

**Independent Complaint Mechanism (ICM) /
DEG / FMO / Proparco**

Preliminary Review Report

22 November 2019

**DEG complaint 18-002 PHC (Feronia)
re Plantations et Huileries du Congo SA (PHC)**

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This report is based on the information, which has been provided to the panel by the complainants, the lenders and other relevant parties. The expressions of opinion and judgement made by the Panel are not intended to act as a finding of fact or legal assessment and cannot be relied upon as such in any court of law.

Preliminary Review Report

Independent Complaint Mechanism (ICM) / 22 November 2019

DEG complaint 18-002 PHC (Feronia) re Plantations et Huileries du Congo SA (PHC)

Executive Summary :

In this preliminary review report summarizes the Independent Complaint Mechanism (ICM) of the Deutsche Investitions- und Entwicklungsgesellschaft mbH (DEG) the findings of a its first visit and investigation phase of a complaint, that the Complaints' Office of Deutsche Investitions- und Entwicklungsgesellschaft mbH (DEG) received on 5 November 2018. It concerns the DEG-financed operation Plantations et Huileries du Congo SA (PHC), a subsidiary of Feronia Inc., a company listed at the Toronto stock exchange.¹

The complaint was lodged by a non-governmental organisation (NGO), RIAO-RDC (Réseau d'Information et d'Appui aux ONG en République Démocratique du Congo) and its chairperson Mr. Jean-François Mombia Atuku ("Complainant") on behalf of a number of people, including notables and other community leaders from communities and groups from areas on two plantation sites in Boteka and Lokutu, who claim that they have been negatively impacted by the project and that this was a result of a failure to comply with DEG's policies. The complaint is asking that the Independent Complaints Mechanism (ICM) shall support a dispute resolution and mediation in relation to the various identified issues, rather than carry out a compliance review of DEG's actions against its policies.

On January 7, the ICM published a Notice of Admissibility and declared the case admissible. Under the terms of Para. 3.2.3 of its policy, the ICM Panel is required to conduct a preliminary review of the issues raised by the complainant RIAO-RDC in the complaint text. In the Preliminary Review, the panel investigated three aspects: (a) Firstly: The Panel needed to check who is backing the complaint and to understand the the size of the groups that support the complaint. (b) Secondly: The issues raised in the complaint need to be verified and the relationship to the project funded by DEG needs to be confirmed. Furthermore, it needs to be assessed whether the issues that can be addressed through the dispute resolution / mediation process need to be clarified and captured in more detail, as they are currently only briefly summarised in the complaint. (c) Thirdly: The ICM needed to identify and evaluate any previous and existing attempts to resolve the dispute and any known barriers to resolution.

¹ While the operation is also financed by Development Bank of the Netherlands (FMO) and other European Development Finance Institutions in a consortium and while FMO is also part of the ICM, the complaint was directed to DEG as consortium leader.

The Panel was able to confirm the legitimacy of RIAO-RDC as a relevant actor representing local communities in the mediation process, particularly people that have supported the complaint. At the same time, it recognized that a larger part of the communities in Boteka as well as in Lokutu would like to select their own representative for a mediation or would like see also other actors representing them and being part of such a process. Establishing locally accepted representation for all concerned persons will thus be an important element of any mediation/dispute resolution process. This needs to be coordinated with the complainant– in the further process. The preliminary review confirmed also that the issues highlighted in the complaint are relevant issues that should be dealt with in the mediation phase. While information details and judgements vary substantively between the stakeholders, the relevance to talk about these issues was confirmed by all the representatives from the communities visited and the other stakeholders.

Based on the findings in the Preliminary Review, the ICM Panel concludes the Preliminary Assessment Phase and recommends that a dispute resolution be conducted. A second trip of the ICM to the sites end of August 2019 confirmed that all potentially relevant actors are supportive of a mediation. Details of (i) who will be part of such a mediation, (ii) who is accepted as representatives of communities, (iii) what issues should be discussed, and (iv) a development of an understanding about potentially good outcomes will have to be addressed with all actors at the beginning and during the mediation process. The experiences with mediation through development banks so far clearly show that it is part of the process to decide which actors shall be involved as well as to clarify who represents communities and what issues need to be discussed. While it is clear that the complainant, the company and representatives of local communities need to be part of the mediation, other actors might join for the whole mediation, or for parts of it, such as other NGOs, trade unions, religious leaders etc. The process itself will give answers to these questions and it would be wrong to determine them too early.

With this in mind, the mediation/dispute resolution phase in the process can formally start. The ICM is hopeful that at the mediation as such can start early in 2020, in holding the necessary discussions with the different stakeholder and in finding out, when, where and with whom the mediation shall happen and in identifying what would be potential results acceptable to the different stakeholders. The mediation process must take time at the beginning to define Rules of Engagement, in order to create an atmosphere of respect, security and trusts as well as clear rules for public communication and confidentiality.

