and any other parties with a financial stake in this acquisition.

We would appreciate your response to this letter, as well as any responses from Feronia and its DFI investors, as we intend to eventually make our letter public.

Please do not hesitate to contact us if you would like to discuss this issue further or if you require further clarification.

Sincerely,

Jean-François Mombia, RIAO-RDC

Devlin Kuyek, GRAIN

Saranel Benjamin, War on Want

Kathrin Petz, urgewald

Winnie Overbeek, World Rainforest Movement

Annex VI

Have PHC's agricultural concessions been issued in accordance with the 1973 Land Law of the DRC?

The focus of the following review is on legal aspects related to the 1973 Land Law of the DRC. As such, the review reflects one important legal segment of the complaint, but does not include international human rights law and related normative guidance, especially the UN Land Tenure Guidelines. With this annex, we do not suggest that the complaint mechanism focus solely on these legal aspects and instead highly encourage that the dispute resolution and mediation process adopt a strong human rights perspective.

Key findings from a 2017 legal review commissioned by NGOs

Ever since 1911, communities in three provinces in the Democratic Republic of Congo (DRC) have contested the legality of the land occupation of **107,000 hectares** of their customary land by the palm oil company *Plantations et Huileries du Congo* (PHC).

For example, a letter dated 25 August 1966, and addressed to a director at the Lever company of Congo - owner of PHC at the time – clearly shows that the customary owner at Lokutu, a man named Lokutu, rented **one hectare** to the Lever Company in 1926, for the company to convert to oil palm plantations. Today, PHC claims concession rights to **63,619 hectares** of land, including 11,943 hectares of oil palm plantation. The letter suggests that The Lever Company had agreed to make monthly payments to Mr. Lokutu – payments which according to the letter, remain outstanding. The letter describes how Lokutu's son wrote to company representatives in 1933 and 1950, requesting payment of the monthly rental fee and protesting the occupation of much larger expanses of land than agreed to by his father. The requests were never answered, the 1966 letter notes.¹

In 2016, community leaders from three districts in Lokutu – one of the three PHC plantation sites - wrote to the Prime Minister, requesting he personally intervene and help end "abuses and other injustices that this colonial company has subjected communities to for over a century, with its illegal exploitation without fair benefit sharing of vast expanses of forests" to which communities hold customary rights.²

To support community calls for this long-standing conflict to be resolved in a way that respects their customary rights to the land, an international coalition of NGOs and solidarity groups commissioned a legal review in 2017. The review assessed the procedural requirements of the DRC's 1973 Land Law, the legal basis for the issuance of agricultural concessions. The authors of the review found a number of irregularities pertaining to the concession contracts held by PHC. The groups that commission the legal review understand that these irregularities likely render the PHC concession contracts illegal.

Schedule 12 of the Loan Facility Agreement signed between PHC and DEG as the lead of a consortium of lenders in December 2015, includes a list of concessions under the heading "Lokutu – Phase 2 (not yet

¹ Letter addressed to Mr. Derenne, Director of the District of Lever plantations in the Congo from Michel Kisekedi, concerning the statements of Mr. Charles-Louis Ebuwe, son of Mr. Lokutu, 25 August 1966. Available at: https://drive.google.com/file/d/1Wc7bFYOc9J6_RX71rrce7uHH8wOu6lZC/view?usp=sharing

² Plainte contre la Société PHC / Feronia à Lokutu. Letter to the Prime Minister of the DRC, dated 15 September 2016 and signed by community leaders from the Districts of Basoko, Yahuma and Isangi, Tshopo Province, DRC. <https://www.grain.org/e/5560>

valid)".³ This suggests that the consortium of lenders, which in addition to DEG includes the Dutch FMO, Belgian BIO and the investment fund EAIF, approved a US\$ 49 million loan facility for PHC in full knowledge that PHC did not possess legally valid concession documents for *at least* a portion of the land it claims in concession.

