

## **Information from the Independent Complaint Mechanism (ICM) of three European Development Banks concerning the mediation process in the Democratic Republic of Congo between the company Plantations et Huileries du Congo (PHC) and local communities.**

*April 18.04.2024*

### **Response to a letter published by several non-governmental organisations, including RIAO-RDC from the DRC with a request to halt the ICM's Dispute Resolution Process.**

The mediation process was finalized in February 2024 with an agreement of all parties in the mediation after two mediation rounds in February - March 2023 and January - February 2024. Participants at the mediation tables are the company (PHC), representatives from the local communities in Boteka and in Lokutu, and RIAO-RDC, the NGO from the DRC which had originally filed the complaint signed by 263 individuals in the end of 2018.

All parties, including RIAO, have agreed and signed the mediation outcomes from 2023 and 2024. In the beginning of March 2024, the ICM mediation team shared the draft Report of the last meetings with all parties to obtain feedback before finalizing and publishing the Report. While the ICM mediation team was still awaiting feedback from local communities in Lokutu and from PHC, RIAO had unilaterally published the draft Report without sending its feedback and comments to the ICM mediation team as it had promised.

The draft Report from the February - March 2024 mediation table was not yet a public document and we regret it was shared to the public before giving the ICM mediation team an opportunity to consider the comments from all participants. The publication of a non-public Report constitutes a violation of the Code of Conduct that was signed by all parties and participants to the mediation in at the first mediation table in 2023. The ICM would like to stress that the success of a mediation depends on all parties' fairness and compliance with the agreed ground rules.

The ICM cannot continue to work on a draft Report after it has been leaked. Therefore, it will produce a final Report on the mediation process in May 2024 to inform the public of the outcomes of the mediation process. The ICM will formally seek comments from all parties before publication of this Report and invites RIAO to constructively use the options provided by the mediation to exchange and share its comments.

With this short information note, the ICM wishes to briefly explain the mediation process and the outcome of the last mediation round, a process that required and was built with the engagement and good will from all parties.

### ***A brief recapitulation of the mediation process:***

While the complaint was lodged in the end of 2018, it took the ICM up to the beginning of 2020 to get a green light from all parties involved to start a mediation process. A mediation process needs support from all parties and is a voluntary process.

Unfortunately, the process was interrupted because of (a) the Covid-19 pandemic as access to the DRC was only possible again in 2022) and (b) a new ownership of the company from whom the ICM needed to get consent to take part in the mediation in 2022.

The mediation process that took place since then can be divided into three steps:

- (1) In August 2022, the ICM mediation team was present in both locations, Boteka and Lokutu, to discuss with all parties, how a mediation table could be organised and who should be represented while still ensuring a manageable number of participants. Based on these discussions, a framework agreement was reached between the local communities and the company as well as RIAO. The ICM noted that some parts of the communities felt appropriately represented by RIAO while others did not. During the process, the local communities continuously indicated that any agreement reached could not only be between RIAO and the company, but between the entire communities and the company to achieve the overall objective to create peace locally. The agreement concerning the representation of the communities was reached in August 2022 and constituted a first breakthrough in the process. Following the agreement on representation, the ICM mediation team organised trainings in conflict resolution and mediation techniques with all potential members (parties and participants) of the mediation table in 2022.
- (2) In 2023, two mediation tables were organized by the ICM, one in Mbandaka for the Boteka plantation and a second one in Kisangani for the Lokutu plantation. A first mediation agreement was reached at both locations, covering the concerns of the parties as identified during the mediation tables in both locations. The agreement was signed by all participants including RIAO (both local RIAO representatives and the president of the organisation). All outcomes were final except on the issue of land rights. For this issue, an agreement was reached in both locations that two land commissions shall be set up with representations of the local communities, RIAO, the company, the land cadastre offices, and a representative of the governor of the two provinces, to note all irregularities related to plantation borders and open issues concerning the land titles used by the company. The ICM provided financial support to local communities and RIAO to participate in the work of the land commission. Moreover, both the local communities and RIAO hired self-chosen legal expertise that was financed by the ICM to be properly advised throughout the process. The final Reports on the conclusions of the two land commissions for each of the two sites were presented at the mediation table in January 2024.
- (3) In 2024, the ICM reconvened one meeting for Boteka (in January in Kinshasa) and one for Lokutu (in the end of January and early February in Kisangani) During these meetings all parties were represented. The two meetings were used to (1) take stock of recent development in the other 5 areas of agreement from 2023 (with very positive developments) and (2) receive the reports from the land commissions presented in both locations by the land cadastre officials. A consensus agreement was reached (available to all parties), bringing the mediation to an end for all 6 areas identified in 2023. All parties agreed to put in place a permanent concertation committee for both sites (Boteka and Lokutu) to allow all parties to periodically discuss open issues and all matters in their relationships and the ICM mediation team will assist in setting up the first concertation committee meeting possibly in June 2024.

