



# Development Finance as Agro-Colonialism:

European Development Bank  
funding of Feronia-PHC oil palm  
plantations in the Democratic  
Republic of Congo

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### 3 SUMMARY

This publication provides an overview of European development bank financing of the palm oil company Plantations et Huileries du Congo (PHC) in the Democratic Republic of Congo.<sup>1</sup> Communities affected by the company's plantations have been deprived of their ancestral land since 1911, when the founder of PHC and co-founder of the global food company Unilever, British industrialist Lord Leverhulme, turned their palm groves into industrial oil palm plantations. Communities never consented to their forests being turned into oil palm plantations. Throughout the decades of demanding justice, communities have faced repression and violence.<sup>2</sup> In 2019 a company security guard was charged with killing a community member.<sup>3</sup> The guard was later acquitted, with family members and civil society organisations having voiced concerns about the circumstances of the acquittal.<sup>4</sup> In 2015, a villager died and his wife was killed by police following an accusation of theft of a few oil palm nuts.<sup>5</sup> These death occurred at a time when several European development banks were invested in PHC, either directly or indirectly. PHC's operations today stand in direct line with the colonial plantation model - and the environmental damage, rights violations and exploitation of community land and labour that is inextricably linked with this model. This industrial plantation model played a crucial and cruel role in European colonization. The financing of PHC shows that (European) development bank support for this colonial plantation model continues to this day.

Until recently, the PHC operations were owned by a Canadian financial company called Feronia Inc. which had bought the company from Unilever in 2009. In June 2020, Feronia Inc. went bankrupt, despite having received funding support to the tune of more than US\$ 150 million since 2013 from European development banks. At the time of Feronia's collapse, the development banks owned Feronia-PHC. They held the majority of shares in Feronia Inc., either directly (CDC Group of the UK) or via investment in a fund (France's Proparco, Spain's AECID and the US's DFC), and have loan repayments worth tens of millions of dollars outstanding (CDC - UK, DEG - Germany, FMO - Netherlands, BIO-Belgium and others via the EAIF). When Feronia Inc. collapsed, the development banks had a big opportunity to start making amends for the occupation of community land by PHC that dates back to European colonial occupation of the Congo. They could have explored ways to hand over concession rights or holdings in PHC to communities. They were not interested. Instead, the development banks handed the PHC assets over to a Mauritius-based private equity company called Straight KKM, and accepted a massive write-off of their debt to the benefit of the new private equity owner.<sup>6</sup> Like Feronia Inc., Straight KKM does not have any reported experience in operating oil palm plantations prior to its involvement in PHC.

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- 1 This report focuses on European development bank funding of Feronia-PHC. However, through the African Agriculture Fund, the U.S. International Development Finance Corporation (DFC, formerly OPIC) has also provided funding to Feronia Inc.
  - 2 See, for example, Analyse réponse CDC et Feronia. Statement signed by 13 community leaders from Feronia's three plantation areas (Lokutu, Yaligimba, Boteka). October 2016. Kampala, Uganda. Available at <https://www.grain.org/e/5560>. See also the Telesur report, Congo: continúa lucha comunitaria contra multinacional Feronia. 2016. [https://www.youtube.com/watch?v=xaZ\\_DellZug&feature=emb\\_title](https://www.youtube.com/watch?v=xaZ_DellZug&feature=emb_title) Accessed 21 December 2020.
  - 3 Update on the Independent Investigation commissioned by CDC to examine the circumstances surrounding the death of Joel Imbangola Lokwa. CDC Group News. 22 November 2019. <https://www.cdcgroup.com/en/news-insight/news/update-on-the-independent-investigation-commissioned-by-cdc-to-examine-the-circumstances-surrounding-the-death-of-joel-imbangola-lokwa/?fl=true>
  - 4 Pers. comm. RIAO-RDC with family members and the lawyer for the family on and following 11 February 2020. See also RIAO-RDC communiqué of 12 February 2020, Urgent communiqué: Feronia security guard acquitted of murdering Congolese land defender. <https://www.farmlandgrab.org/post/view/29469-drc-feronia-security-guard-acquitted-of-murdering-congolese-land-defender>
  - 5 Unpublished statement by community dignitaries and community leaders from Boteka. Dated 16 December 2017. Signed at the town of Bempumba.
  - 6 GRAIN, Development banks must be held accountable for their disastrous oil palm plantation investments in the Congo, 2020. <https://www.farmlandgrab.org/post/view/29868-development-banks-must-be-held-accountable-for-their-disastrous-oil-palm-plantation-investments-in-the-congo>

4 The development bank investment in Feronia-PHC reveals structural aspects that explain why investments in industrial agriculture are contentious and conflict-ridden,<sup>7</sup> violate human rights, pollute and destroy the environment and undermine communities' food sovereignty, self-determination and well-being. These structural features include:

- (1) Continued investment in a colonial model of development that is built on the appropriation of community land and the resulting destruction of community resilience and the exploitation of villagers as labourers on short-term contracts.<sup>8</sup> As in the case of the development bank investment in the sugar cane / bioenergy plantation company Addax in Sierra Leone,<sup>9</sup> the development banks invested in Feronia-PHC at a time when communities have already been rejecting this plantation model and are demanding the return of their ancestral land so they can pursue a different path.<sup>10</sup>
- (2) Neoliberal dogmatism, where ideology often narrows down the development bank's horizon of 'private sector' to investment in private equity funds, no matter their record. For example, in April 2020, the BBC's *Africa Eye* team reported on numerous allegations of fraud, bribery and misappropriation of funds against two British managers appointed by the CDC-backed private equity fund Emerging Capital Partners to run the Kenyan construction firm Spencon (which went bankrupt during their management). This is just one example of concerns being raised about the transparency and accountability of private equity funds using public investments for their own commercial ends.<sup>11</sup> Private equity funds have been pushing into agriculture investments since the 2008 financial crisis, and development investment in these funds has seen a dramatic increase, including into private equity funds investing in agriculture companies.<sup>12</sup> This dogmatism is also revealed in the resistance by development banks to investing in community-controlled operations instead of private equity funds, no matter whether these private equity companies have experience in plantation management or not.<sup>13</sup> Neither Feronia Inc. nor Straight KKM have any record of such experience prior to their involvement with PHC while communities have produced and traded palm oil and other oil palm goods for generations before the land was violently taken from them. This development bank dogmatism keeps the communities in and around the PHC plantations in the DR Congo (or around the Addax sugar cane plantations in Sierra Leone) in poverty, toiling as day labourers on their ancestral land and exposed to regular harassment and violence from company security guards.<sup>14</sup>

7 See among others, Saturnino M. BORRAS et al., Land grabbing and human rights: The involvement of European corporate and financial entities in land grabbing outside the European Union. Paper requested by the European Parliament's Subcommittee on Human Rights. May 2016. ; Fern, Financing landgrabs and deforestation. 2016. <https://www.fern.org/fileadmin/uploads/fern/Documents/Financing%20land%20grabs%20final.pdf> ; Hands off the Land, Fast track agribusiness, land grabs and the role of European private and public financing in Zambia. 2013. [https://www.fian.org/fileadmin/media/publications\\_2015/Reports\\_and\\_Guidelines/13\\_12\\_FIAN\\_Zambia\\_EN.PDF](https://www.fian.org/fileadmin/media/publications_2015/Reports_and_Guidelines/13_12_FIAN_Zambia_EN.PDF)

8 As enshrined in the Universal Declaration on Human Rights (UDHR), International Covenant on Economic, Social and Cultural Rights (ICESCR; ratified by all involved states in Europa as well as DR Congo) and the Declaration on the Rights of Peasants and other People living in Rural Areas (UNDROP).

9 Sierra Leone Network on the Right to Food (SiLNoRF) & Bread for All, MONITORING REPORT On the operations of Addax/ Sunbird Bioenergy Mabilafu Project, Sierra Leone (Period July 2016 – August 2017). 2017. <https://brotfueralle.ch/content/uploads/2017/09/2017-Monitoring-Report-Silnorf-Bfa.pdf> Bread for All & Bread for the World, The Weakest should not bear the risk. Analysis 64. 2016. <https://brotfueralle.ch/content/uploads/2019/03/2016-The-weakest-should-not-bear-the-risk.pdf>

10 See the complaint submitted by nine communities to the Complaint Mechanisms ICM of DEG, FMO and Proparco for a list of statements in which communities affected by the PHC plantations have stated their demand for restitution of their ancestral land. <https://www.farmlandgrab.org/post/view/28543-drc-communities-file-complaint-with-german-development-bank-to-resolve-century-old-land-conflict-with-palm-oil-company>

11 BBC Africa Eye, Spencon: Inside the collapse of an African construction giant. 2020. <https://www.bbc.co.uk/news/world-africa-52126563>

12 GRAIN, Barbarians at the barn: private equity sinks its teeth into agriculture. 2020. <https://www.grain.org/en/article/6533-barbarians-at-the-barn-private-equity-sinks-its-teeth-into-agriculture>

13 See for example GRAIN, Barbarians at the barn: private equity sinks its teeth into agriculture. 2020. <https://www.grain.org/en/article/6533-barbarians-at-the-barn-private-equity-sinks-its-teeth-into-agriculture>

14 See, among others, the following statement from community members: Plainte contre la Société PHC/Feronia à Lokutu. Letter addressed to the Prime Minister of the DRC by the indigenous communities of the territories of Basoko, Yahuma and Isangi. September 2016. Available at <https://www.grain.org/e/5560>. Community members from villages at the Lokutu plantation site reported incidents of harassment and violence during meetings. Recordings of these meetings are available to the organisations co-publishing this report.



By contrast, it is already evident in the experience of several communities at one of the PHC plantation sites how much potential alternative paths hold for communities with control over their ancestral lands. In early 2020, communities took over some 420 hectares of plantation abandoned by PHC and started their own palm oil processing. They have regained an autonomy and income levels never seen as day labourers on the PHC plantations. “With access to these lands, we are able to resume our palm oil production, which was violently interrupted with colonisation”, a member of the operation’s management team said.<sup>15</sup>

- (3) A troubling shift away from mandatory legal requirements and adherence to the few binding human rights norms that exist to voluntary grievance and arbitration mechanisms. Effective due diligence procedures would simply prevent development bank financing if a client was embroiled in land legacy issues or human rights violations. Currently, development banks routinely finance companies with such unresolved (land) conflicts, as long as the client commits to set up a grievance mechanism, implement social action plans and / or engage in third-party certification as a way of showing commitment to resolving conflicts. Many development banks have also set up their own grievance mechanisms. The reality, however, is that these mechanisms are generally proving unsuitable for resolving land legacy conflicts.<sup>16</sup> In fact, these mechanisms are running the risk of exacerbating conflict, leading to human rights violations and undermining community organizing for restitution of their ancestral land. In the case of Feronia-PHC, for example, several of the development banks require the company to achieve compliance with Round Table on Sustainable Palm Oil (RSPO) standards or equivalent certification schemes.<sup>17</sup> Company representatives claim that RSPO rules prevent restitution of forested land inside the concession area to the communities, because of a deforestation risk. It is remarkable that a standard such as RSPO should stand in the way of the company beginning to resolve its colonial land legacy by returning the forested land back to communities.