The findings and information provided in Schedule 12 of the legal Agreement of December 2015 between DEG and PHC confirm [earlier analysis](#) from the NGOs who have warned development banks as early as June 2015 – *before* the consortium of lenders led by DEG approved the USD 49 million loan facility for PHC - that the concession contracts held by PHC were contested and had likely been issued in breach of the law.

This document summarizes key findings from the legal analysis that NGOs commissioned in 2017. The findings pertain to the issuance of "new" concession contracts to PHC from 2014 as well as to irregularities in the PHC concession contracts that Feronia Inc. bought from Unilever, and which cast doubt on the legality of these earlier concession contracts.

Detail on the procedural requirements can be found at the end of the document. The specific questions addressed below are the following:

- (1) Have customary use and the views of customary land users been recorded as required by law?
- (2) Have the competent government authorities approved fragmentation of large concessions into small concession plots of less than 200 hectares?
- (3) Have concession contracts issued from 2014 been signed by the competent government authorities?
- (4) Does PHC have valid concession contracts for the 75,000 ha of forest it claims to be part of its concessions?
- (5) Has Feronia Inc. renewed all of the PHC concession contracts it acquired from Unilever?
- (6) Did PHC have a valid concession for all land now claimed by Feronia between 1973 and 1994 / 2004?
- (7) Is the information for all registration certificates complete?
- (8) Do registration certificates contain the correct business registration number for PHC?
- (9) Irregularities of concession contracts in Equateur Province.

Have the procedures for issuance of the concession contracts been followed?

Key requirements under the 1973 Land Law for issuance of agricultural concessions

The 1973 Land Law of the Democratic Republic of Congo is the legal basis for issuance of agricultural concessions. Four aspects of the law are particularly relevant for establishing whether the concession contracts that were issued to PHC since 2014 are valid; the 2017 legal review of the PHC concession documents found irregularities pertaining to all four of these aspects:

(1) Have customary use and the views of customary land users been recorded as required by law?

According to the 1973 Land Law, two documents are required for an industrial oil palm plantation concession to be legal: a *registration certificate (certificat d'enregistrement)* and a *concession or lease contract (contrat d'emphytéose)*. Those documents, however, are considered legally valid only if the procedures laid down in the 1973 Land Law and subsequent regulations have been followed in the process of issuing of the concession documents. The Law also allows for concession contracts to be nullified if procedures have not been fully adhered to.

³ Term Facility Agreement between PHC and DEG, pg 139. 'Part 2. Concessions'. Available online at: <https://www.sedar.com/GetFile.do?lang=EN&docClass=36&issuerNo=00025224&issuerType=03&projectNo=02436181&docId=3852663>

A key procedural requirement is an investigation (*une enquête*) of the concession application by a local administrator.⁴ The purpose of this investigation is to uncover and document customary land use and possible opposition by customary rights holders to the concession being given or renewed. In the course of the investigation, ***an assessment of the use of these lands by the local people has to be carried out and views of the local people on their customary land being allocated to the applicant have to be documented, in particular any concerns they may have.*** The law is clear in its requirement that the views of the local people be recorded in a "*procès-verbale*" and studied before a concession is awarded.⁵

The 2017 legal review concluded that:

- The "*procès-verbale*" for Feronia's 2015 and 2016 concession contracts do not adequately note the customary use of the land requested by the concession applicant. Article 194 of the 1973 Land Law requests that "the people using the land and their activities" as well as "the views of those who verbally make complaints or observations" be documented. The documentation also fails to note customary users' comments and objection to including community land in the concession contract; the law explicitly requires that such information be included in the *procès-verbale of the investigation*.

Any government authority tasked with deciding on the concession application by assessing the "procès-verbal" and documentation of the investigation would hence draw the conclusion that customary land users did not raise any concerns. This is, however, not the case as communities with customary rights to the land in question have expressed concerns about PHC's land use in written communications on several occasions, including in the letters of 1966 and 2015, cited above, and in public statements in 2013 and 2015. In these statements, communities declare: "We demand, first and foremost, the start of negotiations to reclaim our rights over the land that have been illegally taken from us over the past 104 years" and "We want to be compensated, and only afterwards can we proceed to discussions over a memorandum of understanding for a new contract."⁶

(2) Have the competent government authorities approved fragmentation of large concessions into small concession plots of less than 200 hectares?

