

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-Elinga (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

D00221 Dakar, Senegal

Name of the organisation: RIAO-RDC

Email: jfmombia.at16@gmail.com

Telephone: +221 773469621

Adresse: IMMEUBLE B2 SENEGINDIA
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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 Huilleries 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>



g/m

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 communiqués from the communities (see Annex III.A.iii; 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/vggt/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 mediation.

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



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.

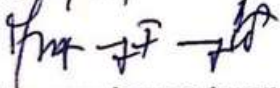
Complainants believe that a mutually agreeable solution is possible. Complainants expect that this dispute resolution and mediation process requested from the DEG complaints mechanism will arrive at mutually acceptable agreement between PHC, relevant government authorities and the complainants whose 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.

