

Independent Complaint Mechanism – DEG / FMO / Proparco

Case: PHC 18-002 – Mediation Phase

Successful Mediation Outcome, March 24, 2023:

The Independent Complaint Mechanism of the three European Development Banks, DEG, FMO and Proparco has successfully finalized a first round of Mediation Tables in the Case “*Plantations et Huileries du Congo SA (PHC)*” in the Democratic Republic of Congo. Two mediation tables were held in Mbandaka from March 13 – March 17 and in Kisangani from March 20 - March 24. The participants commonly agreed that it is an historic moment that a common base for exchange and consultation have been agreed upon between the communities and PHC and that mechanisms for further cooperation, communication and discussion of conflicting views were set up.

On both locations a set of outcomes have been agreed and signed off by all participants. Inter alia a commission has been created between the two parties and experts to look into pending land disputes, a complaint mechanism has been agreed to exchange early on all potential cases of conflict and potential human rights violations and a committee to discuss social development concerns and further projects in a transparent manner.

The mediation tables were opened in Mbandaka by the Governor of the Province of Equateur and in Kisangani by the Vice Governor of the province of Tshopo. The provincial governments will support the implementation process between the Company and the communities at both places.

Background to the complaint:

The DEG received in November 2018 a complaint concerning the DEG-financed operation, at that time subsidiary of Feronia Inc., a company listed at the Toronto stock exchange. The Complaint was lodged by a non-governmental organization (NGO), RIAO-RDC (*Réseau d’Information et d’Appui aux ONG en République Démocratique du Congo*) and its chairperson Mr. Jean-François Mombia Atuku on behalf of persons from nine communities out of over 60 villages around the BOTEKA and LOKUTU plantations, two of the three locations of the PHC. The Complaint contains signatures of 265 represented individuals in several lists including notables and other community leaders from communities and groups from the two plantation areas (considered here as complainants). In January 2019, the Independent Expert Panel of the ICM published a notice that this complaint was admissible for a “dispute resolution process to involve an external mediation according to the ICM policy.

The Complainants claim that they have been negatively impacted by the DEG-financed operation and that this was a result of a failure to comply with DEG’s policies. The operation was also financed by FMO and other European Development Finance Institutions in a consortium, but the complaint was directed to DEG as the consortium leader. The complaint raises concerns about the legitimacy of the land titles of the plantation and alleged deprivation of the use of customary land (1), physical and human rights abuses by PHC security guards and police (2), and the lack of information and legal support of communities in negotiations with PHC (3). The complainants have requested to conduct a dispute resolution and mediation process.

The company PHC was sold in 2021 and 2022 and despite the fact that the new owners paid back the loans of the development banks the new management was committed to continue the mediation process as a possibility to create a lasting peace with the communities.

Mediation process:

During ICM’s assessment through a series of sites visits and meetings with communities and PHC in 2019 and 2020, both the Complainants and the Company confirmed their interest in engaging in a dispute resolution process convened by ICM with the aim of resolving the land dispute and seeking to address any consequent impacts on poverty and alleged harassment and human rights abuses. In April 2022, ICM recruited a professional mediator after a break period due to COVID-19 restrictions, which did not allow to travel to the country. In 2022, the mediator and his team and the ICM expert conducted three field visits in Lokutu and Boteka in May (Lokutu), August (Lokutu), and November (Boteka) 2022 to better understand the allegations raised in the complaint and identified actors involved in this case and prepare the mediation.

In both places the mediation team brought together more than 30 representatives from the communities, including RIAO representatives, a delegation from the company and a small group of commonly accepted observers from Civil Society in both locations. The participants in both mediation tables first agreed on the issues that need to be discussed, exchanged options for solutions, presented and discussed the options and at the end they agreed on a set of solutions and the next implementations steps.

=====