Many of the PHC concession contracts that Feronia Inc. acquired when it bought PHC from Unilever were for areas larger than 1,000 hectares, in one case covering as much as 46,000 hectares (at Lokutu). The 1973 Land Law very clearly requires that a contract for concessions of 2,000 hectares or more must be signed by the Minister of Lands and that this signature be validated by a special law adopted by Parliament.⁷ Such

⁴ 1973 Land Law of the DRC: <http://www.wipo.int/edocs/lexdocs/laws/fr/cd/cd003fr.pdf>. Article 193 outlines key procedural steps in the award of a concession. Article 194 provides further detail on the assessments to be carried out by a surveyor as part of the assessment of a request for concessions under the 1973 Land Law: "The objectives of the inquiry, as specified under Article 194 of the Land Law, are to: a) physically verify the solicited land for the concession; b) document the people using the land and their activities; c) document what exists on the land, for example trees, forest, waterways etc; d) document the views of those who verbally make complaints or observations, and, e) register and study the gathered data".

⁵ In French: "L'audition des personnes qui forment verbalement leurs réclamations ou observations". The law does not further specify this specification

⁶ Cited in: RIAO-RDC and GRAIN (2015): Agrocolonialism in the Congo. European and US finance bankrolls new round of agro-colonialism in the DRC. <https://www.grain.org/article/entries/5220-agro-colonialism-in-the-congo-european-and-us-development-finance-bankrolls-a-new-round-of-agro-colonialism-in-the-drc> ; Declaration cited available at: "[Desiderata de la population de Yahuma face à la société PHC/Feronia area Lokutu](#)", signed in Mosité, 8 March 2015

⁷ See page 12 / 13 of the publication 'Module de vulgarisation de la loi foncière de la RDC' for an overview of the competent authorities for issuance and renewal of concessions of different sizes. <http://www.leganet.cd/Doctrine.textes/DroitCiv/Droitdesbiens/Droit%20foncier%20rdc.pdf>

validation did not take place for any of the large PHC concessions which Feronia Inc. acquired from Unilever and that were renewed and fragmented with issuance of new concession contracts for plots of less than 200 hectares since 2014.

The 2017 legal review concluded that:

- By "fragmenting" the large concessions into smaller plots, the legal requirement for concessions over 2,000 hectares (signature of the concession contract by the Minister of Lands and validation of the contract through a special law adopted by Parliament) were circumvented in the "renewal" process. Sometimes Feronia Inc., PHC and development banks say concessions have been "renewed" while at other times they claim these are "new" concession contracts. Concession contracts for the much smaller areas only required the signature by the Governor of the province. The total area of land PHC holds in concession contracts, however, has not changed.
- There is no indication that permission was sought from the competent authorities when PHC applied for new concessions of less than 200 hectares each since 2014;
- Some of the new fragmented concession plots are held by development banks DEG, FMO and others as mortgage for their loans to PHC.

By circumventing the legal requirements for renewal or issuance of concessions covering such significant areas of fertile agricultural land, PHC also undermines the legislative procedures put in place to ensure that the elected members of the DRC parliament are informed and approve or reject issuance of concessions over such vast areas of land as claimed by PHC, now through a large number of small concession plots that regardless cover consecutive expanses of land.

(3) Have concession contracts issued to PHC since 2014 been signed by the competent government authorities?