Grievance mechanisms, while growing increasingly popular with development banks, have been a huge frustration to communities and civil society. A mediation process triggered by a complaint under the World Bank International Finance Corporation’s (IFC) grievance mechanism, for example, addressed the eviction of around 1,000 families in Uganda that were evicted to make room for timber plantations by a company called New Forests Company.<sup>18</sup> The mediation left nearly half the community of 1,000 families without any compensation, yet the company and development banks cite this mediation process as a model and evidence that conflicts have been resolved.<sup>19</sup> In the case of Feronia-PHC, communities who submitted a complaint to the German development bank DEG <sup>20</sup> in November 2018 have now been waiting over two years for

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- 15 Communities take control of plantations abandoned by Feronia PHC. 2020. <https://www.farmlandgrab.org/post/view/29682-groups-welcome-feronias-decision-to-abandon-plantation-lands-and-enable-communities-in-the-dr-congo-to-thrive>
- 16 See, for example, Forest Peoples Programme: Non-judicial grievance mechanisms as a route to remedy – an unfulfilled opportunity. November 2020. <https://www.forestpeoples.org/en/briefing-paper/2020/non-judicial-grievance-mechanisms-route-remedy-unfulfilled-opportunity>
- 17 See, for example the requirements of KfW Group: [https://www.kfw.de/PDF/Download-Center/Konzernthemen/Nachhaltigkeit/Ausschlussliste\\_EN.pdf](https://www.kfw.de/PDF/Download-Center/Konzernthemen/Nachhaltigkeit/Ausschlussliste_EN.pdf). In October 2016, Feronia Inc. stated in response to a press request that “We registered on April 14th, 2016, to initiate the RSPO certification process. [...] We are targeting Q4 2017 for our first site, although a lot of work remains to be done. We have in place a tracking system to record key milestones as they are achieved.” As of December 2020, no information has been released by Feronia –PHC to suggest that the company has obtained RSPO certification.
- 18 See, for example, Mubende evictees yet to get own homes 10 years later. 11 August 2020. Daily Monitor. <https://www.monitor.co.ug/uganda/news/national/mubende-evictees-yet-to-get-own-homes-10-years-later-1918644>; Sophia Greene, Uganda land evictions row. Financial Times. 9 October 2011. <https://www.ft.com/content/f49c5686-f0d7-11e0-aec8-00144feab49a> and Oxfam report New Forests Company and its Uganda Plantations. 2011. <https://www.oxfam.org/en/research/new-forests-company-and-its-uganda-plantations-oxfam-case-study>. Last accessed 21 December 2020.
- 19 Witness Radio, The Agony of a Tree-Planting Project on Communities’ Land in Uganda. WRM Bulletin 251. 2020. <https://wrm.org.uy/articles-from-the-wrm-bulletin/section1/the-agonny-of-a-tree-planting-project-on-communities-land-in-uganda/> In a section on its website referring to the IFC CAO complaint, the company notes that “We signed agreements with community co-operatives and fulfilled all our commitments. Both disputes were officially closed and recognised internationally as role models of successful resolution between private companies and communities.” <https://newforests.net/sustainability-reports/>. Accessed 12 January 2021.
- 20 The development banks DEG, FMO and Proparco operate a joint complaints mechanism, where complaints submitted to any one of the three banks is assessed by a joint Expert Panel, and where complaints are processed using joint procedures.

the requested mediation to even start.<sup>21</sup> Meanwhile, and with the development banks looking on, the company has been expanding its plantations onto land immediately adjacent to the village of Yalifombo,<sup>22</sup> even though the illegality of the company's land concession contracts is at the heart of the community complaint submitted in 2018.

### Development banks and the expansion of monoculture plantations on the African continent

PHC is not the only case on the African continent where development banks have promoted programmes and projects for the expansion of industrial monoculture tree plantations. In November 2020, communities and civil society organisations from 10 countries testified during the first ever African Peoples Tribunal about the human rights and environmental abuses connected to these investments. In all but one case were development banks and international financial institutions involved,<sup>23</sup> not only through loans or investments, but also through political and programme support at national and regional level.

In one case in Ghana, SIAT SA acquired its plantations through a failed World Bank program that aimed to establish oil palm and rubber plantations across several countries in West and Central Africa in the 1970s and 1980s. In fact SIAT's founder and co-owner Pierre Vandebecq was a member of the consultancy team that worked on the World Bank program. The World Bank provided loans for the governments and in the 1990s, the state plantations had accumulated large debts and were forced into privatisation. Vandebecq formed SIAT in 1991 and acquired several of the old World Bank-funded plantation projects.<sup>24</sup> The German and African development banks also chipped in, as did the UK Commonwealth Development Corporation Group (now CDC Group) and a Belgian public-private financier called BMI-SBI.<sup>25</sup>

Another example is the tree plantations controlled by Green Resources AS in Uganda, Tanzania and Mozambique. They were rescued from bankruptcy by Norfund and Finfund in 2018<sup>26</sup> where the Norwegian government has also provided substantial diplomatic backing. The plantations have also been financed by the International Finance Corporation<sup>27</sup> and the Dutch development bank FMO,<sup>28</sup> despite the well documented environmental and social harms and community resistance.<sup>29</sup>

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- 21 RIAO-RDC, DRC communities file complaint with German development bank to resolve century-old land conflict with palm oil company. 2018. <https://www.farmlandgrab.org/post/view/28543-drc-communities-file-complaint-with-german-development-bank-to-resolve-century-old-land-conflict-with-palm-oil-company>
  - 22 See, for example, statements at a court hearing contained in 'Denuncian activistas abusos de empresa de aceite de palma.' TeleSur Video 11 February 2020. <https://videos.telesurtv.net/video/812290>. Accessed 21 December 2020. See also the transcripts from the 28 January 2020 court hearing in Kisangani at <https://www.slideshare.net/aujourlejour1/dossier-yalifombo>. Accessed 21 December 2020.
  - 23 Testimonies presented during the African Peoples Tribunal. Building People Power. November 2020. <http://africanpeopletribunal.org/resources/documents/>
  - 24 GRAIN, Communities in Africa fight back against the land grab for palm oil. September 2019. <https://www.grain.org/en/article/6324-communities-in-africa-fight-back-against-the-land-grab-for-palm-oil>
  - 25 Friends of the Earth Africa, Ivory Coast, technical form for the presentation of a case. 2020. [http://africanpeopletribunal.org/wp-content/uploads/2020/11/APT\\_Ivory\\_Coast-min.pdf](http://africanpeopletribunal.org/wp-content/uploads/2020/11/APT_Ivory_Coast-min.pdf)
  - 26 Green Resources Annual Report 2019. <http://greenresources.no/wp-content/uploads/2019/12/Green-Resources-Annual-Report-2019.pdf>
  - 27 International Finance Corporation, IFC Investment in Green Resources Supports Reforestation, Environment in Tanzania: New Power Plant and Plantations to Create More Than 5,000 Jobs by 2011. 2009. <https://ifcext.ifc.org/ifcext/pressroom/ifcpressroom.nsf/1f70cd9a07d692d685256ee1001cdd37/4ab39481551e6f93852575d10051368c>, accessed 16th October 2020.
  - 28 FMO client information GREEN RESOURCES AS. <https://www.fmo.nl/project-detail/57233>, accessed 16 October 2020.
  - 29 Friends of the Earth Mozambique, Technical form for the presentation of a case. 2020. [http://africanpeopletribunal.org/wp-content/uploads/2020/11/APT\\_Mozambique-min.pdf](http://africanpeopletribunal.org/wp-content/uploads/2020/11/APT_Mozambique-min.pdf), accessed 10 December 2020.

And the list of controversial plantation companies financed by development banks goes on. These industrial plantations are often high risk investments. They are not necessarily healthy companies in terms of profits, either. The question, therefore, remains why development banks continue to finance a colonial era production model that is systemically harmful and does not lead to development.



School in Yalifombo, built by community members. As part of an accord between the community and the company in 2017, Feronia-PHC had committed to constructing a school before expanding its plantations in the immediate vicinity of the village of Yalifombo. 05 February 2020. <https://twitter.com/Oskartelesur/status/1225048851775655937/photo/1>. Photo: Oskar Epelde (@oskartelesur).

[illegible]

Que la société FERONIA puisse libérer pour nous  
permettre de survivre avec nos familles au-delà  
continuer avec cet esclavagisme depuis Unilover  
(plus de 100 ans) à nos jours.

Continuer avec cet esclavagisme depuis Unilover  
(plus de 100 ans) à nos jours.

J'ai à Bismarck le 16 décembre 2019

Cette communauté notable au Indes Commune  
Village (Indes)

FERONIA	FERONIA	FERONIA
FERONIA	FERONIA	FERONIA
FERONIA	FERONIA	FERONIA
FERONIA	FERONIA	FERONIA

2017 statement from community leaders from Boteka requesting restitution of the communities' ancestral land.

30 GAR, "Banking Facility for Golden Veroleum Limited of USD500 million," 13 March 2013. <https://goldenagri.com.sg/wp-content/uploads/2016/02/GAR14-13-03-2013-Banking-Facility-for-Golden-Veroleum-Limited-of-USD-500-million.pdf>

## 8 Development Finance as Agro-Colonialism: European Development Bank funding of Feronia-PHC oil palm plantations in the Democratic Republic of Congo<sup>31</sup>

In 2009, a now bankrupt Canadian financial company called Feronia Inc. took over *Plantations et Huileries du Congo* (PHC), a company managing the crumbling 110-year old colonial oil palm plantation operations previously owned by the global food corporation Unilever. The plantations are part of a concession covering roughly 107,000 hectares of land spread over three provinces in the Democratic Republic of Congo (DR Congo). The concession today consists of hundreds of individual concession contracts renewed by different land registrars rather than one continuous concession contract. PHC uses around 25,000 hectares of this vast concession for its industrial oil palm plantations. The remainder of the concession area is forested land. Community members at all three concession sites report regular patrolling of the forested areas by company security guards and company restrictions that limit their use of the forests within the concession.<sup>32</sup>

Since 2013, European development banks have provided around US\$ 150 million in loans and equity investments to Feronia Inc. and PHC. Together, they were the largest shareholders and creditors of Feronia Inc. at the time the company entered into a restructuring process in June 2020. During this restructuring, which preceded the Feronia Inc. bankruptcy filing in August 2020, the development banks agreed to pass the assets that Feronia Inc. held in PHC to a Mauritius-based private equity fund called Straight KKM. In the course of the restructuring negotiations, the development banks also agreed to write off much of their outstanding debt. The UK's CDC Group is said to have written off US\$ 72.1 million of its US\$ 76.6 million<sup>33</sup> investment. Following the restructuring, CDC ceased to be an equity investor in PHC and became a lender alongside the (European) development banks.<sup>34</sup> Germany's DEG, the Dutch FMO, Belgian BIO and the Emerging Africa Investment Fund (EAIF) are said to have agreed to write off up to 80 percent of their collective US\$49 million loan if the new owner agrees to implement a revised environmental and social action plan.<sup>35</sup> It is unclear what has become of the roughly 13.5 percent shareholding of the African Agriculture Fund (AAF) which ties France's Proparco and Spain's AECID to Feronia Inc..

Meanwhile, and despite an ongoing mediation at the Independent Complaint Mechanism (ICM) operated jointly by the Dutch, German and French development banks,<sup>36</sup> community demands for restitution of their ancestral land have, once again, been ignored in this recent transfer of PHC concession titles to the new owner, KKM. In their complaint to the ICM, affected communities challenge the legality of the concession contracts held by Feronia-PHC, now Feronia KKM / PHC.<sup>37</sup> The Feronia Inc. bankruptcy proceedings would thus have been an appropriate moment for European development banks to address this unresolved land legacy question. They chose not to do so.

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31 A draft of this report was shared with Feronia KKM on 12 January 2021 for comment. No reply had been received as of 21 January 2021 (date at which the text was last updated).

32 Pers. comm. during community meetings between representatives of groups co-publishing this report in 2015 and 23-27 January 2020.

33 GJN Freedom of Information request to CDC Group plc. 2020. [https://www.whatdotheyknow.com/request/feronia\\_inc#outgoing-1090050](https://www.whatdotheyknow.com/request/feronia_inc#outgoing-1090050), accessed 15 December 2020.

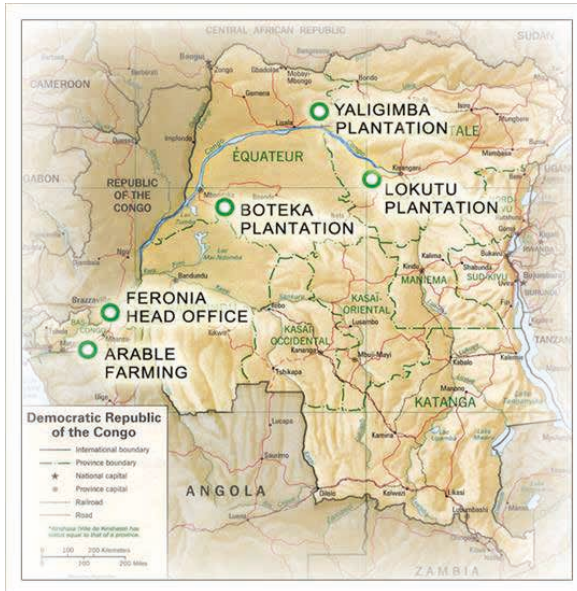
34 BIO, A statement on the completion of the restructuring of Feronia / PHC. 30 November 2020. <https://www.bio-invest.be/en/news/a-statement-on-the-completion-of-the-restructuring-of-feronia-phc>

35 See among others, <https://www.bio-invest.be/en/news/a-statement-on-the-completion-of-the-restructuring-of-feronia-phc>

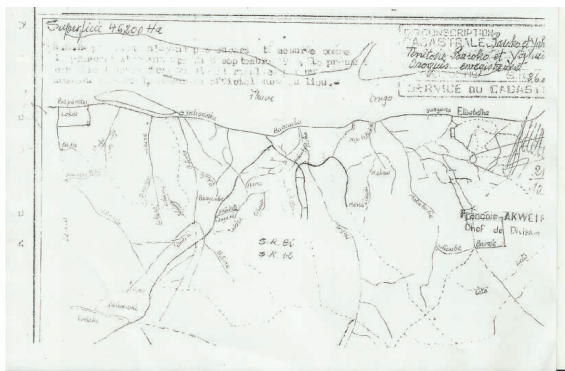
36 Webpage at DEG website about complaint against Feronia-PHC: <https://www.deginvest.de/%C3%9Cber-uns/Verantwortung/Beschwerdemanagement/Feronia/index-2.html>, accessed 29 September 2020.