1. Background

On 5 November 2018, the Complaints' Office of Deutsche Investitions- und Entwicklungsgesellschaft mbH (DEG) received a complaint, dated 5 November 2018. It concerned the DEG-financed operation Plantations et Huileries du Congo SA (PHC), a subsidiary of Feronia Inc., a company listed at the Toronto stock exchange. The complaint was lodged by a non-governmental organisation (NGO), RIAO-RDC (Réseau d'Information et d'Appui aux ONG en République Démocratique du Congo) and its chairperson Mr. Jean-François Mombia Atuku ("Complainant") on behalf of a number of people, including notables and other community leaders from communities and groups from areas² who claim that they have been negatively impacted by the project and that this was a result of a failure to comply with DEG's policies. The complaint is asking that the Independent Complaints Mechanism (ICM) shall support a dispute resolution and mediation in relation to the various identified issues, rather than carry out a compliance review of DEG's actions against its policies.

While the operation is also financed by FMO and other European Development Finance Institutions in a consortium and while FMO is also part of the ICM, the complaint was directed to DEG as consortium leader. Upon request of the ICM Independent Expert Panel, DEG has confirmed that the case is treated for the time being as a complaint to DEG only.

On January 7, the ICM published a Notice of Admissibility and declared the case admissible. The Panel decided that the admissibility criteria are met, namely: The Panel is satisfied that

- DEG has an active financial relationship with the client,
- there is an indication of a potential relationship between the DEG-financed operation and alleged impacts, and
- the complaint relates to substantial direct or indirect and adverse impacts or risks.

2. Issues raised in the complaint

The complaint covers three areas of concern/issues:

(1) The first issue relates to the legitimacy of the land titles of the plantation and access rights to the plantations sites. The complaint describes that PHC claims concession rights over 107,000 hectares of land, of which around 30,000 ha are currently managed by the company as an industrial palm oil plantation. The complaint text challenges the legitimacy of the land titles of the company and claims that communities in the area are unaware of the boundaries of PHC's land concessions and that the land validation process carried out, after the granting of a loan facility by a consortium of three development banks in 2015 (DEG Germany, FMO Netherlands, BIO Belgium), demonstrated some irregularities pertaining to concession con-

² The complaint is written in the name of representatives from six communities in Lokutu (Yanongo, Mwingi, Mwando, Lokutu, Bongemba, Bokala) and from three in Boteka (Boteka, Bengale et Bolombo, Bolombo Elinga). The names are spelt here as they are presented in the complaint.

tracts. The complaint text claims that there have been breaches of the communities' customary land rights. The complaint text also claims that communities are deprived of their use of their customary land, forests, water sources, and related natural resources, which allegedly led to deep poverty and extreme food insecurity.

(2) In addition to the land issues, the complaint text claims that community members, including residents of communities submitting the complaint, have been subject to regular harassments as well as grave physical and human rights abuses by PHC security guards and the police.

(3) The complaint text claims that communities have no level playing field in all negotiations with PHC given the limited access to information and knowledge of right. The text claims that this 'knowledge gap' and the absence of legal support and affordable legal aid is contrary to standards developed in the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests adopted by the FAO council in 2012. The complainants describe that they are of the view that DEG, as well as the other lenders, have failed in ensuring their due diligence in assessing these issues and in putting in place appropriate remedial actions. Moreover, the text of the complaint claims that the new concession contracts developed in 2015 after the granting of the loan facility were done without the consent or consultation of the affected communities and that the IFC Performance Standard 1 on Assessment and Management of Environmental and Social Risks and Impacts, Standard 5 on Land Acquisition and Involuntary Resettlement and Standard 7 on Indigenous Peoples are not met by the project.

The complainants assume that the last attempts to solve conflicts between PHC and the communities, particular the currently used Social Protocols (see below), have not been successful. These Protocols were initiated and organized by the provincial Government in Kisangani in November 2017. The process involved PHC, community representatives, and the concerned administration to reconcile the described land use conflicts. Therefore, the complainants have specifically requested for a dispute resolution and mediation process to be led by the ICM with the aim of (i) resolving the long-standing and ongoing land dispute and the alleged deprivation of the use of customary land and (ii) seeking to address any subsequent impacts on poverty, alleged harassment, and human rights abuses.

3. Questions for preliminary review

Under the terms of Para. 3.2.3 of its policy, the ICM Panel is required to conduct a preliminary review of the issues raised by the complainant RIAO-RDC in the complaint text. Based on the Preliminary Review, the ICM Panel recommends whether the ICM process should be continued and, if so, whether a compliance review or a dispute resolution process should be conducted (see para. 3.2.4). In this Preliminary Review, the panel has identified the following points, which need to be determined and clarified:

- a) **Firstly:** The Panel needs to **identify the size of the groups that support the complaint**. The number of persons from communities that support the complaint needs to be clarified. Furthermore, it must be determined (i) whether they represent individual claims or whether the complaint is done in the name of the whole community or parts of it, and (ii) whether all of these complainants intend to be represented by Jean-François Mombia Atuku and RIAO-RDC or whether some of these complainants intend to pursue their complaints as individual complainants or through different representation.
- b) **Secondly: The issues raised** in the complaint need to be verified and the relationship to the project funded by DEG needs to be confirmed. Furthermore, it needs to be assessed whether the issues that can be address through the dispute resolution / mediation process need to be clarified and captured in more detail, as they are currently only briefly summarised in the complaint.
- c) **Thirdly:** The ICM needs **to identify and evaluate any previous and existing attempts to resolve the dispute** and any known barriers to resolution.