Feronia Inc.'s public communications indicate that the company had decided to make use of the land PHC holds under concession until the date of expiration of the concession contracts, which it acquired from Unilever. It stated publicly that it had "renewed" the PHC concession contracts, but that the law obliges the company to fragment the land: *"Under new DRC law, the Company has to fragment the concessions and demarcate the boundaries together with government land conservators. Feronia PHC are currently undergoing this process and complying with these requirements."*⁸

To our knowledge, there is no such obligation under DRC law. Based on the laws and regulations in the DRC, there is only the following procedure that the company would be required to follow: a prior written request for authorisation from the competent authorities, in accordance with Article 72 of the 1973 Land Law, in order to change the destination⁹ of the concession contract.

⁸ Feronia, Environmental and Social Impact Assessment, December 2015, page 118.
[http://www.feronia.com/uploads2/V2.%20Social%20Impact%20Assessment%20\(Final\).pdf](http://www.feronia.com/uploads2/V2.%20Social%20Impact%20Assessment%20(Final).pdf)

⁹ The authors of the 2017 legal review note that "In case Feronia fragmented its occupied land in smaller concession contracts, then it cannot be defined as a renewal of existing concession contracts. A renewal of a concession covers the entire destination and land specifications (Article 19, Ordonnance 74-148), and no parts of it. Although no exact definition of a "destination" is given in the law, the destination of a land clearly covers more than the boundaries of the occupied land, as defined in a concession contract. Based on article 9 of Ordonnance 74-148, a destination shall be determined by its environment, hygienic conditions and the development plans of the country." Pg. 8 Legal Review 2017 (unpublished).

Based on Article 202 of the (2006) Constitution and Articles 6 and 7 of the DRC Agriculture Law, the future use of lands in rural areas of the country can only be determined by the central government, and not by regional authorities. Therefore, the procedures undertaken to register and "fragment" the Boteka and Lokutu concession contracts when the larger PHC concession contracts that Feronia Inc. bought from Unilever expired, were likely in breach of the law - unless there was a prior determination by the central government to change the use of the land that was included in the PHC concession contracts that Feronia Inc. bought from Unilever.

International NGOs and solidarity groups and local communities are not aware of such a decision prior to PHC having requested a "renewal" and fragmentation of its concession contracts. In the absence of such a decision by the central government, such fragmentation into smaller land parcels would appear to violate Article 190 of the 1973 Land Law and subsequent Ordenances. The article in the Land Law states that it is the applicant's responsibility to ensure that its request for a concession contract is made to the appropriate, competent authority.¹⁰

(4) Does PHC have valid concession contracts for the 75,000 hectares of forest it claims are part of the concessions?

The validity of PHC's concession claims over the 75,000 hectares of land that remains forested is particularly questionable. The concession contracts issued since 2014 for plots of less than 200 hectares must be regarded as "new" concessions, and they appear to cover land under oil palm plantations only. For the issuance to qualify as a "renewal", the local administrator would have to ascertain that the concessionaire complied with the requirements of the particular land use specified in the registration certificate and concession contract (the "destination" of the land) and any additional specifications. The destination on the registration certificates and concession contracts of the expiring PHC concession contracts that Feronia Inc. bought from Unilever referred to the large areas covered by these concessions, not just parts thereof (Article 19, Ordonnance 74-148). Renewal would thus have to have included the 75,000 hectares of forested land because there appears no permission from competent authorities to alter the "destination" of the land.

Furthermore, if the fragmentation of concessions was done according to the procedures for "renewal" of a concession contract, but "new" concession contracts for differently sized plots of land were issued, this would constitute grounds for an appeal requesting the cancellation of all the "new" concession contracts located within the larger PHC concessions that Feronia acquired from Unilever.

Additional irregularities pertaining to the PHC concessions

The following section refers to irregularities that may render the PHC concession contracts which Feronia Inc. acquired from Unilever invalid because **procedures required when a concession changes ownership appear to not have been followed**. It appears that Unilever did not request new concession contracts in accordance with the procedures laid down in the 1973 Land Law¹¹ for all of the PHC concessions that Feronia Inc. acquired in 2009 from Unilever. This may also render subsequent PHC concessions issued since 2009 invalid. Furthermore, it is **doubtful that Unilever renewed all concession contracts dating prior to 1973**.