37 Note that the 21 December 2015 'Term Facility Agreement' between the development banks DEG, FMO and BIO and Feronia PHC contains an annex, "Schedule 12 art 2 Concessions" which lists concession contracts in a table titled "Lokutu -Phase 2 (not yet valid)". [www.sedar.com](http://www.sedar.com) – Company Profiles – Feronia Inc., accessed 29 September 2020.





Lokutu is PHC's largest plantation at 63,560 hectares. The plantations are situated alongside the Congo River in the Tshopo province of the DRC. They are 1,530 km by river from Kinshasa, and 210 km from Kisangani, the country's third largest city. Around 15,000 hectares of the concession are used for industrial oil palm plantations. Community members are not allowed to use the forest or collect fruit or farm in the forested areas. Boteke is PHC's oldest and smallest plantation at 13,542 hectares, around 110 km east of the town of Mbandaka, which has a population of approximately half a million people. The plantation area at Boteke consists of 31 individual concessions.



Map showing a 46,000 hectare concession area at the Lokutu plantation site which is now fragmented into many small concession contracts. The map was part of the concession documents held at the Feronia Inc. London office in 2018.

While development banks claim that their investment in Feronia-PHC has provided development and employment, communities remain deprived of their ancestral land and the possibilities to sustain themselves off the use of their land. Villagers who have found work on the PHC plantations, have toiled mostly as poorly paid contract workers or labourers on short-term contracts. For years into the development bank investment, labourers were paid less than the minimum wage. While the development banks claim that wages for workers have more than doubled since 2013,<sup>38</sup> they remain far below living wages and Feronia-PHC has – illegally – kept workers employed for years as day labourers instead of providing them with fixed contracts as required by Congolese law once a worker has been employed under casual contracts for a certain time.<sup>39</sup> A 2019 Human Rights Watch investigation<sup>40</sup> found that female labourers reported the lowest monthly salaries among the plantation workers. Their salaries ranged between 12,000 FC (US\$7.30) and 30,000 FC (US\$18.75).

38 A 14 May 2020 Human Rights Watch submission to the UK International Development Committee refers to a development bank statement in response to its November 2019 report 'A Dirty Investment'. The submission notes that "The joint statement also said that, since 2013, minimum wages for company workers have more than doubled and are now substantially above the minimum wage in Congo. Consider, however, that the national minimum wage for agricultural workers in Congo is 1,680 FC (US\$1.03) per day. The World Bank sets the extreme poverty threshold at US\$1.90 per day." The submission further notes that "the joint statement asserted that the average worker earns US\$3.30 per day. Human Rights Watch addressed an information request to CDC Group on December 5, 2019, soliciting supporting documentation from the company or the bank that could serve as basis for evidence for this figure. To date, Human Rights Watch has not been made party to any information that substantiates this claim." The HRW submission including the reference to the Joint statement from CDC Group, BIO, DEG and FMO in response to Human Rights Watch report are available at <https://farmlandgrab.org/29638>. The statement regarding wages having doubled is repeated in an 8 December 2020 statement from the CDC Group published by The Ecologist in response to the article 'Polluting investments not in our name', 19 November 2020 edition of the same publication. The CDC response is available at <https://theecologist.org/2020/dec/08/development-finance-must-include-risks>, last accessed 12 January 2021.

39 Human Rights Watch (2019): A Dirty Investment. European Development Banks' Link to Abuses in the Democratic Republic of Congo's Palm Oil Industry. [https://www.hrw.org/sites/default/files/report\\_pdf/drc1119\\_web\\_0.pdf](https://www.hrw.org/sites/default/files/report_pdf/drc1119_web_0.pdf), accessed 30 September 2020.

40 Human Rights Watch (2019): A Dirty Investment. European Development Banks' Link to Abuses in the Democratic Republic of Congo's Palm Oil Industry. [https://www.hrw.org/sites/default/files/report\\_pdf/drc1119\\_web\\_0.pdf](https://www.hrw.org/sites/default/files/report_pdf/drc1119_web_0.pdf), accessed 30 September 2020.

A former manager (who supervised over 200 plantation workers in Boteka) reportedly told Human Rights Watch that women were mainly employed as fruit-picker day labourers, that the company pays them 30 FC (US\$0.01) for every sac of 10 kilos, and that in his view, 15 sacs per day is already too hard to accomplish. He noted that the maximum a woman in this role can earn is 15,000 FC (US\$9.04) per month.<sup>41</sup> The following statement from the Human Rights Watch report underscores that wages remain extremely low, despite claims by development banks that payments to workers have more than doubled since the development banks started financing Feronia-PHC: "Human Rights Watch reviewed 43 pay slips of contract workers from the three plantations – they are paid per day worked, as are day labourers. Their daily rate ranged between 2,562.42 FC (US\$1.50) and 3,442.20 FC (US\$2.00), except for one who supervised a team of 13 plantation workers and earned 4,658.34 FC (US\$2.80) per day in 2018. In a letter to Human Rights Watch, Feronia said that their average worker earns US\$3.30 per day, but did not substantiate their statement with supporting documentation or explain the calculation through which this average was obtained."<sup>42</sup> The report further notes that day labourers do not receive pay slips with their monthly cash payments, and that they were paid between 10,000 FC (US\$6.00) and 54,000 FC (US\$32.41) per month.

Company commitments to refurbish crumbling housing in workers' camps and to provide infrastructure such as health dispensaries and water pumps / water bore holes, allegedly conditional to the final pay-out under the US\$ 49 million loan facility by the Dutch, German and Belgian development banks, have turned out to be largely empty promises.<sup>43</sup> The development banks claim that 72 water bore holes have been built or repaired but refuse to provide a list of the village names where these works have allegedly been undertaken. CDC, for example, claims that US\$ 7 million have been invested in infrastructure.<sup>44</sup> How much of this has been spent on upgrading roads PHC relies on for its operations and how much has gone into the community support projects, however, the bank does not say. BIO has provided a partial list of schools and health dispensaries in its April 2019 response to a report published by the Belgian NGO CNCD-11.11.11. Only one school is listed as completed, the remaining 16 structures are listed as "ongoing", "start soon", "next year" or "reported"<sup>45</sup> (see table page 15). Few pictures of completed structures have been published by the company or the development banks. The secrecy around the exact location of the supposed social infrastructure funded by Feronia-PHC and the absence of transparent accounts of how much has been spent on what make independent verification by civil society organisations or the communities impossible.<sup>46</sup> Renovations of workers' houses are also far behind schedule, with no substantive information provided by the company or development banks about the location of allegedly already renovated houses. As recently as March 2020, five and seven years respectively after development banks started funding Feronia-PHC, a dilapidated worker's house at the plantation site in Boteka collapsed, leaving several persons injured and an 11-year old child dead.<sup>47</sup>

41 See Human Rights Watch report 2019. Accessed 21 December 2020.

42 See Human Rights Watch report 2019. Pages 38/ 39. Accessed 21 December 2020.

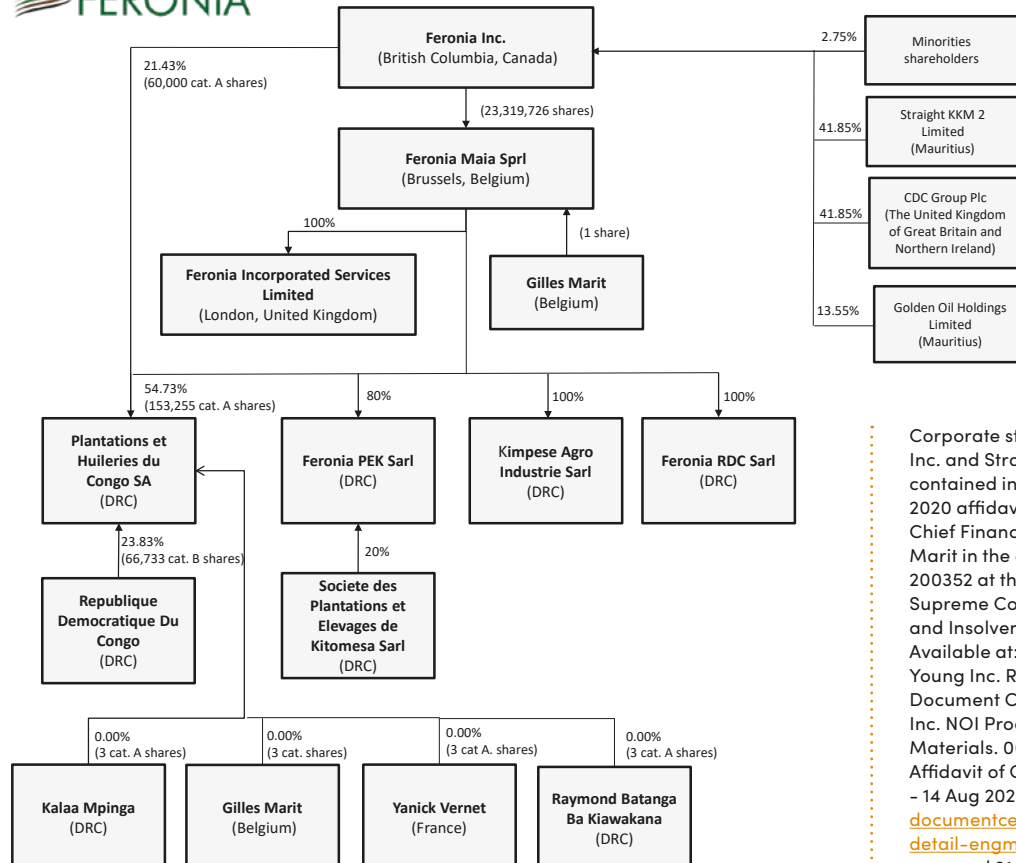
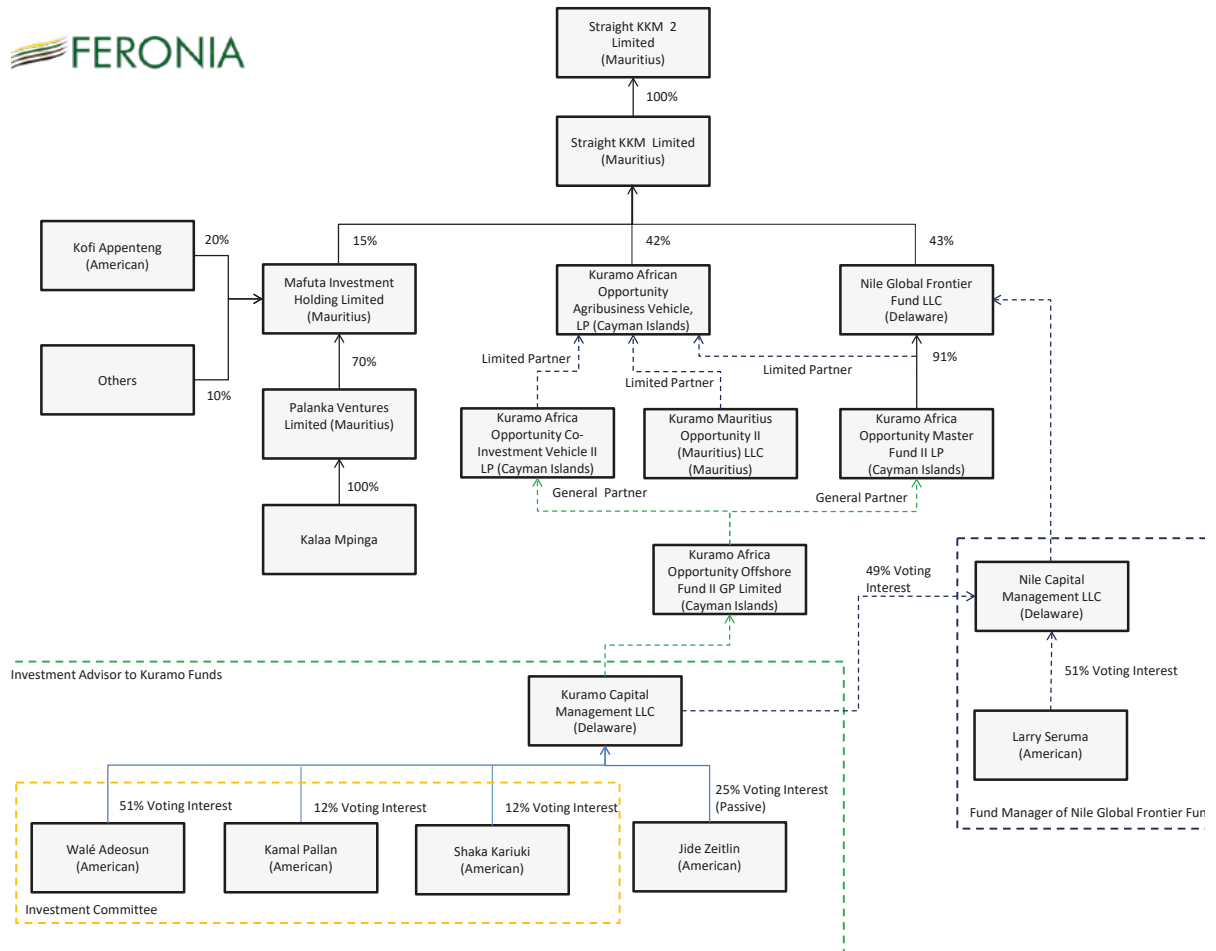
43 See Human Rights Watch report 2019 and CNCD-11.11.11, Accaparement made in Belgium. Le financement de Feronia par la Coopération belge. April 2019. <https://www.cncd.be/accaparement-made-in-belgium-financement-feronia-congo-cooperation-belgique-etude>

44 See, for example, the CDC reply to a GJN Freedom of Information Request at [https://www.whatdotheyknow.com/request/feronia\\_inc#outgoing-1090050](https://www.whatdotheyknow.com/request/feronia_inc#outgoing-1090050), accessed 15 December 2020.