4. Assessment methods

The ICM's preliminary assessment of the complaint consisted of:

- a desk review of project documentation;
- calls & meetings with DEG's project team;
- exchange with representatives of the communities both through calls as well as physical visits to Boteka and Lokutu
- visit to project sites and some of the villages where the Complainants live, during May 24th to June 04th, 2019³.

5. Field visit

To investigate these three issues mentioned in the admissibility note, the panel conducted a first mission to DRC in May / June 2019. The ICM ensured that its trip was organised in such a way that the organisation representing the complainants (RIAO-RDC) and its representative, Mr. Jean-Francoise Mombia Atuku, were able to participate. During the trip, the panel visited the two plantation locations that are addressed in the complaint, Boteka and Lokutu. The company PHC (Feronia) was open to receive the ICM-team and facilitated the travel and stay at the plantation sites. The Panel was able to meet with the RIAO-RDC support groups at both

³ The list of villages visited can in the found in the Annex. It was impossible during the first trip to visit all villages that supported the complaint, but the team met representatives from the villages or 'groupements', from which list of signatures were attached. In one of those village for the Boteka region most of the people present declared in the meeting that they do not support the complaint (Bolondo Elinga). See details in the Annex.

locations, with other community representatives, different stakeholders as well as with several representatives of PHC (Feronia) at both locations.

6. Preliminary Review findings

The text of this chapter follows the three issues for investigation described in the admissibility note of the Panel:

Related to a): Identification and number of supporters to the complaint

During the trip, the Panel could verify that RIAO-RDC is present at both locations and has a legitimate base of supporters and local representatives. The ICM met persons from all villages⁴ that had signed the sheets supporting the complaint. At the same time, it was observed and identified that other communities or persons in Boteka and Lokutu did not wish to be represented by RIAO-RDC. It needs to be noted that RIAO-RDC never claimed to represent all villages. Several community representatives from villages / communities that have not signed the complaint and that the Panel met, supported the issues raised in the complaint. The panel was not able to identify if all persons and stakeholders have the same understanding of the issues at stake, but – in general – the issues are supported broadly by most stakeholders. Community representatives argued in all meetings that it would be important for a mediation to directly include the leadership of communities in a dispute resolution and mediation process. Some stated that they would not like to be represented by RIAO-RDC. Others requested that the ICM should include also other local stakeholders, including NGOs, in any action related to mediation.

To sum up: The Panel confirms the legitimacy of RIAO-RDC as a relevant actor representing local communities in the mediation process, particularly people that have supported the complaint. At the same time, it recognized that a larger part of the communities in Boteka as well as in Lokutu does not necessarily want to be represented by RIAO-RDC.⁵ Most of the persons met in villages were generally supportive of the idea of a mediation, but would like to select their own representative for a mediation or would like to see also other actors representing them and being part of such a process. Establishing locally accepted representation for all concerned persons will thus be an important element of any mediation/dispute resolution process. This needs to be also coordinated with the complainant.

⁴ In Boteka, supporters were identified in all villages mentioned in the complaint (Boteka, Bongale 1 and 2 as well as from Bempumba). In Bolondo Elinga supporters were met, while others persons of the village were reluctant to be represented by RIAO. In Lokutu, supporters were met from Lokutu, Bongemba, Mwingi, Mwanda, Bokale and Yalomgo (supporters of these six villages signed the complaint). The ICM could not visit all villages, but met representatives from these villages in meetings organized by RIAO or in meetings with other communities.

⁵ Quantifications are to be read carefully because the ICM could only meet a sample of communities in both locations. Particular in Lokutu where the number of communities is much bigger than in Boteka, the ICM could identify support for RIAO and also communities that do not feel represented by RIAO and / or do not want to be represented by RIAO.

Related to b): Better understanding of the issues raised in the complaint

This report is not written to give a judgement on the facts and issues found as a judgement of the ICM. Its only purpose is to describe if the issues raised in the complaint letter are relevant issues that were confirmed during the first visit by different community representatives. An important step of the planned mediation will be that the stakeholders agree on the list of issues to be mediated. At a later stage, the ICM will elaborate an issues paper that will describe the different positions found to each of the issues.

- (1) Land issues are at the core of the complaint document**, particularly the legitimacy of the land titles of the plantation in general and access rights of communities to unused parts of the plantation sites.⁶

Findings during the visit:

There seems to be an understanding, broadly shared by communities visited, that the land, where the company is operating, historically is land, which was used by and was the property of the communities. Therefore, the expectation is that the company, in exchange for using that land, should ensure better realization of development benefits to communities, particularly now as the company is modernizing its plantations and its mills. In this respect, communities framed land issue as a symbolic issue, which highlights that the communities do not feel they are receiving sufficient benefits from the presence of the company. Beside this general understanding, some communities mentioned that the mediation should address specific problems of land demarcation or better access to land for other agricultural activities. The ICM notes that the land belongs to the State and that PHC / Feronia has a leasehold to use it. It is also important to note that the complaint challenges the legitimacy of the land titles, while the company has a different understanding of the issues and that it will be a task for the mediation to formulate the aspects of the land issues that can and should be dealt with during the mediation.