¹⁰ Loi n° 73-021 du 20 juillet 1973 portant régime général des biens, régime foncier et immobilier et régime des sûretés telle que modifiée et complétée par la loi n° 80-008 du 18 juillet 1980, articles 184 and 203.

¹¹ The 1973 Land Law effectively cancelled all land titles awarded prior to 1973, and therefore, new concession contracts had to be requested.

Failure to do so would also invalidate today's concessions because the 1973 Land Law effectively cancels all concessions issued prior to 1973 and describes the procedure for their renewal.

It further appears that PHC does not have valid *registration certificates* for all the land held in concession. Without valid *registration certificates*, the concessions are not legally valid. Concession contracts from 2015 and 2016 held by PHC appear to be invalid because they refer to registration certificates held by another PHC company **with a different business registration number**. The business registration number of the company called PHC that is holding the concession *contracts* is CD/KIN/RCCM/14-B- 55791, while the PHC holding the registration *certificates* has a business registration number dating back to 1964.

(5) Did Feronia Inc. renew all of the PHC concession contracts it acquired from Unilever?

Various PHC concession contracts held at Feronia's London office seem to have been issued in 1994/1995, and should have a validity for 25 years.¹² Some of these concession contracts from 1994 and also from 2004, are presented in "Binder Lokutu 4 20170222_123951-20170222_130238.pdf." An analysis of these documents shows many irregularities:

Page in Binder Lokutu 4 20170222_123951-20170222_130238.pdf	Irregularities
p. 221, conversion of a registration certificate to an ordinary concession (concession contract). Signed by the Conservator of Land. 1,256ha	A Conservator of Land has no right to sign an ordinary concession. Concession contracts (contract d'emphytéose) for rural land areas of over 1000 hectares must be signed by the Minister of Lands. These contracts must be validated by the President of the Republic if they are over 1000 ha but less than 2000 ha, and if they are 2000 hectares or larger, Parliament needs to validate the concession through the passing of a special law or a similar act of Parliament. This concession contract has been signed by the wrong authority, and is null and void. Secondly, a registration certificate cannot be converted to a concession contract. These are two separate documents and both are required for a valid concession. However, the Conservator used the term "conversion". This concession contract is invalid or fake.
p. 223, conversion of a registration certificate to an ordinary concession (concession contract). Signed by the Conservator of Land. 4,692ha	Ibid. A validation through adoption of a special law in reference to the concession would also have been required as the concession is larger than 2,000 hectares.
p. 299, conversion of a registration certificate to an ordinary concession (concession contract). Signed by the Conservator of Land. 1,531ha	Ibid
p. 231, conversion of a registration certificate to an ordinary concession (land lease). Signed by the Conservator of Land. 46,200ha	Ibid. A validation through adoption of a special law in reference to the concession would also have been required as the concession is larger than 2,000 hectares
P. 233, conversion of a registration certificate to an ordinary concession (concession contract). Signed by the Conservator of Land. 276ha	Ibid
235, conversion of a registration certificate to an ordinary concession (concession contract). Signed by the Conservator of Land. 2,800ha	Ibid. A validation through adoption of a special law in reference to the concession would also have been required as the concession is larger than 2,000 hectares.

¹² Page 225 of Binder DSC00654-DSC01809.pdf held at Feronia's London office provides an overview of the periods of validity for some concessions held by Feronia-PHC.