45 Réponse de BIO au rapport du CNCD-11.11.11. Analyse de cette réponse par le CNCD-11.11.11. <https://www.cncd.be/accaparement-made-in-belgium-financement-feronia-congo-cooperation-belgique-etude>, accessed 21 December 2020.

46 In the Q&A section of the webpage FMO's involvement in Plantations et Huileries du Congo, FMO states that "Since 2015, PHC made repairs to 2,100 km of operational roads and ca 3,800 houses for employees. Also 95 schools, 4 hospitals, 17 dispensaries and 6 health centers were refurbished, all essential infrastructure, ready to receive the local government's health and education professionals." Regretably, neither the development banks nor the company have provided any details on location that would enable independent verification of these claims. <https://www.fmo.nl/questions-answers>, accessed 21 December 2020.

47 Les maisons des travailleurs de Feronia à Boteka sont des bombes sur la pluie. Congo au jour. March 2020. <https://congoaujourd'hui.blogspot.com/2020/03/une-maison-sest-ecroulee-sur-un.html?q=C3%A9croul%C3%A9e>, accessed 30 September 2020. See also Feronia Sustainability report 2017: 28. <https://www.feronia.com/uploads/2018-09-11/feroniareport2017-124330.pdf>. Last accessed 21 December 2020.



Corporate structure of Feronia Inc. and Straight KKM as contained in the 14 August 2020 affidavit of Feronia Inc. Chief Financial Officer Gilles Marit in the case VLC-S-B 200352 at the British Columbia Supreme Court (Bankruptcy and Insolvency), Exhibit C. Available at: Ernst & Young Inc. Restructuring Document Centre. Feronia Inc. NOI Proceedings. Motion Materials. 001 Application. Affidavit of Gilles Marit - 14 Aug 2020. <https://documentcentre.ey.com/#!/detail-engmt?eid=390>, accessed 21 December 2020.

## 12 Short chronology of European Development Bank funding of Feronia-PHC

Since 2013, development banks have provided a total of around US\$ 150 million to Feronia Inc and its Congolese subsidiary PHC. By far the largest volume of funding has been provided by the UK's [CDC Group](#), which in [December 2016](#) held over 65 percent of Feronia Inc. shares. At the time of Feronia's collapse in June 2020, CDC Group held approximately 41 percent (see infographic).

European development banks including the Belgian development bank [BIO](#), Germany's [DEG](#), Dutch [FMO](#), France's [Proparco](#), Spain's [AECID](#) and the USA's [DFC](#) have provided loans or made equity investments, either directly or via the investment funds Emerging Africa Infrastructure Fund ([EAIF](#)) and African Agriculture Fund ([AAF](#)).

AAF was the first to commit funding to Feronia in December 2012, acquiring 32.5 percent of Feronia Inc. shares for an investment of US\$ 20 million in 2013. Between June 2015 and January 2016, AAF increased its investment when it bought Feronia Inc. debentures worth US\$ 8 million. These were converted into shares in April 2016, leaving AAF with a 26 percent holding in Feronia Inc.. No public information is available on what has become of AAF's ca 13 percent shareholding amidst the collapse of Feronia Inc. in June 2020.

The development banks have financed Feronia-PHC in full knowledge of the on-going legacy land issue and the tensions between communities and the company.<sup>48</sup> In September 2015, prior to the approval of the US\$ 49 million loan facility provided by DEG, FMO and BIO, CDC issued a response to the June 2015 NGO report 'Agro-colonialism in the Congo'.<sup>49</sup> The loan facility is secured against PHC assets and a pledge of the shares<sup>50</sup> of PHC by Feronia's Belgian subsidiary, Feronia Maia sprl.

As Feronia Inc. has registered multi-million-dollar losses in every year of its existence, the company has relied on cash injections from development banks to maintain its operations. There is no indication that when Feronia Inc. collapsed in June 2020, the development banks truly considered a restructuring that would have recognized communities' rights to their ancestral land. We are not aware of any communication of the development banks with the communities who submitted the complaint in November 2018 via RIAO-RDC, on how the ongoing ICM mediation process managed by the DEG (see box) or some other format of consultation could be used to explore options for community management of the land and plantations that have been occupying their ancestral land for over a century. Instead, development banks opted to hand over the disputed concession contracts and several newly refurbished mills for processing the oil palm fruit to the Mauritius-based private equity company Straight KKM and committed to writing off outstanding payments upwards of US\$ 90 million.

48 These issues have been raised, among others, in three NGO reports based on visits with communities in the concession area that have been published since June 2015, several news reports, parliamentary questions in Belgium and Germany, meetings in 2017 between staff of NGOs co-publishing this report and the development banks BIO and DEG as well as in the 2018 community complaint submission to the ICM, available at <https://tinyurl.com/y2s8wtpc>. NGO reports: RIAO-RDC and GRAIN, *Agro-colonialism in the Congo: European and US development finance bankrolls a new round of agro-colonialism in the DRC*. June 2015. <https://grain.org/en/article/5220-agro-colonialism-in-the-congo-european-and-us-development-finance-bankrolls-a-new-round-of-agro-colonialism-in-the-drc>; RIAO-RDC et al., *Land conflicts and shady finances plague DR Congo palm oil company backed by development funds*. November 2016. <https://www.farmlandgrab.org/post/view/26662-land-conflicts-and-shady-finances-plague-dr-congo-palm-oil-company-backed-by-development-funds> and CNCD-11.11.11, *Accaparement made in Belgium. Le financement de Feronia par la Coopération belge*. April 2019. <https://www.cncd.be/accaparement-made-in-belgium-financement-feronia-congo-cooperation-belgique-etude>. News reports: ARD Monitor, *Afrika-Politik der Bundesregierung: Millionen für Despoten*. December 2016. <https://www1.wdr.de/daserste/monitor/sendungen/afrika-politik-102.html>; TeleSur TV report, *Congo: comunidad Yahuma exige cese de operaciones de planta de palma*. September 2016. <https://www.youtube.com/watch?v=d52OLyeVH2I>; Labarre, RDC : l'accaparement des terres par PHC Boteka affecte près de dix-sept villages dans la province de l'Equateur. 2020. Available at: <https://farmlandgrab.org/29965>; Noïrfalisse, Q., *L'huile de palme et les plantations de la discorde*. Le Vif. 2018. <https://www.levif.be/actualite/international/l-huile-de-palme-et-les-plantations-de-la-discorde-reportage/article-normal-1057277.html>. Parliamentary Questions: *Kleine Anfrage 18/10173, Finanzierung des Palmölunternehmens Plantations et Huileries du Congo (Feronia) durch die Deutsche Investitions- und Entwicklungsgesellschaft*, available at <https://kleineanfragen.de/bundestag/18/10413-finanzierung-des-palmoelunternehmens-plantations-et-huileries-du-congo-feronia-durch-die-deutsche-investitions-und-entwicklungsgesellschaft>; Feronia, *une entreprise à l'éthique douteuse, financée par Bio*, available at <http://www.gwenaellegrovnus.be/index.php/travail-parlementaire/questions/item/129-feronia-une-entreprise-a-l-ethique-douteuse-financee-par-bio>. Last accessed 14 January 2021.

49 CDC Group response to report raises concerns about land grabs, inadequate consultations & compensation by Feronia & Unilever in DRC. Link to the full statement available at <https://farmlandgrab.org/25324>.

50 In the event that Feronia-PHC did not repay the loan, the development banks could claim shares in the company to the value of any outstanding loan commitments.



### 13 Who has profited from a company in the red throughout its entire existence?

A capital injection of US\$ 150 million by development banks could have made a huge difference to the communities at Lokutu, Boteka and Yaligimba. It could have been used to build badly needed infrastructure, support local food systems and communities' food sovereignty and improve health services. Instead, the development banks sunk the funds into a company without any prior experience in oil palm plantation management.

And what did the US\$ 150 million buy? According to a July 2020 statement issued by CDC,<sup>51</sup> two new oil palm mills were constructed "at a cost of almost \$28m" and new oil palm trees were planted on 17,500 hectares of land and "other agricultural improvements" carried out, at a cost of US\$ 39 million. Furthermore, CDC claims that "around \$7m has been spent on restoring clean water provision, healthcare and educational facilities," though communities might find that hard to believe considering the state of these facilities. Only in March 2020, a house collapsed at a workers' camp in Boteka, injuring several people and leaving an 11 year old child dead.<sup>52</sup> Refurbishment of houses at the workers' camps had been one of the priorities in the Action Plan negotiated between Feronia-PHC and the DFIs in 2015.<sup>53</sup>

At the end of the day, a substantial part of the money that the development banks paid out to Feronia-PHC – purportedly with the goal of financing "development" – was spent on executive salaries for European company managers,<sup>54</sup> travel expenses, legal teams and consultants<sup>55</sup> and rental and other fees to a powerful Congolese politician.<sup>56</sup> In 2019 alone, for example, Feronia Inc. reported payment of US\$ 402,699 in board fees to non-executive directors and "compensation paid or payable to key management for employee services" of US\$ 905,883. Key management includes the Executive Chairman, Chief Executive Officer, the Chief Financial Officer, the Chief Operating Officer, and the directors of the Company.

Year	Losses reported by Feronia Inc. (CDN)
2009	10,872,281
2010	7,289,180
2011	6,829,095
2012	8,947,080
2013	12,864,798
2014	20,267,351
2015	29,429,309
2016	11,842,085
2017	14,570,035
2018	62,961,677
2019	91,173,211
<b>Total</b>	<b>220,380,562 (US\$ 164,705,000)</b>





Source: Feronia Inc. Annual Consolidated Financial Statements 2009 to 2019.

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- 51 CDC Group, A statement on the investment in Feronia (PHC) by KKM. July 2020. <https://www.cdcgroup.com/en/news-insight/news/a-statement-on-the-investment-in-feronia-phc-by-kkm/> Accessed 21 December 2020.
- 52 Les maisons des travailleurs de Feronia à Boteka sont des bombes sur la pluie. <https://congoaujourd'hui.blogspot.com/2020/03/une-maison-sest-ecroulee-sur-un.html?q=C3%A9croul%C3%A9e>, accessed 30 September 2020; see also Feronia Sustainability report 2017: 28. <https://www.feronia.com/uploads/2018-09-11/feroniareport2017-124330.pdf>. Last accessed 21 December 2020.
- 53 Despite repeated requests, including from Members of Parliament in Germany and Belgium (pers. comm. 16 October 2020), the development banks have not released the ESG Action Plan. The Feronia Inc. Sustainability Report 2017 states on page 7 "c.850 worker homes repaired or rebuilt to date, benefiting approximately 5,000 people." <https://www.feronia.com/uploads/2018-09-11/feroniareport2017-124330.pdf>
- 54 RIAO-RDC et al., Land conflicts and shady finances plague DR Congo palm oil company backed by development funds. November 2016. <https://www.farmlandgrab.org/post/view/26662-land-conflicts-and-shady-finances-plague-dr-congo-palm-oil-company-backed-by-development-funds>
- 55 GRAIN, Feeding the one percent. October 2014. <https://grain.org/e/5048>
- 56 ARD Monitor, Afrika-Politik der Bundesregierung: Millionen für Despoten. December 2016. <https://www1.wdr.de/daserste/monitor/sendungen/afrika-politik-102.html>. Accessed 21 December 2020.



# Development Bank funding of Feronia-PHC

Since 2013 Feronia-PHC received ca. US\$ 150 million. Largest share of financing from CDC Group (UK), the only direct shareholder in Feronia Inc. among the development banks. Others invested via the African Agriculture Fund (AAF) or provided loans (BIO, DEG, FMO, Emerging Africa Infrastructure Fund (EAIF)).