The ICM notes a general observation / feeling of communities that they are not receiving enough benefits from the plantation. This is amplified by the slow implementation of the Social Protocols (see below). The communities claim that they are not aware of the current difficulties of the company to generate profits and the current need for high investments in order to make the plantation profitable in future. The complaint challenges the legitimacy of the land titles in general.

For consideration in the next phase: The land issues need to be further defined in the mediation process. The ICM panel observed partially very contradictory assumptions related to key aspects, such as (i) how much of the land is potentially usable for other purposes (e.g. for community agriculture), (ii) how much of concession land is already under use by communities, and (iii) how much is high conservation value (HCV) areas. The same is true for the details of the land validation process conducted end of 2015.

⁶ See issues as summarized in chapter 2 above.

Different details are presented. The ICM will continue to study and assess the background information and will document the different positions in an issue paper. Moreover, the question, what are the concrete and specific demands / expectations related to the land issues raised in the complaint document and by different stakeholders, needs to be well prepared and understood as part of the preparation and first steps of the mediation.

- (2) **Community participation:** The issues related to community participation, as described in the complaint letter, have been summarized in chapter 2 (see above). The complaint text claims that communities have not had a level playing field in negotiations with PHC. The text claims that the 'knowledge gap' and the absence of legal support and affordable legal aid are contrary to standards developed in the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests. Moreover, the complainants claim that (i) the new concession contracts developed in 2015 after the granting of the loan facility were concluded without the consent or consultation of the affected communities and (ii) the IFC Performance Standard 1 (on Assessment and Management of Environmental and Social Risks and Impacts) and Standard 5 (on Land Acquisition and Involuntary Resettlement) have not been met by the project.

Findings during the visit:

The documents relevant to the 2015 process of renewal and subdivision of land concessions were not available at the plantation sites and need to be studied during the following visits with the PHC / Feronia in Kinshasa and the Government's cadastral department in Kisangani. Interviews need to be conducted to fully understand the forms and fora for consultation that were held during this process. An issue paper might be published by the ICM later in the process. It would present different opinions observed with different stakeholders and might present the findings of a more detailed research.

To do during the preparation phase of the mediation:

It is of very high importance to clarify the communication and participation formats used during the renewal of the concession contracts in 2015. It was impossible to get all the necessary information during the pre-assessment trip because it deserves more detailed research.

- (3) **Related to harassments, intimidations, theft:** In addition to the land issues, the complaint claims that community members, including residents of communities submitting the complaint, have been subject to regular harassments and sometime grave physical and human rights abuses by PHC security guards and the police. The pre-assessment mission has confirmed that this is an issue, which was supported as a relevant issue by all communities visited, and needs further consideration.

Findings during the visit: The situation at both locations and in many communities seems quite conflictive. Harassment and intimidation are – confirmed through reports by most communities visited – done by local police and PHC security guards. It was also

reported that security forces are sometimes attacked by community members – either workers or other members of communities – who are illegally harvesting on PHC's plantations. Often, issues of theft of fruits and parts of the harvest seem to be underlying causes of the conflicts. Feronia has partly contracted out the security services (in Lokutu) and there are conflicts between security services and people suspected of theft on both sites. It needs further research if this type of contracting has an impact on the situation. Security guards on PHC plantations are in general unarmed.

To do during the preparation phase of the mediation:

These issues require further investigation, inter alia concerning (i) the alleged harassment and intimidation, (ii) the alleged scope of the theft, (iii) the allegations about the role of organized groups for robbery, and (iv) the role and behaviour of security forces as well as the role of the local policy. It needs to be discussed with the stakeholders, what are items for mediation related to this issue and what would be potential outcomes. Any necessary improvements in the professional application of security standards also need to be discussed.

- (4) **Additional issue (not explicitly mentioned in the complaint): Issues related to employment:** Most of the communities met during the field mission mentioned that the **contract situation, the remuneration of workers** and general availability of employment are of key importance and that a mediation should deal with these issues.

Findings during the visit:

Communities visited highlighted the large number of casual workers, which are paid only for the days employed. Community members were also mentioning in several meetings that staff is often not hired (or not enough staff is hired) from the communities on or around the plantations. Problems of delayed payments were reported to happen.

To do during the preparation phase of the mediation:

While the issue has not been raised in the complaint it has been mentioned in all meetings with community representatives during the research visit. It therefore needs to be investigated and discussed with all stakeholders if it should be taken up as additional issues in the mediation process. It should also be clarified whether these employment demands potentially are to be addressed in other fora, such as the dialogue between the trade unions and the company.

To sum up: The preliminary assessment confirms that the issues highlighted in the complaint are relevant issue that should be dealt with in the mediation phase. While information details and judgements vary substantively between the stakeholders, the relevance to talk about these issues was confirmed by all the representatives from the communities visited and the other stakeholders. Concerning the fourth issues and the question if it should be taken up needs further to be investigated with all stakeholders.