238, conversion of a registration certificate to an ordinary concession (concession contract). Signed by the Conservator of Land. 1,670ha	Ibid
p. 239, conversion of a registration certificate to an ordinary concession (concession contract). Signed by the Conservator of Land. 5,185ha	Ibid. A validation through adoption of a special law in reference to the concession would also have been required as the concession is larger than 2,000 hectares.
p. 226. bail lease (ordinary concession) signed by a lawyer	The request for a concession contract has to include: (1) the name of the company, partnership, association or establishment, (2) the complete identity of his or her legal or statutory representative(s), (3) destination of the land, (4) 1) for a parcel of land, the number of the parcel; 2) if the land is not subdivided, (a) a plan of the land (including its boundaries and all other dimensions), constructions of a permanent character, roads, rivers, aerial photograph etc. (b) a sketch of the land. (Article 192) If the lawyer who has signed the mentioned bail lease was not presented as legal representative during the application of the concession contract, he has no legal authority to sign the concession contract. This requires further investigation, as the applicant's files are not included in Feronia's documents.
p. 242. bail lease (ordinary concession) signed by a lawyer	Ibid

(6) Did PHC have a valid concession between 1973 and 1994 / 2004 for all land now claimed by Feronia Inc.?

Article 390 of the 1973 Land Law effectively cancels all land titles awarded prior to 1973, and therefore, new concession contracts had to be requested. It appears that Unilever did not request new concession contracts in accordance with the procedures laid down in the 1973 Land Law for all of the concessions acquired by Feronia: The documents Feronia has made available to NGOs at its London office suggest that the concession contracts (from 1994 and 2004) that NGOs were granted access to seem to be the first concession contracts covering the land since 1973. ***If there are no additional documents, PHC did not have a valid land concession for these lands since 1973, and therefore has no right to operate on the land.***

In the absence of further documentation providing evidence that the PHC concessions cancelled by the 1973 Land Law were renewed in accordance with the provisions of the 1973 Land Law between 1973 and 1994, Feronia's statement in August 2015, that the "*renewal process has been undertaken a number of times*"¹³ is incorrect.

(7) Is the information contained in the registration certificates complete?

Registration certificates included in Binder Lokutu 4 20170222_123951-20170222_130238.pdf, suggest that Feronia Inc. does not have legally valid registration certificates for all PHC concessions because of various irregularities in registration certificates.

Registration certificates in the binder mentioned above describe the land as the "**property**" of PHC. The 1804 Civil Code of the DRC states clearly that registration certificates do not confer ownership but only grant the right to use a plot of land. Furthermore, the 1973 Land Law provides clear requirements for the information which needs to be included in a registration certificate. Information on several registration certificates is

¹³10 August 2015 Response from Feronia to GRAIN and RIAO-RDC report 2015.

incomplete: For the registration certificates covering the 46,200 hectare Lokutu concession, the size indicated on registration certificates is not clear; it is given as "approximately", and the description is absent; the sketch is vague, and each certificate contains a note that the certificate should be renewed to ensure correct demarcation of the land. This renewal can be initiated by the State or the owner of the certificate,¹⁴ and results in an annulation of the previous registration certificate.

(8) Do registration certificates contain the correct business registration number for PHC?

The Land Law is very clear: registration certificates need to be renewed when the concession contract is transferred to another party (Article 235) or when the company holding the registration certificate changes. This process did not take place, although a transfer occurred in 2002 to another company, albeit with the same name PHC. The 2004 registration certificates, which replaced the former certificates, refer to a "PHC" with a business registration number 1964 as the owner of the certificates. The PHC on the 2015/2016 concession contracts, however, is listed with registration number CD/KIN/RCCM/14-B-55791.¹⁵ This company was registered by Decree 133/2002. This change from PHC with registration number 1964 to PHC with registration number CD/KIN/RCCM/14-B-55791 required a replacement of the registration certificates with the old registration number to one with the new one.

An analysis of all available land documentation held at Feronia's office in London clearly shows that PHC with business registration number CD/KIN/RCCM/14-B-5579 has no registration certificates for use in Boteka, Lokutu and Yaligimba. Although the 2004 registration certificates refer to "PHC" as operator, it refers to a company with a different (corporate) registration number. Consequently, PHC with registration number CD/KIN/RCCM/14-B-5579 has no right to operate the land it currently holds under concession in the DRC. Its 2015/2016 concession contracts refer to registration certificates that belong to another company (although that company shares the same name).