## Developments Banks:

-  BIO (Belgium), DEG (Germany), FMO (The Netherlands)
-  Proparco (France), AECID (Spain)
-  DFC (USA, formerly OPIC)
-  CDC Group (UK)

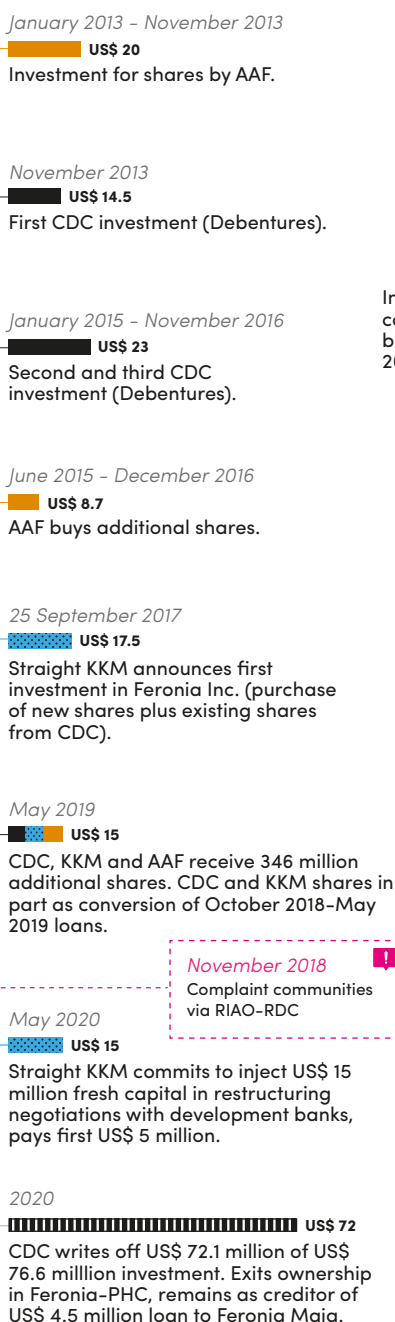
## Private sector investors:

-  AAF (Mauritius)
-  EAIF (Mauritius)
-  Straight KKM (Mauritius)
-  Other Private Sector investors (including in 2010, Feronia Inc. founder R. Sood and Congolese politician B. Kikaya Bin Karubi and in 2016, Deutsche Bank (Germany))

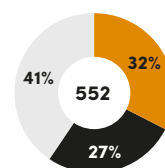
## Loans Million US\$



## Equity Investments and Debentures Feronia Inc. Million US\$

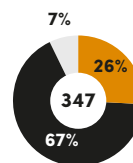


## Feronia Inc. Shareholdings Millions of shares and percentage

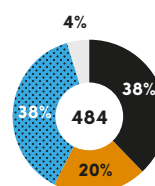


May 2014

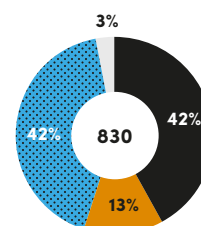
In June 2014, Feronia Inc. consolidated shares on a 10:1 basis. Total of shares after June 2014 consolidation: 55.2 million



May 2016



April 2018



June 2020

Sources of figures used: Feronia Inc. Management's Discussion and Analysis 2011–2019 (<https://www.feronia.com/md-and-a>, accessed 21 December 2020); Feronia Inc. Management Estimates of Share Register for the dates share volumes are cited (<https://www.feronia.com/pages/view/shareholder-information>, last accessed 21 December 2020); Feronia Inc. Consolidated Financial Statements 2012–2019 listed on the Canadian Securities Administrators' SEDAR website under "Feronia Inc" (<https://www.sedar.com/FindCompanyDocuments.do>, last accessed 21 December 2019); Affidavit of Gilles Marit – 14 Aug 2020 (<https://documentcentre.ey.com/#/detail-engmt?eid=390>, last accessed 21 December 2020); FMO Annual Report 2019 (<https://buildingprospects.fmo.nl/2019/annual-report-2019/performance-on-our-strategy/production-capacity-development>, accessed 21 December 2021).

Over years, development bank staff have argued that the money wasn't there for investments in 'social infrastructure'. Millions, however, were available for paying the salaries of expat company managers based in London and Kinshasa, where the company maintained 41 people on its payroll even as it was nearing bankruptcy, according to the Feronia Inc. 2019 consolidated financial statement.

Projects	Area	Groupment	Progress
School Yamaya	Yaligimba	Yaligimba	Completed
School Yaoselo	Lokutu	Bolesa	Ongoing
Health center Yanongo	Lokutu	Yanonogo	Ongoing
Dispensary Yambienene	Lokutu	Mwingi	Ongoing
School Nkelengo	Boteka	Bokala	Ongoing
School Bokala	Lokutu	Monkoso	Start soon
Warehouse	Boteka	Monkoso	Start soon
School Loonga	Boteka	Monkoso	Start soon
Health center Yalisubu/Yabongonda	Lokutu	Mwando	Start soon
School Yaliambi	Yaligimba	Yaliambi	Start soon
Dock	Lokutu	Mwingi	Next year
Health center Lieki	Lokutu	Bolombo 1	Next year
Health center Ndongo	Lokutu	Bongemba	Next year
Bolesa groupment chief house	Lokutu	Bolesa	Next year
House of the chief	Boteka	Monkoso	Reported
Houses of groupment chiefs (7)	Yaligimba	All	Reported
Boreholes (12)	Lok/Yal	-	Reported

The table shows how little of the social infrastructure promised by Feronia-PHC and its financial backers has been realised since development banks started financing the company in 2013. There has been no update from the development banks that includes detailed information about the location of structures that have allegedly been completed. Source: Réponse de BIO au rapport du CNCD-11.11.11. <https://www.cncd.be/accaparement-made-in-belgium-financement-feronia-congo-cooperation-belgique-etude>.

## Communities demand remediation of 110-year theft of their ancestral land

In November 2018, the community support organisation RIAO-RDC (Réseau d'Information et d'Appui aux ONG en République Démocratique du Congo) filed a complaint on behalf of communities from the provinces of Tshopo and Equateur with the Independent Complaint Mechanism (ICM) operated jointly by the Dutch, German and French development banks.<sup>57</sup> On 7 January 2019, the ICM declared the complaint that is being handled by the German development bank DEG as lead of the US\$ 49 million loan facility, admissible.

Over the years, communities from all three of the sites occupied by PHC plantations, Lokutu, Boteka and Yaligimba, have sought to regain control over their ancestral lands which fall within the concessions claimed by PHC. On numerous occasions, they have called for negotiations with the company and government authorities to determine the conditions under which the company may be allowed to continue to operate on their ancestral land. Community leaders have issued multiple letters, memos and declarations addressed to government authorities, company representatives and the development banks financing Feronia Inc. and PHC. The 2018 complaint submission references several of these statements issued by communities over the years.<sup>58</sup> The statements describe how this illegal theft of their ancestral lands and forests has deprived villagers of the means to feed and house their families and earn their livelihoods. As a result, poverty and malnutrition are rampant and severe. The complaint requesting a mediation led by the ICM is one more expression of community opposition to PHC's operations on their ancestral land without their permission.

In the complaint, communities have cited a number of reasons for why the concession contracts held by PHC (now majority owned by KKM) are invalid. These include, among others:

<sup>57</sup> Community Complaint against DEG-FMO financing of PHC available at <https://tinyurl.com/y2s8wtpc>

<sup>58</sup> See, for example, the TeleSur TV report, Congo: comunidad Yahuma exige cese de operaciones de planta de palma. September 2016. <https://www.youtube.com/watch?v=d52OLyeVH2I>. Accessed 21 December 2020. Labarre, J. (2020): RDC : l'accaparement des terres par PHC Boteka affecte près de dix-sept villages dans la province de l'Equateur. Desknature.com; also available at: <https://farmlandgrab.org/29965>.

- Communities never gave consent to the conversion of their ancestral forests to oil palm plantations;
- The concession contracts contain errors that make them null and void (the credit agreement between PHC and the German development bank DEG even contains an annex listing concession contracts described as 'not yet valid');<sup>59</sup>
- PHC and its successive owners, including UK development bank CDC, have breached countless promises and written commitments made towards the communities with regards to providing employment, health posts, schools and roads. In a 2016 letter to FIAN, a German non-governmental organisation, the German Ministry of Economic Cooperation and Development (BMZ) explained that in the "sustainability strategy" that the development banks agreed with the company as part of the December 2015 loan facility, the company committed to "assess and verify the concessions and land titles". The Ministry stated: " This is an ongoing process that in addition to the company, involves above all the local population and the relevant government authorities. [...]. In this context, next steps include among others the development of a land use plan and a Community Development Programme, in order to enable, in the framework of a structured dialog with the local population, their participation in a sustainable land-use on the concession area."<sup>60</sup> None of the community members nor RIAO-RDC and the coalition of NGOs supporting the communities over the years are aware of any of these activities having been implemented.

Tired of waiting, in early 2020, several communities at the Lokutu plantation site in the province of Tshopo took over some 420 hectares of plantation abandoned by PHC and started their own palm oil processing.<sup>61</sup> They have regained an autonomy and income levels never seen while they toiled as day labourers on the PHC plantations. "We are happy to finally have access to lands that we have been kept out of for so long," says a member of the operation's management team. "With access to these lands, we are able to resume our palm oil production, which was violently interrupted with colonisation. Since the beginning of the week, I alone have sold 15 drums of oil, which gives me 300 thousand Congolese Francs (US\$150) in profit. That's seven times what you could earn working extremely hard for the company for a whole month."<sup>62</sup>



Worker showing his payslip Photo: Oskar Epelde.  
@Oskarelepede

In 2020, villagers in Mwando, Isangi Territory took back over 400 ha of land from the Feronia-PHC Lokutu plantation concession. They are working collectively to harvest palm nuts and produce their own palm oil with a small-scale mill.

59 Ernst & Young Inc. Restructuring Document Centre. Feronia Inc. NOI Proceedings. Motion Materials. 001 Application. Affidavit of Gilles Marit – 14 Aug 2020, Page 145f. <https://documentcentre.ey.com/#/detail-engmt?eid=390> , accessed 21 December 2020.

60 Letter dated 16 July 2016 from the BMZ to FIAN Germany. Pages 3, 4.

61 Groups welcome Feronia's decision to abandon plantation lands and enable communities in the DR Congo to thrive. 2020. <https://www.farmlandgrab.org/post/view/29682-groups-welcome-feronias-decision-to-abandon-plantation-lands-and-enable-communities-in-the-dr-congo-to-thrive>.

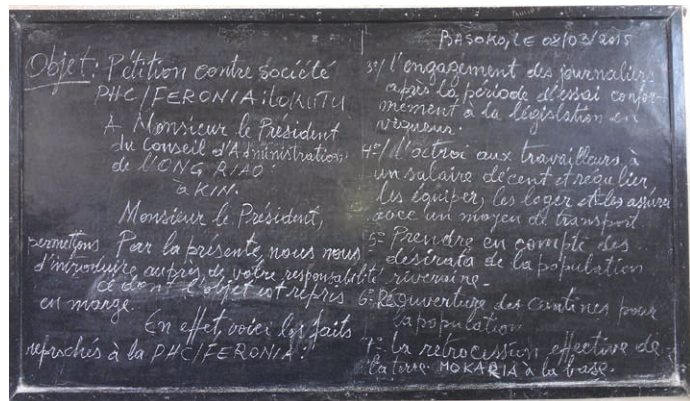
62 Communities take control of plantations abandoned by Feronia PHC. 2020. <https://www.farmlandgrab.org/post/view/29682-groups-welcome-feronias-decision-to-abandon-plantation-lands-and-enable-communities-in-the-dr-congo-to-thrive>



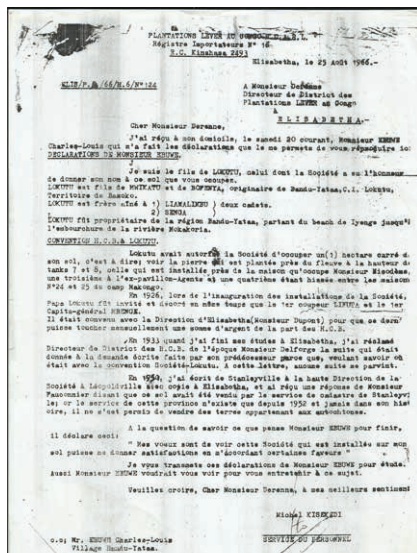
## 17 History of Plantations et Huileries du Congo (PHC)

In April 1911, the UK businessman Lord Leverhulme was given a licence to create vast oil palm plantations by the Belgian colonial administration.<sup>63</sup> His company 'Huileries du Congo Belge' obtained the monopoly to harvest and process all palm fruit in an area of 750,000 hectares. Historical records show that forced labour was used on a massive scale and that the Belgian colonial army enforced the monopoly and the company's abusive working conditions with brutal violence.<sup>64, 65</sup>

In 1930, Leverhulme's company merged with Dutch Margarine Unie to form Unilever which held the PHC concessions until 2009 when Unilever sold the company to Feronia Inc. for US\$ 4 million. Historical records show that communities never consented to the companies' operations on their territories, nor did they approve of the destruction of their oil palm groves and their replacement with oil palm plantations.<sup>66</sup> These industrial plantations today cover roughly 25,000 hectares of the 107,000-hectare concessions claimed by PHC.