Having said this, it is important to note that the information provided as background information in the complaint are challenged by some stakeholder or interview partners. This is not the place to discuss the differences in positions on certain facts, and the different facts presented by the stakeholders to the Panel.⁷ The objective of this preliminary review report is only to find out whether the issues mentioned in the complaint resonate with the stakeholders and should further be addressed.

Related to c): Previous attempts to solve the situation

One effort to deal with the situation, was the initiative of RIAO to work towards peace agreements between the company and the communities. A group of RIAO activists travel to all three locations and got signature of community representatives and a formal support of the company. The signing of Peace Accords between communities, RIAO and most probably PHC happened in August 2017 and different arguments / allegations are made why they were not implemented. The complaint text describe that PHC refused to engage in an agreed reconciliation process and that PHC instead organised an own process of signing Social Protocols (called 'ad-hoc social agreements' in the complaint document) which were signed between community representatives, PHC and the Governor of Tshopo (Lokutu plantation) in November 2017.⁸ PHC explains that RIAO never sent terms of reference for an implementation work of the peace agreements (which RIAO proposed to PHC) and that the November 2017 conflict resolution agreement (social protocols) was initiated by PHC but by the governor of Tshopo province.

Findings during the visit:

The Social Protocols⁹ signed for Lokutu in November 2017 has led to a formal implementation process with specific promises made by PHC. PHC implemented some of the agreed outcomes. Moreover, the company reports that other additional development activities have been financed even before signing the Social Protocols, such as water boreholes, medial infrastructure, roads etc. All in all, in most the communities visited, frustrations were high about a slow and sometime non-existing process of implementation of the Social Protocols. At least, the process fuelled and increased the already existing expectations of communities vis-à-vis the company.

As with the issues above, different views exist on these events and it is not the place to present a final judgement on the 'real' developments. Instead, this Preliminary Review Report wants to highlight that all previous agreements should carefully be understood and the outcomes

⁷ The ICM will publish later in the process – before the mediation will start - an issues paper with the objectives to (i) document the different positions identified and assessed in the process and (ii) note the results of the research done on the issues by the ICM.

⁸ While this process was first started in Tshopo (Lokutu plantation) it was later extended to the other plantation sites. A similar protocol was signed in Boteka in January 2018.

⁹ In this text, the term 'Social Protocols' is used to refer to these agreements. The French title refers to social 'cahier de charge', a term of contracts that are included as legal obligations in Congolese Forest laws. A similar obligation does not exist with respect to agricultural investments/projects. In order to avoid misconceptions due to a use of a wrong legal term, this text uses the term 'Social Protocols'.

studied because the planned mediation could potentially build on some of the agreements already reached or learn why frustration was generated?

To do during the preparation phase of the mediation:

The implementation process of the

- a) previous community engagement and investments by PHC,
- b) previous attempts to solve the situation, such as the peace agreements, as well as
- c) the Social Protocols as planned and actually realised and the rationale for delays need to be documented in detail and in a transparent manner in order to potentially use the results in the mediation process. The community representatives met during the first visit propose that a mediation should build on the achievements and decisions made in the Social Protocol process, even if implementation is weak. It could make negotiations easier and one does not have to start from zero. Whether this is a position shared by most of the communities and stakeholders, remains to be ascertained. The current implementation process of the Social Protocols is so slow that other stakeholders do not believe that the process can be used as a good starting point. Some stakeholders in communities have therefore indicated that a new start is needed for a trustful mediation. It will be one of the issues for the preparation phase of the mediation to identify which aspects of the Social Protocol negotiation and implementation process can be used for the planned mediation.

7. Conclusions

The Panel concludes the Preliminary Assessment Phase and recommends that a dispute resolution be conducted. All potentially relevant actors are supportive of a mediation. Details of (i) who will be part of such a mediation, (ii) who is accepted as representatives of communities, (iii) what issues should be discussed, and (iv) a development of an understanding about potentially good outcomes will have to be addressed with all actors at the beginning and during the mediation process. The experiences with mediation through development banks so far¹⁰ clearly show that it is part of the process to decide which actors shall be involved as well as to clarify who represents communities and what issues need to be discussed.¹¹ With this in mind, the mediation/dispute resolution phase in the process can formally start, albeit with a preparation phase. The ICM is hopeful that at the beginning of 2020 the mediation as such can start, in order to hold the necessary discussion with the different stakeholder and to find out, when, where and with whom the mediation shall happen and to identify what would be potential results acceptable to the different stakeholders. The mediation process must take time at the beginning to define Rules of Engagement, in order to create an atmosphere of respect, security and trusts as well as clear rules for public communication and confidentiality.

New developments

In recent months, the situation between the company, RIAO-RDC and other groups has become more conflictive and sometimes aggressive. RIAO-RDC organized a protest provocatively carrying fruit bunches stolen from PHC's plantations, when the new CEO of Feronia visited Lokutu for the first time in February 2019. During a July strike, as reaction on government-imposed changes in the payment of family allowances, which are no longer paid with the salary, the Area General Manager was blocked in his office. A company security guard is accused to have killed – probably off duty at that time – a boat driver on July 21, who RIAO-RDC claims was a member of its organisation. Investigations into the latter incident are ongoing. In the meantime, the suspect was caught and brought to the court in Mbandaka.