(9) Irregularities of concession contracts in Equateur Province

Letters attached to concession contracts at the Boteka site, from the Chef de Division, Le Conservateur des Titres Immobilières, Circonscription Foncière de Mbandaka, Province de l'Equateur to the Director General of PHC state that the concession contracts are for "concessions in perpetuity" (see, for example, pp. 37, 49, 61, ... 428 of Binder DSF at Feronia Inc. London offices for Boteka site). There is no further clarification of these statements in the individual concession contracts. The reference to "concessions in perpetuity" are only found in the letters to Feronia Inc. It could mean that the wrong procedures were applied for issuance of the concession contracts in Equateur province: those for concessions in perpetuity rather than for ordinary concessions.

The authors of the 2017 legal review describe this as a remarkable mistake, because while the letter refers to a "concession in perpetuity", it also refers to a concession contract. Concession contracts are issued for ordinary concessions; *no concession contracts are issued for concessions in perpetuity*.¹⁶ It should also be noted that "concessions in perpetuity" can only be granted to and transferred between Congolese natural persons.¹⁷

¹⁴ Article 242 of the 1973 Land Law.

¹⁵ Registered by Decree 133/2004. Reference: the new (so called fragmented) concession contracts presents PHC's current civil personality.

¹⁶ Article 109 of the 1973 Land Law. Authors of the legal analysis for the NGO coalition state: "*C'est une erreur remarquable, car si elle se réfère à une concession à perpétuité, elle se réfère également à une emphytéose. Les emphytéoses concernent des concessions ordinaires et ne peuvent être accordées dans le cadre de concessions perpétuelles*".

¹⁷ Article 80, 1973 Land Law.

Procedures for issuance or renewal of an agricultural concession laid out in the 1973 Land Law of the DRC

An agricultural concession in the DRC requires two documents, a *registration certificate* and a concession contract (*contrat d'emphytéose*) to be legally valid. These documents also have to have been issued in accordance with the procedures laid down in the 1973 Land Law and the subsequent regulations for the concession to be considered legal. Article 227 of the 1973 Land Law clearly states that the registration certificate alone does not allow the concession applicant to start operations on the land, and that a **concession contract (*contrat d'emphytéose*)** also has to be signed for the applicant's use of the land to be legal.

Of particular relevance in relation to the controversy around the PHC plantations are the procedures and the documents that have to be prepared before a concession contract can be signed; especially relevant is the information that must be included in the documentation of the investigation that precedes the signing of the concession contract.

The process of **preparing the concession contract** starts with the company submitting an official request for the land.¹⁸ This request for a concession contract or a renewal of a concession contract must be submitted by the company in writing and be addressed to the Conservator of Lands.¹⁹ It must contain certain specifications about the company submitting the request²⁰ and the land for which the concession contract is requested.²¹ For concessions over rural land such as those held by PHC, the 1973 Land Law then requires that an official investigation (*une enquête*) be undertaken.²² This investigation includes a survey of the land and is carried out by a local administrator of lands (*Commissaire de zone, or agent à ce commi*).²³ The official tasked with carrying out this survey has to (a) physically verify the land requested for the concession; (b) **document people's use of the land and their activities**; (c) document what exists on the land, for example trees, forest, waterways, etc; (d) **document the views of those who verbally make complaints or observations about the use of the land or the concession request²⁴, and (e) register and study the gathered data.**²⁵

The survey has to be publicly announced at the location of the proposed concession, and the announcement has to include a copy of the applicant's demand for the area of land that is requested by the concession applicant. **The data gathered during the survey has to be included in written notes that are part of the**

¹⁸ As per Article 190 of the 1973 Land Law.

¹⁹ Ordonnance 74-148 du 2 juillet 1974 portant mesures d'exécution de la loi 73-021 du 20 juillet 1973 portant régime général des biens, régime foncier et immobilier et régime des sûretés, Articles 13.1 and 19.