2015 Community Statement Basoko, Lokutu plantation site.



Letter addressed to Mr. Derenne, Director of the District of Lever plantations in the Congo, concerning the statements of Mr. Charles-Louis Ebuwe, son of Mr. Lokutu, 25. August 1966. [https://drive.google.com/file/d/1Wc7bFYOc9j6\\_RX71rrce7uHH8wOu6lZC/view?usp=sharing](https://drive.google.com/file/d/1Wc7bFYOc9j6_RX71rrce7uHH8wOu6lZC/view?usp=sharing).

- 63 Kindela, F., Recycling the past: rehabilitating Congo's colonial palm and rubber plantations. 2006. <https://global.mongabay.com/news/bioenergy/2006/09/recycling-past-rehabilitating-congos.html> , accessed 29 September 2020.
- 64 See, for example this historical Video The Wealth Of The World - Congo Harvest Reel 2 Of 2 (1950-1959): <https://www.youtube.com/watch?v=-exESilp0jo> , accessed 29 September 2020.
- 65 Jules Marchal, Lord Leverhulme's Ghost: Colonial exploitation in the Congo, New York: Verso. 2008.
- 66 See Annex III of the complaint submitted to the DEG'S ICM in November 2018 and 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. [https://drive.google.com/file/d/1Wc7bFYOc9j6\\_RX71rrce7uHH8wOu6lZC/view?usp=sharing](https://drive.google.com/file/d/1Wc7bFYOc9j6_RX71rrce7uHH8wOu6lZC/view?usp=sharing)

## 18 Communities beset by abuses

As noted earlier, by December 2015, when the European development banks DEG, FMO and BIO took the decision to provide a US\$ 49 million loan facility to Feronia-PHC, reports were readily available concerning serious allegations of intimidation,<sup>67</sup> detentions,<sup>68</sup> beatings<sup>69</sup> and killings<sup>70</sup> of villagers by police, military personnel and company security guards.<sup>71</sup> These atrocities often followed accusations that community members had stolen palm fruits from the concession areas.

Community reports indicate that tensions, violence, intimidation and harassment have increased since the nine communities submitted their complaint to the DEG's ICM in November 2018. Incidents include, but are not limited to, the following:

On 16 March 2019, Congolese military forces reportedly fired live bullets against protesters from the Bolombo and Wamba villages in the municipality of Mwingi, Tshopo Province.<sup>72</sup> The two villages are surrounded by oil palm plantations at the Lokutu oil palm concession of Feronia-PHC. Since the beginning of the year, communities in this part of the concession areas had been protesting over underpaid wages for plantation workers from the communities, and demanding that the company return their lands.<sup>73</sup>

On 21 July 2019, a RIAO member, Joël Imbangola Luneu, was killed at the Boteka plantation site.<sup>74</sup> A PHC security guard, Mr. Ebuka, was subsequently charged with his murder. Testimonies point to Joël Imbangola's involvement with RIAO-RDC as possible motive for the killing.<sup>75</sup> The testimonies allege that Mr. Ebuka was accompanied by a second PHC security guard. The lawyer representing Joël Imbangola Luneu's family at the trial and family members of Mr. Imbangola Luneu informed RIAO-RDC that Mr. Ebuka was represented in court by a legal team of more than 20 people who stated during the trial that they were being paid to represent Mr. Ebuka by Feronia's DR Congo subsidiary PHC.<sup>76</sup> In February 2020, Mr. Ebuka was acquitted. Neither Joël Imbangola's family nor their lawyer had been informed of the acquittal and only found out when the



RIAO-RDC member Joël Imbangola Luneu was killed on 21 July 2019.

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- 67 Front Line Defenders, DRC: Investigation and intimidation against HRD Augustin Alphonse Bofaka and other human rights defenders. November 2015. <https://www.farmlandgrab.org/post/view/25532-drc-investigation-and-intimidation-against-hrd-augustin-alphonse-bofaka-and-other-human-rights-defenders>
  - 68 RIAO-RDC and GRAIN, Agro-colonialism in the Congo: European and US development finance bankrolls a new round of agro-colonialism in the DRC. June 2015. <https://grain.org/en/article/5220-agro-colonialism-in-the-congo-european-and-us-development-finance-bankrolls-a-new-round-of-agro-colonialism-in-the-drc>
  - 69 Joaquim Muntané i Puig, Feronia Inc. Una diosa desnuda de cómo empresas acaparadoras de tierras son rescatadas por fondos públicos de cooperación al desarrollo. May 2015. <https://www.farmlandgrab.org/uploads/attachment/feronia.pdf>
  - 70 See, among others, Analyse réponse CDC et Feronia. Statement signed by 13 community leaders from Feronia's three plantation areas (Lokutu, Yaligimba, Boteka). October 2016. Kampala, Uganda. Available at <https://www.grain.org/e/5560>.
  - 71 RIAO et al, Land conflicts and shady finances plague DR Congo palm oil company backed by development funds. 2016. <https://www.grain.org/e/5564>
  - 72 Illegal Deforestation Monitor, Military open fire on communities protesting oil palm development in DRC. March 2019. <https://www.farmlandgrab.org/post/view/28868-military-open-fire-on-communities-protesting-oil-palm-development-in-drc>
  - 73 RIAO-RDC et al., Violent tensions at Feronia's oil palm plantations in the DR Congo. March 2019. <https://www.farmlandgrab.org/post/view/28823-violent-tensions-at-feronia-s-oil-palm-plantations-in-the-dr-congo>
  - 74 RIAO-RDC, Land defender violently killed by a security guard of a Canadian palm oil company in the DR Congo. July 2019. <https://farmlandgrab.org/29061>
  - 75 Details of the incident have been confirmed in three separate, recorded interviews. Two of these were interviews with eye witnesses of the incident. The testimonies have been made available to the NGOs co-publishing this report. They have not yet been made public due to concerns for the safety and security of witnesses who provided testimonies.
  - 76 Pers. comm. September 2019 and February 2020 between RIAO-RDC and the lawyer representing the family of Joël Imbangola Luneu.

suspect returned to the village.<sup>77</sup> The loss of the main income earner and the circumstances of his death put Joël Imbangola's family in a precarious situation. Several people connected with Joël Imbangola have died since his killing. These include his wife, father and sister along with her six children and his former boss.<sup>78</sup> The deaths leave eight children orphaned and without means to support themselves.

In August 2019, CDC Group appointed an "independent team to investigate the death of Mr. Joël Imbangola Luneu."<sup>79</sup> CDC has thus far refused to make public the report of this investigation, citing the ongoing court proceedings. Now that the suspect has been acquitted, CDC must publish the full report of its investigation into the death.

Joël Imbangola's murder is not the first tragic death to have taken place on Feronia-PHC's oil palm plantations at Boteka. In March 2015, Mr. Jeudi Bofete Engambi, a worker at the PHC plantations, lived in the Bokula workers' camp. In a written statement, community dignitaries and community leaders note that he had been reported by a company security guard for having taken a few palm nuts from the company plantations, and was summoned to the Boteka police station where he was severely beaten.<sup>80</sup> He later died at the hospital in Boteka of the injuries sustained as a result of the beating at the police station. His wife was killed by live bullets fired into the group of family members who brought the body of her deceased husband to the PHC company facilities in Boteka as a way of protesting.<sup>81</sup> The collecting of a handful of oil palm nuts left on the ground after harvest to provide food for the family has left the couple dead and seven children orphaned.

Between 12<sup>82</sup> and 16<sup>83</sup> September 2019, the national police arrested several villagers from communities involved in the mediation process initiated by the 2018 community complaint.<sup>84</sup> The arrests were made violently in the middle of the night in the villages of Yalifombo, Lokumete and Mwingi, all located near the site of the new PHC Lokumete oil palm mill currently under construction. Villagers have been resisting the take-over of additional land by Feronia-PHC for the expansion of its industrial oil palm plantations around the new mill site.<sup>85</sup> Those arrested had also earlier attended a meeting

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- 77 Pers. comm. September 2019 and February 2020 between RIAO-RDC and the lawyer representing the family of Joël Imbangola Luneu. See also RIAO-RDC, DRC: Feronia security guard acquitted of murdering Congolese land defender. February 2020. <https://www.farmlandgrab.org/post/view/29469-drc-feronia-security-guard-acquitted-of-murdering-congolese-land-defender>
- 78 Pers. comm. with family members and NGO contacts in Boteka February, March and May 2020.
- 79 CDC Group, Update on the Independent Investigation commissioned by CDC to examine the circumstances surrounding the death of Joel Imbangola Lokwa. November 2019. <https://www.cdcgroup.com/en/news-insight/news/update-on-the-independent-investigation-commissioned-by-cdc-to-examine-the-circumstances-surrounding-the-death-of-joel-imbangola-lokwa/>, accessed 21 December 2020.
- 80 Unpublished statement by community dignitaries and community leaders from Boteka. Dated 16 December 2017. Signed at the town of Bempumba.
- 81 See also GRAIN et al. (2017): Feronia in the Democratic Republic of the Congo: Harassment, violence and oppression. <https://farmlandgrab.org/27490> and pers. comm. with village leaders from Boteka and NGO contacts in August and November 2017. Photos of people injured during the protest following the death of Mr. Engambi have not been released due to the security situation at Boteka and tensions between the company and the communities.
- 82 Front Line Defenders, Intimidation and attacks against land rights defenders in Tshopo and Equateur provinces. September 2019. <https://www.farmlandgrab.org/post/view/29183-intimidation-and-attacks-against-land-rights-defenders-in-tshopo-and-equateur-provinces>
- 83 RIAO-RDC, Land conflict between villagers and PHC-Feronia in Lokutu, DR Congo: Violent arrest of many community leaders. September 2019. <https://www.farmlandgrab.org/post/view/29157-land-conflict-between-villagers-and-phc-feronia-in-lokutu-dr-congo-violent-arrest-of-many-community-leaders>
- 84 World Rainforest Movement, Action alert! Immediate release of villagers in the DR Congo imprisoned on false charges related to a land conflict with Feronia Inc.. February 2020. <https://www.farmlandgrab.org/post/view/29470-action-alert-immediate-release-of-villagers-in-the-dr-congo-imprisoned-on-false-charges-related-to-a-land-conflict-with-feronia-inc>
- 85 The villagers at Yalifombo have little doubt that their leaders were arrested because they had insisted that the company fulfill its promises made in writing as part of the controversial social agreements in November 2018. In the case of Yalifombo, the company had agreed to build a school, a health dispensary and a water bore hole before the expansion planting of oil palm plantations would commence on an old rubber plantation immediately next to the village that for some reason remained part of the disputed Feronia-PHC concessions. Communities have been using the land for decades, with houses and fields found on the land now converted to oil palm plantations by PHC. The villagers were arrested when the planting started and they insisted that the company first deliver on its obligations before taking more land from them. Pers. comm in January 2020 with villagers in Yalifombo and during a meeting with the five persons arrested at Kisangani Central Prison.

between community leaders and members of the ICM's panel of experts where they had shared their grievances.<sup>86</sup> Those arrested have stated that the police officers who made the arrests in September 2019 were accompanied by the security guards of Feronia-PHC, and the villagers were transported in a company vehicle.<sup>87</sup>

One of those arrested was released from jail on payment of a large sum of money, several goats, chicken and other items – a fortune for a villager. The five Yalifombo villagers, unable to pay the requested sums, were transported to Kisangani Central prison, some six hours by motorboat from their village, and held in jail without charges for months.<sup>88</sup> After two court hearings that revealed inconsistencies in the case brought against them, they were eventually released on bail in early 2020, more than five months after their arrest.<sup>89</sup> Despite the inconsistencies that were exposed during the first two court hearings, their case has not been dropped. Another court hearing in October 2020 was cancelled when villagers had already arrived at the location of the district court, several hours travel away from the village of Yalifombo.