Risks and uncertainties not under the influence of the ICM

- **Agreement on mediation process:** The ICM has realised that a mediation can only be successfully started, when all stakeholders agree with such a process. While the preliminary assessments proved that RIAO-RDC has a legitimate base at the two locations and represents parts of the communities that supports the complaint, other communities visited would prefer to be represented by either traditional leadership or other

¹⁰ The ICM is exchanging with other actors of the network of International Accountability Mechanisms (IAM) about these issues. The network of complaint mechanisms of international development banks has exactly been created to provide a platform for exchange and common learning. The ICM is member of the IAM.

¹¹ While it is clear that the complainant, the company and representatives of local communities need to be part of the mediation, other actors might join for the whole mediation, or for parts of it, such as other NGOs, trade unions, religious leaders etc. The process itself will give answers to these questions and it would be wrong to determine them too early.

NGOs. Whether an agreement on the setting and on terms of references for a mediation process can be achieved depends on the willingness of the stakeholders to collaborate and compromise and is not under control of the ICM.

- **Timing and phasing for the two plantations:** A clarification is needed how a mediation can be organized, given the significant distance between the different locations of the company's plantation sites, the difficulties of travel and communication. Most community representatives met were at least in favour of starting locally with the mediation.
- It must be determined if the mediation shall include **all three sites of the plantation or only the two sites**, which are covered in the complaint.
- **Agreement on issues to be covered:** A successful mediation will depend on a careful agreement over the issues to be covered during the mediation. The ICM does not know yet if a common understanding of the issues can be reached. The ICM will prepare an issue paper that can be used as a starting point for discussions between the stakeholders. The issue paper will contain an overview on different positions articulated by the stakeholders and will summarize findings of the ICM on the issues
- **Nomination of a team of independent mediators:** The ICM will select a team of mediators for the process. The ICM will organize the selection process, ideally a combination of national and international mediation experts. National experts need to speak the local languages, an international mediator needs to have experiences in such forms of mediation. The ICM is in contact with the International Accountability Network in the search for potential candidates.
- **Mutual trust:** 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. This is a key commitment needed from all stakeholders. The mediation will start with the formulation of relevant Rules of Engagement for the process to reduce intimidations or unfriendly acts and that support the building of mutual trust.

8. Next steps

A. To do during the preparation phase of the mediation

The overall situation and the potentials of the conflicts to escalate need to be closely monitored by the ICM in the coming months. On the one hand, unfriendly acts, intimidations etc. can influence the potential of a positive mediation process. A mediation should help to reduce tensions and to find mid- and longer-term solutions. On the other hand, if the conflicts escalate, most likely, a mediation can only start when the tension is reduced and other measures of conflict resolution have been applied and have shown impact. The basis for a successful mediation is an atmosphere of trust and security for all actors involved. The ICM can only proceed and propose a mediation process if accepted and wished by the different stakeholders.

B. Next steps in the process

- A second trip at the start of the preparation phase for the mediation is planned from August 18 to September 01, 2019. The objective is to find consent of all stakeholders to start a mediation process and to make the process known.
- A team of mediators needs to be identified starting in September 2019 and hopefully ending at the end of the year.
- An issue paper will be prepared by the ICM before end of November and will be discussed with all stakeholders.
- A process paper describing the possible mediation process and a guidance handbook for the mediation process will be prepared by the ICM and the selected mediator beginning of 2020.
- In parallel, the above-mentioned Rules of Engagement for all stakeholders will be developed with the mediators in order to start discussion with the stakeholder early 2020.
- The discussion of the issue paper, the process paper with the guidance handbook and the Rules of Engagement will be discussed with the stakeholders, ideally during a third visit (a combined visit of the ICM and the selected mediators) at the beginning of 2020.

C. Questions that shall guide the preparation phase for the mediation

All relevant actors have shown support for a mediation process during the pre-assessment visit. During the preparation phase of the mediation the following issues need to be better understood and clarified:

1. Who are the relevant stakeholders to be included in the mediation process and for what reasons?
2. Can the outcomes of the Social Protocol process (and/or prior and other efforts by the company and RIAO) be used as a basis for the mediation process?
3. Potential terms of reference for a mediation: the following questions need to be addressed:
 - (i) Who is part of such a mediation, who is accepted as representative and by whom?

- (ii) What issues should be addressed taking into account past and present efforts by PHC?
 - (iii) What would be good and desired outcomes?
 - (iv) What is the process/timeline of the mediation?
4. Shall there be separate mediation processes in both or only one central round table to tackle all both together? What are potential locations for the mediation?
 5. Who should be facilitating the mediation?
 6. What needs to be done / achieved by all relevant stakeholders in advance and in the preparation phase of a mediation?
 7. The ICM will continue to prepare an issue paper. The ICM will document the views of different stakeholders on the issues described above. It will also contain an overview of research results of the ICM undertaken so far. The issue paper will be prepared by the ICM until end of November and will be sent for comments in advance of a mediation with the complainant and PHC/Feronia.