²⁰ The applicant has to give: (1) the name of the company, partnership, association or establishment, (2) the complete identity of his or her legal or statutory representative(s), (3) destination of the land, (4) 1) for a parcel of land, the number of the parcel; 2) if the land is not subdivided, (a) a plan of the land (including its boundaries and all other dimensions), constructions of a permanent character, roads, rivers, aerial photograph etc. (b) a sketch of the land.

²¹ Article 192 of the 1973 Land Law.

²² Article 193 of the 1973 Land Law.

²³ In French: *Commissaire de zone, or un fonctionnaire ou agent à ce commis*, as stipulated in Article 193 of the Loi n° 73-021 du 20 juillet 1973 portant régime général des biens, régime foncier et immobilier et régime des sûretés telle que modifiée et complétée par la loi n° 80-008 du 18 juillet 1980.

²⁴ In French: "L'audition des personnes qui formulent verbalement leurs réclamations ou observations"

²⁵ As stated in the law: "l'enquête comporte: 1) la vérification sur place de la délimitation du terrain demandé ; 2) le recensement des personnes s'y trouvant ou y exerçant une quelconque activité ; 3) la description des lieux et l'inventaire de ce qui s'y trouve en fait : de bois, forêts, cours d'eau, voies de circulation, etc. ; 4) l'audition des personnes qui formulent verbalement leurs réclamations ou observations ; 5) l'enregistrement et l'étude de toutes les informations écrites."

documentation prepared in the course of the investigation. This document is called *procès verbale* - PV²⁶. Several state authorities, including the *Commissaire de region*, the State Prosecutor and the State Counsel are then provided with the *procès verbal* for further assessment, rejection or approval. The investigation, and in particular, the written documentation of the survey process is intended to ensure that the relevance of the land for the communities is known to the authorities, can be considered in the conditions included in the concession contract and especially that authorities are aware of any opposition to the concession where the concession includes customary land.

When the relevant government institutions have approved the investigation's documentation and agree on the applicant's request, the request is sent to the **competent authority** for signature.²⁷

Those competent authorities are identified in Article 183 of the 1973 Land Law, and they vary depending on the size of the land covered by the concession contract. For concession contracts over more than 2,000 hectares, for example, the concession contract has to be signed by the Minister of Lands, and an adoption of a special law concerning the particular concession is required to validate the Minister's signature. For concession contracts covering 200 hectares or less, only a signature from the Governor of the Province where the concession is located, is required.

Article 204 of the 1973 Land Law states that all concessions can be cancelled in case of violation of any of the procedural requirements of the law.

Renewal of concession contracts

Articles 14, 70 and 111 of the 1973 Land Law and Ordonnance 74-148 confirm that the procedures described for the signing of a new concession contract also have to be followed when a concession contract is renewed.²⁸ A concession contract for the type of concession held by PHC (ordinary concession for rural lands) can only be granted for a maximum of 25 years, after which the applicant can apply for renewal.²⁹

Article 192 of the 1973 Land Law describes the conditions that have to be met for an ordinary concession to qualify for renewal: The renewal has to be requested six months before the existing concession contract expires, and the request has to be addressed to the Conservator of Lands.³⁰ **The competent authority can only renew the concession contract after an assessment of the concession's destination.** This assessment includes the conditions laid down in Article 194, paragraph 2: to document the activities taking place on the land under concession and the comments and possible opposition of people with customary title to the land in question. As mentioned before, **all of this information should be included in the written notes (*procès-verbale*)**, both in the case of issuance of a new concession contract as well as in the case of renewal of an already existing concession.

²⁶ Article 195 of the Land Law.

²⁷ Article 200 of the 1973 Land Law.

²⁸ Ordonnance 74-148 du 2 juillet 1974 portant mesures d'exécution de la loi 73-021 du 20 juillet 1973 portant régime général des biens, régime foncier et immobilier et régime des sûretés, Article 14.

²⁹ Article 70 of the 1973 Land Law

³⁰ Articles 13 and 19 of the 1973 Land Law, Ordonnance 74-148.