The extent of violence and harassment with connection to the plantation company security guards and police at the Feronia-PHC plantations is shocking. It is, however, far from an exception at industrial plantations. Community leaders from Sierra Leone to Cameroon report regular incidents of violence perpetrated against communities in and around industrial plantations.<sup>90</sup> Yet, development banks keep financing this violent plantation model that is based on depriving communities of their ancestral land in country after country. They maintain their support despite ample documentation of this violence inherent in the colonial plantation model. They claim that due diligence checks, bank adherence to safeguards, mandatory social action plans and commitments by their clients to voluntary certification assessments can prevent such violence. Other impacts of the colonial plantation model on the communities affected by the Feronia-PHC plantations have seemingly not even been assessed by the development banks. An analysis of impacts on the human right to food as enshrined in the *International Covenant on Economic, Social and Cultural Rights*, for example, is not mentioned in any of the publicly available due diligence and certification documents. Moreover, the development banks also seem to largely ignore important human rights norms like the *Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*.

86 Pers. comm. during visit between villagers at Kisangani Central Prison in January 2020 and a member of the NGO coalition co-publishing this report. The statements were confirmed in meetings with villagers at Yalifombo.

87 Pers. comm. during visit between villagers at Kisangani Central Prison in January 2020 and a member of the NGO coalition co-publishing this report.

88 Pers. comm. during meeting at Yalifombo village in January 2020, in which a member of the NGO coalition co-publishing this report participated. The statements were also confirmed in conversation between the NGO visitor and the five villagers at Kisangani Central Prison in January 2020.

89 A member of the NGO coalition publishing this report attended the court hearing on 28 January 2020. The village chief explained that Feronia took the last plots of land available to them to expand its oil palm plantations and that the company promised to build a hospital, a water bore hole, and more, before expanding the plantation onto the land used by the community. Because the company ignored community calls to live up to the promises made, the community joined the complaint submitted to DEG in 2018, he explained. A journalist who attended the court hearing published several articles and videos. See, among others: <https://twitter.com/WorldRainforest/status/1225097527420248070>; TeleSur Video 11 February 2020, Denuncian activistas abusos de empresa de aceite de palma. <https://videos.telesurtv.net/video/812290>. Accessed 21 December 2020. See also the official transcripts from the January 2020 court hearing in Kisangani at <https://www.slideshare.net/aujourdjour1/dossier-yalifombo>. Accessed 21 December 2020.

90 See, for example, Box Development banks and the expansion of monoculture plantations on the African continent in this report and case documents at <http://africanpeoplestribunal.org/resources/documents/>; FIAN, Case Report 2019. Land Grabbing for Palm Oil in Sierra Leone. February 2019. [https://www.fian.be/IMG/pdf/fian\\_b\\_report\\_landgrab\\_in\\_sl\\_malen\\_2019\\_full\\_weblow.pdf](https://www.fian.be/IMG/pdf/fian_b_report_landgrab_in_sl_malen_2019_full_weblow.pdf); M. Mason & R. McDowell, Rape, abuses in palm oil fields linked to top beauty brands. November 2020. <https://apnews.com/article/palm-oil-abuse-investigation-cosmetics-2a209d60c42bf0e8fcc6f8ea6daa11c7>; F. Garcia Delgado, An oil palm front advances on an Indigenous community in Peru. December 2020. <https://news.mongabay.com/2020/12/an-oil-palm-front-advances-on-an-indigenous-community-in-peru/>; Oakland Institute, Land Deal Brief: Massive Deforestation Portrayed as Sustainable Investment: The Deceit of Herakles Farms in Cameroon. September 2012. [https://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/Land\\_deal\\_brief\\_herakles.pdf](https://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/Land_deal_brief_herakles.pdf)



## 21 Complaints Mechanism jointly operated by FMO, DEG and Proparco<sup>91</sup>

The Independent Complaints Mechanism (ICM) was established jointly by the Dutch and German development banks FMO and DEG in February 2014, with France's Proparco joining in July 2018.<sup>92</sup> Individuals, organisations or other parties who are negatively affected by an investment financed by any of the three development banks can submit a complaint, or nominate someone to file a complaint on their behalf.

Once a complaint is filed, it is assessed by an international Expert Panel, currently consisting of three persons. The panel will assess whether the complaint is admissible and determine if the complaint will proceed to a dispute resolution / mediation process or a compliance review. In the latter case, the Expert Panel investigates whether the development banks complied with their respective policies relevant to the investment in question. Three complaints involving a compliance review have been filed thus far with the ICM through DEG; the FMO website lists four cases. Procedures for dispute resolution / mediation are still being developed following the admission of the first complaint requesting dispute resolution / mediation in November 2018 – the complaint of nine of the communities affected by the Feronia-PHC plantations in the DR Congo.

Grievance mechanisms have grown increasingly popular not just with the development banks but also with large companies. Many multinational corporations boast of having set up in-house grievance mechanisms. But they have turned out to be a huge frustration to communities. In theory, they allow affected communities to seek redress without facing the many hurdles that may prevent them from filing a case in the court of law. In practise, however, many of the same hurdles – high costs, lack of access to legal advice, intimidation by the company, procedures biased against the community – also block community access to grievance mechanisms, or prevent just resolution of conflicts. This is particularly so where land legacy conflicts are involved. In addition, these are voluntary mechanisms and the outcomes are not legally binding. Mechanisms such as the ICM thus have to be seen in the context of the wider trend of corporate demands for replacement of binding regulation and regulatory oversight with voluntary processes such as certification or grievance mechanisms.

Little documentation exists to date about incidents where a community complaint has led to a mediation between a community and the company involved in a land legacy conflict. Two disconcerting trends, however, already emerge. First, as currently set up, grievance mechanisms ensure that land legacy conflicts do not become an impediment to development bank investments. Resolution of such conflicts seems secondary. Second, the mediation processes tend to be structurally biased against resolution of a land legacy conflict in a way that would do justice to community demands. It appears that the existing grievance mechanisms are designed to tire out communities and appease them with the promise of social projects and employment at the company rather than ensure the restitution of land to communities.

A mediation process triggered by a complaint under the World Bank International Finance Corporation's (IFC) grievance mechanism against a plantation company in Uganda is a case in point. Around 1,000 families were evicted to make room for timber plantations by a company called New Forests Company. The mediation left nearly half the community without any compensation for the illegitimate eviction. The other half obtained just one hectare of land per family regardless of how much land the company had taken from them. The company and development banks, meanwhile, cite the mediation process that took place as evidence that conflicts have been resolved when clearly the community has been seriously short-changed and left with the task to rebuild its resistance struggle for restitution of their ancestral land.<sup>93</sup>

91 See: NGO Briefing on Independent Complaints Mechanism of FMO and DEG. February 2014. [https://www.banktrack.org/download/briefing\\_on\\_fmo\\_compliance\\_mechanism/1140213\\_fmo\\_compliance\\_mechanism\\_briefing\\_final.pdf](https://www.banktrack.org/download/briefing_on_fmo_compliance_mechanism/1140213_fmo_compliance_mechanism_briefing_final.pdf)

92 FMO's webpage of the ICM is available at <https://www.fmo.nl/independent-complaints-mechanism>, accessed 21 December 2020.

93 Witness Radio, The Agony of a Tree-Planting Project on Communities' Land in Uganda. WRM Bulletin 251. 2020. <https://www.wrm.org.uy/articles-from-the-wrm-bulletin/section1/the-agony-of-a-tree-planting-project-on-communities-land-in-uganda/>

## 22 Communities ask why it is taking so long for the promised mediation to even take off

There is growing frustration among villagers from nine communities in the provinces of Tshopo and Equateur who, with support from the Congolese organisation RIAO-RDC, submitted their complaint to the ICM in November 2018.<sup>94</sup> They did so with high hopes that the process would help resolve their 100-year long struggle for justice and restitution of their ancestral lands.

The process, however, has become a huge frustration to the complainants. Theirs is the first complaint that has been requesting a mediation under the joint FMO, DEG and Proparco ICM procedures. Two years have passed since the complaint was declared admissible in January 2019 by the ICM's Expert Panel, yet complainants are still in the dark as to even the most basic information such as when the mediation will start in earnest or who has been appointed as mediator.

While the restrictions due to the COVID-19 pandemic may explain some of the delays since February 2020, the delays and haphazard communication of the ICM predate the pandemic. Community members were expressing their frustration about the lack of communication and absence of support, the company actively undermining the process and long delays well before the current global health crisis took hold. For example, in their complaint submission, communities requested "that the independent complaints panel ensure that complainants have access to independent advice throughout the process of dispute resolution and meditation." They noted their 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, and referred among others to the *Voluntary Guidelines on the responsible Governance of tenure of land, fisheries and forests in the Context of national Food Security* which call on states and other parties to remove all forms of discrimination related to tenure rights, including those resulting from lack of legal capacity and lack of access to economic resources.<sup>95</sup>

Although it is obviously too early to speculate on the outcome of the mediation or embark on an evaluation of the mediation process, this section points to already perceptible structural flaws in the complaints process. These flaws are very likely to militate against the pending mediation process delivering justice for the communities. They must be addressed by the development banks that set up the mechanism if they care to run a mediation process that will do justice to complainants' demands for restitution of their ancestral lands.



Yalifombo villagers at the court hearing in Kisangani on 28 January 2020. Photos: Oskar Epelde. @oskarepelde

94 Community Complaint against DEG-FMO financing of PHC available at <https://tinyurl.com/y2s8wtpc>

95 Point 4.6 of the Voluntary 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." Point 6.6 of the Guidelines calls on "States and other parties [to] consider additional measures to support 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 [...]" <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>



Newly planted oil palm plantation near the village of Yalifombo and close to the site of the new Feronia-PHC palm oil processing plant at Lokumete.

### Extremely slow process

The only step in the mediation process that has thus far been undertaken within a reasonable timeframe, was the assessment of whether the complaint submitted on 8 November 2018 was admissible. The Expert Panel delivered that verdict on 7 January 2019. It then took five months for an Expert Panel delegation to undertake its first visit to the plantation area; another three months passed before a panel delegation met with complainants a second time, in August 2019. On both of these visits, the Expert Panel met with complainants from the two locations separately rather than bringing them together for joint discussions in one location. No further Expert Panel visit has taken place since.

Complainants are disappointed that communication from the Expert Panel to the complainants has been extremely limited.<sup>96</sup> Complainants were, for example, not provided with a report on the first meeting with the Panel before the second visit took place, making it very difficult to prepare for this second visit. They also expressed confusion about the purpose of this second visit, relaying that it felt like being questioned, having to go over much the same content as during the first meeting. They also expressed the feeling that their complaint was being opened to participation by others with different motives rather than the meeting with the Expert Panel being conducted as an open exchange with complainants about how this extremely challenging mediation could be organized. On 22 November 2019, the Expert Panel published a “Preliminary Review Report”.<sup>97</sup> The report contains the panel’s recommendation “that a dispute resolution be conducted” and a confirmation that “all relevant actors have shown support for a mediation process during the pre-assessment visit.” The report also notes that “the mediation process will depend on the willingness of all stakeholders to participate in a cooperation or discussion and avoid acts that may increase tensions at local levels.”<sup>98</sup> As of December 2020, communities had not received substantive information beyond that contained in this Preliminary Review Report and a short note that due to COVID-19 restrictions, the mediation will be delayed. This Preliminary Review Report remains the only substantive document posted on the DEG’s ICM website on this complaint.<sup>99</sup>

96 Pers. comm. during meetings 23–28 January 2020 at the Lokutu plantation site (including with signatories of the complaint documents submitted to the ICM in November 2018) between a member of the NGO coalition co-publishing this report. co-publishing this report and community representatives.

97 ICM Expert Panel Preliminary Review Report DEG complaint 18-002 PHC (Feronia) re Plantations et Huileries du Congo SA(PHC). November 2019. English version: [https://www.deginvest.de/DEG-Documents-in-English/About-us/Responsibility/ICM-Preliminary-Review-Report-DEG-complaint-18002-PHC\\_191122\\_final\\_EN-2.pdf](https://www.deginvest.de/DEG-Documents-in-English/About-us/Responsibility/ICM-Preliminary-Review-Report-DEG-complaint-18002-PHC_191122_final_EN-2.pdf) French version: [https://www.deginvest.de/DEG-Dokumente-weitere-Sprachen/Verantwortung/ICM-Preliminary-Review-Report-DEG-complaint-18002-PHC\\_191122\\_final\\_FR.pdf](https://www.deginvest.de/DEG-Dokumente-weitere-Sprachen/Verantwortung/ICM-Preliminary-Review-Report-DEG-complaint-18002-PHC_191122_final_FR.pdf), (accessed 16 November 2020).

98 Ibid, footnote 63, ICM Expert Panel Preliminary Review Report, page 15.

99 Beschwerdemanagement. PHC (FERONIA) / 18-002. <https://www.deginvest.de/%C3%9Cber-uns/Verantwortung/Beschwerdemanagement/Feronia/index-2.html> Accessed 16 November 2020.