D. Preliminary time table for the next steps

August 2019	Start preparation phase of the mediation 2 nd field visit of the ICM (18 August – 1 September)
October / November 2019	Selection of potential mediator (September to November)
December 2019	The preliminary Issues Paper by the ICM will be prepared and will be shared with all stakeholders
January 2020 and onwards	Third field trip is envisaged (ICM + mediators) to discuss the methods for the mediation, to introduce the mediators to at the sites and to work on drafts of two documents: (1) A process document with a guidance handbook (2) A draft of the Rules of Engagement

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Annexes

Annex 1: Programme of the mission

Date	Day	Activity
24 May	Friday	Arrival Kinshasa
25-May	Saturday	Flight: Kinshasa – Mbandaka
		Boat: Mbandaka Beach – Boteka
		Briefing with AGM (Area General Manager), PHC Security Manager, ASM (Area Social Manager)
26-May	Sunday	Boteka: <ul style="list-style-type: none"> Meeting with ASM Meeting with communities (see village list) at the school in Boteka (organised by RIAO) (maximum of 35 men and 5 women) Meeting with RIAO
27-May	Monday	Bongale I: <ul style="list-style-type: none"> Meeting with villagers, incl. members of the Comité de base Bepumba Meeting with notables Short visit of the health center
		Bongale II <ul style="list-style-type: none"> Short exchange meeting with villagers
		Bolondo-Elinga <ul style="list-style-type: none"> Meeting with 60 -70 villagers, incl. several members of the Comité de base Ilongo <ul style="list-style-type: none"> Meeting with NGO IGED (Initiative de Gestion Environnemental et de Développement)
28-May	Tuesday	Boteka <ul style="list-style-type: none"> Visit of the mill Discussion with the plantation manager Meeting with the security managers (of PHC and Boteka) Meeting with the AGM Meeting with the Chef de Groupement (CG) in the presence of a PHC worker (brother of the CG)
29-May	Wednesday	Boat: Boteka - Mbandaka Beach
		Flight: Mbandaka – Kinshasa
		Meeting with KfW

Date	Day	Activity
30-May	Thursday	Flight: Kinshasa – Kisangani
		Meeting with the Bishop of Kisangani and Bishop of Isangi
		Meeting with President of RIAO
31-May	Friday	Boat: Kisangani Beach – Lokutu
		Lokutu <ul style="list-style-type: none">Meeting with AGM, ASM and Security Advisor LokutuMeeting with ASM and her assistant Liesse Centre <ul style="list-style-type: none">Meeting with CADAP (Centre d’Animation et de Développement Intégral et Auto-promotion)
First part of delegation		
01-Jun	Saturday	Lokutu <ul style="list-style-type: none">Meeting with the village of Yaoselo; about 50 participantsMeeting with Chef de Sector
		Long meeting with ASM to discuss the different issues
02-Jun	Sunday	Lokutu <ul style="list-style-type: none">Meeting with RIAO (maximum 23 participants)
		Boat: Lokutu - Kisangani Beach
03-Jun	Monday	Flight: Kisangani – Kinshasa
		Departure Kinshasa
04-Jun	Tuesday	Arrival in Germany
Second part of delegation		
01-Jun	Saturday	Boat: Lokutu to Kisangani beach
		Flight: Kisangani to Kinshasa
02-Jun	Sunday	Meeting with ESG Coordinator
		Departure Kinshasa
03-June	Monday	Arrival in Germany

Annex 2: Villages covered during the Preliminary Review Mission

Boteka Plantation

Secteur	Groupe	Village	Complaint	Met 1st mission
Dwali				
Dwali	Monkoso			
Dwali	Monkoso	Nkelengo		
Dwali	Monkoso	Ilongo		
Dwali	Monkoso	Bondjoku		*
Dwali	Monkoso	Nseke		
Dwali	Monkoso	Bongale 1	x	***
Dwali	Monkoso	Bongale 2	x	
Dwali	Monkoso	Bempumba		***
Dwali	Monkoso	Loonga		*
Dwali	Monkoso	Besombo village		
Dwali	Monkoso	Bofalamboka		
Duali	Monkoso	Engonjo Loyeka		
Duali	Monkoso	Likoli		
Duali	Monkoso	Lofeli		
Duali	Monkoso	Iyambo1		
Duali	Monkoso	Iyambo 2		*
Duali	Monkoso	Ifoma Ngele		
Duali	Monkoso	Bolondo Elinga	x	***
Duali	Monkoso	Mission catholique		
Boteka			x	***

Legend:

* representatives of villages met

** villages visited

*** representatives of villages met and village visited

* in yellow, when participants in meetings did not specify their village, but only mentioned their groupment

x when a village name is specified

x when only a name of groupment is mentioned in the complaint (numbering of Annex I)

In PHC's zone of influence

No longer exploited (Boteka) or out of PHC's zone of influence (Iokutu)