## 24 Major design flaws

The complaint against Feronia-PHC undoubtedly was going to be a challenging one for any dispute resolution process to carry out well. Mistrust is deep-seated and the company has walked away from previous agreements with communities where much less was at stake for the company than in this complaint focused squarely on the land legacy conflict. Logistically, the huge distances between communities involved in the complaint are a major challenge, with complainants from communities spread across two provinces. More communities, including from the third plantation site, in a third province, are eager to be involved in the complaint because they share the same grievances and deprivation of their ancestral land as a result of the colonial PHC concessions.

In this context, clear and fair procedures are key. Regretably, they have shown to be lacking.

The ICM complaints procedures require that the company confirm its willingness to participate in the mediation. Initially, it was unclear whether Feronia-PHC would be agreeing to the mediation. When the Feronia CEO who had given his commitment, left the company – the interim CEO had to re-confirm the previous commitment. This procedure then had to be repeated once again when Feronia Inc. went into bankruptcy and the PHC assets were handed over to the private equity company KKM. These procedural requirements, we understand, had not been communicated to the complainants.<sup>100</sup> And while the European development banks have all confirmed that the new owner has committed to engage in the mediation<sup>101</sup>, neither the banks nor the ICM have to our knowledge informed the complainants directly that the mediation will continue and how the recent ownership change will affect the mediation.

For both visits, the **Expert Panel relied on Feronia-PHC for organizing part of the logistics and used accommodation at the company facilities and transport associated with PHC.** While organizing these visits certainly is a challenge, the sites are reachable without depending on company logistics. Relying on the company for organizing transport meant compromising trust from communities, not least because it meant that the Expert Panel was accompanied by company people or people seen as allies of the company. Using accommodation at the company facilities also limited the possibility for community members to meet with the Expert Panel delegation unobserved by Feronia-PHC.<sup>102</sup>

**The ICM does not have an independent budget.** This leads, among others, to DEG deciding which costs incurred by the community support organisation RIAO-RDC when accompanying the Expert Panel visits the complaint mechanism will reimburse. While a promise had been made by DEG prior to the first Expert Panel visit to cover certain expenses incurred by RIAO-RDC for accompanying that visit, the conditions attached became untenable when the Panel used company housing and transport. This essentially left RIAO-RDC with no choice but to seek alternative accommodation and transport arrangements that did not force RIAO-RDC members to use company facilities in a context where tensions between the company and communities had flared up at all plantation sites and RIAO-RDC member, Joël Imbangola Luneu's death had occurred between the two visits, for which a PHC security guard was subsequently arrested and charged but later acquitted (see *chapter Communities beset by abuses*).

**The ICM does not provide financial or legal support for communities during the mediation process.** This essentially excludes many communities who do not have access to funding from filing

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100 During a workshop organised by RIAO-RDC in Lokutu in January 2020, in which a member of the NGO coalition publishing this report participated, the NGO member gave a presentation on the ICM procedures. Workshop participants, several of whom had been present at meetings the ICM Expert Panel held with complainants during its two visits to the Lokutu plantation site, stated that they had not been aware of these procedures which require such re-confirmation of the company commitment to participate in the mediation.

101 See, for example, the BIO statement "A statement on the completion of the restructuring of Feronia / PHC". November 2020. <https://www.bio-invest.be/en/news/a-statement-on-the-completion-of-the-restructuring-of-feronia-phc>, accessed 16 November 2020.

102 In conversations in January 2020 with a member of the NGO coalition publishing this report, two community members stated in separate conversations that they had not sought a conversation with Expert Panel members outside the community meetings because of the Panel's choice of accommodation.



a mediation complaint in the first place. Or, as in this case, it leaves them at a huge disadvantage. The communities that submitted the complaint against the development bank funding of PHC, for example, requested access to legal support, citing the *Tenure Guidelines*. Whether this support will be granted, or how else the ICM will ensure a level playing field with regards to access to legal advice during the mediation, has to our knowledge not been discussed yet with complainants. The disadvantage is even more of an issue in a complaint as complex as that against Feronia-PHC whose vast concessions span 107,000 hectares in three provinces and affect hundreds of communities. Even for a meeting of only the complainants appointed by the nine communities which submitted the complaint, half of them would have to take an internal flight or travel for several days one way on the Congo river. Community leaders from the nine communities have thus been unable to meet and prepare together since they submitted the complaint. The development banks have also not provided financial support to RIAO-RDC, the organisation chosen by the complainants to submit the complaint on their behalf and accompany them in the process. By contrast, development banks have provided upwards of US\$250,000 to the consultancy Earthworm to advise Feronia-PHC on relations with communities.<sup>103</sup> This has created much confusion among communities, for whom the role that Earthworm is playing is unclear, not least because at one stage, the consultancy is said to have advocated a parallel mediation process.



Group of villagers meeting with ICM Expert Panel members. Photo RIAO

### Expert Panel decisions that have undermined community trust in the panel's independence

While sporadic communication and the slowness of the process are testing complainants' patience, other Expert Panel decisions have started to undermine community trust in the independence of the Panel. Two examples (as summarised below) for this were cited by community members with whom a member of the international NGO coalition supporting the communities met at the Lokutu plantation site in January 2020.<sup>104</sup>

**Confusion over Expert Panel role in mediation.** For complainants, the role of the Expert Panel in the mediation remains unclear. While after the first visit, they were left with the impression that Expert Panel members would be present during the mediation meetings, they are now under the impression that the mediation will be carried out by someone else chosen by the Expert Panel. How exactly this choice will be made or has been made and what role the company may play in determining the mediators, remains unclear to the complainants. They fear that their input into this discussion may not be reflected in the final choice of the mediator(s).

**Confidentiality of meetings not ensured.** Shortly after the second Expert Panel visit, several villagers were arrested without charges in the middle of the night, and five of them were detained for five months, with the court case still hanging over their heads after their release on bail in March 2020 (chapter

<sup>103</sup> FMO Building Prospects Fund 2019. <https://buildingprospects.fmo.nl/2019/annual-report-2019/performance-on-our-strategy/production-capacity-development>. See also the Earthworm statement on its work with Feronia. January 2020. <https://www.earthworm.org/id/news-stories/our-work-with-feronia-in-the-democratic-republic-of-congo>. Accessed 21 December 2020.

<sup>104</sup> The 12-day visit included meetings with the five villagers from Yalifombo held at Kisangani central prison between September 2019 and March 2020 and the lawyer representing them in the court case; open meetings in five communities and meetings with local government representatives and the participation in a two-day workshop with over 20 representatives from communities involved in the ICM complaint. The examples described in the text were mentioned by community members attending the workshop as well as in meetings at the communities.

Communities beset by abuses for details). Two of the villagers who were arrested also took part in meetings with the Expert Panel during their second visit. During this meeting, they shared information about company repression and the company expanding onto land used by the community.<sup>105</sup> The company had promised to build a school and health dispensary and install a water pump before starting the planting. When PHC began planting before even starting construction of a school or installing the water pump, community leaders demanded the company comply with its commitment; they repeated this demand during the meeting with the Expert Panel.<sup>106</sup> Voicing their concern about repression if they participated in the mediation meetings, villagers understood that the Expert Panel would set up a hotline so they could immediately reach out to the Expert Panel. The hotline still does not exist. And the five villagers who spent over five months in jail and still have a case hanging over their heads, feel abandoned by the Expert Panel, never having heard once from the Panel in all the months they were kept in jail.



In a meeting on 25 January 2020 with a member of the NGOs co-publishing this report community members of Bokala Wamba, Lokutu, stated that the plastic tube was installed by the company to set up a water bore hole and that no further work has been done. They are still waiting for the company to install the promised water bore hole.

**Development banks must respect legitimate land rights of local communities, acknowledge land legacy conflicts and exploitation of communities' palm groves dating back to colonial era by Feronia-PHC and ensure restitution of ancestral community land to communities**

Clearly, the bankruptcy of Feronia Inc. in June 2020 was a moment where the European development banks could have done a lot to acknowledge and redress (in small part) their countries' colonial legacy in the Congo. They chose not to. Instead of using their de-facto ownership position to establish a process towards the restitution of land based on international human rights law<sup>107</sup>, they chose to uphold the exploitative plantation concession model and claim that their investment in this model will bring 'development' and employment. It hasn't done so in the more than 100 years since the land was taken from communities by force and these communities are tired of hearing more empty promises that development and employment are just around the corner. One hundred years on from that colonial-era theft, they continue to experience extreme poverty, repression, violence and deprivation.

Handing the PHC plantation and milling assets over to a private equity firm, as the development banks have just done, is unlikely to resolve the conflicts that PHC has with communities.

105 Pers. comm. during visit between villagers at Kisangani Central Prison in January 2020 and a member of the NGO coalition co-publishing this report. The statements were confirmed in meetings with villagers at Yalifombo during the same January 2020 visit. See also the transcripts from the January 2020 court hearing in Kisangani at <https://www.slideshare.net/aujourdjour1/dossier-yalifombo>. Accessed 21 December 2020.

106 Pers. comm. during January 2020 visit. The Expert Panel has confirmed that the setting up of a hotline was discussed at a community meeting during their second visit in August 2020. Such a hotline, the Expert Panel member explained, would be set up once the mediation started while community members were under the impression such a hotline would be set up immediately following the Expert Panel delegation visit.

107 As mentioned before, the **Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security** (2012) underscore the pre-existing human rights obligations of States, both within and outside their territories. This applies in particular to the requirement of consultation and "active, free, effective, meaningful and informed participation" prior to any transfer of legitimate land rights (para. 3B6), but also with regard to the obligation of "restitution for the loss of legitimate tenure rights to land, fisheries and forests" (para. 14.1-14.4) or the requirements applicable to large-scale transactions of tenure rights (para. 12.1-12.15), e.g. "States should ensure that existing legitimate tenure rights and claims, including those of customary and informal tenure, are systematically and impartially identified, as well as the rights and livelihoods of other people also affected by the investment, such as small-scale producers" (para. 12.10) <http://www.fao.org/cfs/home/activities/vggt/en/>, accessed 21 December 2020.

According to community members, the company has been offering various models of community enterprises where community members would harvest the oil palm fruit and sell the harvest to PHC. Communities have not been interested, for a good reason: they say that the company has shown that it cannot be trusted to pay its workers.<sup>108</sup> If PHC cannot even pay the meagre wages for the labourers, how is it going to pay for the oil palm fruits that people bring to the mills? Such models would also not address the core community demand: restitution of their ancestral land.

Many communities that have been deprived of their ancestral land ever since Lord Leverhulme's company destroyed their palm groves and turned them into industrial oil palm plantations are tired of empty promises from companies and European development banks, the latest of which is the DEG-led mediation that has yet to get off the ground. Tired also of waiting any longer, the first communities in Lokutu have begun to take their communities' development in their own hands and are producing palm oil from the fruits harvested from plantations that PHC has abandoned. Their operations are showing the potential that lies in communities shaping their own destiny once they regain control over their ancestral land. The communities in Lokutu are inspired not least by seeing the hundreds of community palm oil mills operating in the region, whose business is booming.

Such a community-centered approach would also be in line with key human rights norms, including the right to food and the rights of peasants, which establish the obligation of states (the Congolese government, but also (European) governments financially supporting Feronia-PHC) to respect, protect and fulfil the right to food (and related human rights) of affected communities, as well as to support and protect the specific rights of peasants and other people working in rural areas, by supporting models that fulfil their human rights and aim "at the conservation and sustainable use of land [...], including, through agroecology [...]". The recently adopted *UN Declaration on Peasants Rights* makes very clear that, in this case, (European) States must ensure that their "investment policies and programmes contribute effectively to protecting and strengthening local livelihood options and to the transition to sustainable modes of agricultural production [...], including agroecological and organic production" (article 16); and more generally, "that non-State actors that are in a position to regulate [...] respect and strengthen the rights of peasants and other people working in rural areas" (article 2.5).

It is very unlikely that any new private equity owner in PHC would succeed where Feronia Inc. failed due to its reticence in addressing the community request for resolving the land legacy issue that is at the centre of the conflict between company and communities. Given that the European development banks are still tied to PHC through debt, with mortgages to PHC's lands as collateral, they still have a second chance to do the right thing and use the collapse of Feronia Inc. to initiate a process of restitution of the land to the communities who have been demanding the return of their ancestral land ever since it was brutally taken from them by the company set up by Lord Leverhulme. The investment in Feronia-PHC is certainly not the only disastrous investment in agriculture by European development banks – but the Feronia Inc. debacle must be the last. And European development banks must do the right thing and respect community demands for restitution of their ancestral land.



School constructed in the community of Centrale, near Bokala Wamba, as part of Feronia-PHC commitment to communities at Lokutu. Villagers interviewed in January 2020 were under the impression that the company considered the construction of this school as completed – despite the lack of toilets and windows. Photo credits: World Rainforest Movement.