LOKUTU Plantation

Territoire	Secteur	Groupe ment	Village	Complaint	Met 1st mission
Isangi	Luete				
	Luete	Mwando			*
	Luete	Mwando	Yalisubu	x	
	Luete	Mwando	Yabongonda	x	
	Luete	Mwando	Lisalangomba		
	Luete	Mwando	Tongoso	x	
	Luete	Mwando	Yamolende		
	Luete	Mwando	Yamogambe		
	Luete	Mwando	Lionge		
	Luete	Mwando	Yema		
	Luete	Mwando	Isanga		
	Luete	Mwando	Bumba Losuna		
	Luete	Mwando	Yamofaya		
	Luete	Mwando	Mweto		
	Luete	Mwando	Yamwambe		
Yahuma	Bolinga				
	Bolinga	Bolesa			
	Bolinga	Bolesa	Yaoselo		*
	Bolinga	Bolesa	Yakote		
	Bolinga	Bolesa	Yaokoka		
	Bolinga	Bolesa	Liesse centre		*
	Bolinga	Bolesa	Liesse vilage		
	Bolinga	Bolesa	Lingomo		
	Bolinga	Bolesa	Yaholia		
	Bolinga	Bolesa	Bohema		
	Bolinga	Bolesa	Bohema 2		
	Bolinga	Bokala Wamba		x, l, 9	
	Bolinga	Bokala Wamba	Bokala		*
	Bolinga	Bokala Wamba	Efomi		
	Bolinga	Bokala Wamba	Piko		
	Bolinga	Bokala Wamba	Yalomami		
	Bolinga	Bokala Wamba	Wamba		
	Bolinga	Bolombol			*
	Bolinga	Bolombo	Ngima		
	Bolinga	Bolombo	Yaosiko		
	Bolinga	Bolombo	Ngombel		
	Bolinga	Bolombo	Ngombell		
	Bolinga	Bolombo	Lingomo		
	Bolinga	Bolombo	Lieki		
	Bolinga	Bolombo	Kawele		
	Bolinga	Bongemba		x, l, 6	*
	Bolinga	Bongemba	Ndongo		

Territoire	Secteur	Groupeement	Village	Complaint	Met 1st mission
	<i>Bolinga</i>	<i>Bongemba</i>	<i>Yoyombe</i>		*
	<i>Bolinga</i>	<i>Bongemba</i>	<i>Yatonda</i>		
	<i>Bolinga</i>	<i>Bongemba</i>	<i>Ndongo-Bongemba</i>		
	<i>Bolinga</i>	<i>Bongemba</i>	<i>Yahuma-Yamongo</i>		
	<i>Bolinga</i>	<i>Bongemba</i>	<i>Yaoliko</i>		
	<i>Bolinga</i>	<i>Bongemba</i>	<i>Yauto</i>		
Basoko	Lokutu			x, l, 4	***
	Lokutu	Mwingi			
	Lokutu	Mwingi	Ngima		
	Lokutu	Mwingi	Yekakule		
	<i>Lokutu</i>	<i>Mwingi</i>	<i>Bolembu</i>		
	Lokutu	Mwingi	Yaboloko		
	Lokutu	Mwingi	Yambienene	x, l, 2	
	Lokutu	Mwingi	Yangoma Lokele		
	Lokutu	Mwingi	Yangoma Molifa		
	Lokutu	Mwingi	Centre Commerc.		
	Lokutu	Mwingi	Yata		
	<i>Lokutu</i>	<i>Mwingi</i>	<i>Isangamawa</i>		
	<i>Lokutu</i>	<i>Mwingi</i>	<i>Iyenge</i>		
	<i>Lokutu</i>	<i>Mwingi</i>	<i>Makongo II</i>		
	<i>Lokutu</i>	<i>Mwingi</i>	<i>Isombol</i>		
	<i>Lokutu</i>	<i>Mwingi</i>	<i>Isomboll</i>		
	<i>Lokutu</i>	<i>Mwingi</i>	<i>Yamwela</i>		
	<i>Lokutu</i>	<i>Mwingi</i>	<i>Yaliwe</i>		
	Lokutu	Yanongo		x, l, 1	
	Lokutu	Yanongo	Nsele		
	Lokutu	Yanongo	Yamangele		
	Lokutu	Yanongo	Singa		
	Lokutu	Yanongo	Yalipombo rive	x. l, 1	
	Lokutu	Yanongo	Yalipombo pisé		
	Lokutu	Yanongo	Yakindua		
	<i>Lokutu</i>	<i>Yanongo</i>	<i>Lokole</i>		
	<i>Lokutu</i>	<i>Yanongo</i>	<i>Bafamba</i>		
	<i>Lokutu</i>	<i>Yanongo</i>	<i>Yasambe</i>		
	<i>Lokutu</i>	<i>Yanongo</i>	<i>Isako</i>		
	<i>Lokutu</i>	<i>Yanongo</i>	<i>Basayo</i>		
	<i>Lokutu</i>	<i>Yanongo</i>	<i>Yandumba</i>		
	<i>Lokutu</i>	<i>Yanongo</i>	<i>Yasonga</i>		
	<i>Lokutu</i>	<i>Yanongo</i>	<i>Mbutu</i>		
	<i>Lokutu</i>	<i>Yanongo</i>	<i>Sokinex</i>		