The two land commissions reports indicated that the acquisition procedures of land titles of 2015 were unclear to local communities because community members were not properly involved in the process, hence they requested that PHC regularize the situation amicably through compensation measures to be given to community members. The parties agreed that community leaders will go back to their respective localities and *groupements* to discuss with their community members and identify the type of compensation for each locality or *groupement* that will be presented to PHC during the first concertation committee meetings for discussions. In exchange the community members accept the legitimacy of the land title of PHC from 2015, whose legality was confirmed by the land commissions. While it was clear that PHC pays regularly land royalties of its 2015 titles for both sites (Boteka and Lokutu), it was also recommended for Lokutu that PHC ensures that the cadastre official goes back to the field to measure again and confirm with precisions the figure indicated in the 2015 titles.

The final outcome including a summary of the reports from the land commissions will be annexed to the final mediation Report to be published in May 2024.

***A fair and inclusive mediation process was held:***

The NGO's open letter stated that the mediation process is „coercing the communities into foregoing their rights ... “. This is a wrong understanding of a mediation process. The ICM can only offer a platform in which the parties can agree on outcome by consensus. It cannot coerce anyone into signing the outcome. When a consensus is reached and signed by all, it is the opposite of coercion; it is exactly the outcome that the mediation table can bring, allowing a spirit of cooperation based on a search for lasting solutions. Based on the recent meetings, the ICM can report that the local communities as well as the company are in the process of searching long-lasting solutions for the two locations. At the end of the meetings in January 2024 in Kinshasa and in February 2024 in Kisangani, the parties were celebrating together the outcomes, which were signed by all parties including all participants of and the president of RIAO.

The letter says that the communities were „foregoing their rights ... without the time, resources, security and legal support required to adequately defend their interests.” The ICM notes that this is not a correct description of the process. The ICM covered the costs for all participants in the mediation tables, as well as the costs for the preparations of the steps in the process described above, including the work of the two land commissions for both Boteka and Lokutu. Particularly all costs of RIAO were covered during the last five years while this process was ongoing. The mediation process included the time needed for the work of the land commissions to be completed, and all parties received financial support to facilitate their participation in the commission's work, including the costs of legal advice by an expert of their choice for each community (Boteka and Lokutu).

Any questions regarding additional financial support concern could have been raised during the mediation process and at the mediation table, but none such additional requests were raised. The NGOs statement seems to try to delegitimize a process, which was carefully developed with all parties. The results of a mediation depend on the voluntary participation and mutual agreement by the parties and should not be imposed on them by other actors.

The letter accuses the ICM mediation process to have not addressed the „most basic elements of the complaint from communities. These are the” legitimacy of the land titles of the plantation”. As the short summary above has shown, this is not correct, because the work of the land

commissions and the final agreements reached in 2024 are directly addressing all land-related issues including land legacy. The available land titles and the land legacy before and during 2015 were highlighted in the two land commissions reports and discussed during the last two meetings. All information that was sent in by RIAO in 2018 were at hand and it was the role of RIAO to make use of the documents attached in Annex V and VI of the complaint from 2018 and to bring up further information they might have collected in the last months or years. RIAO attended all the mediation tables and, in fact, agreed with the communities' position and on points to be raised.

The community representatives agreed on the outcome and the next steps in setting up the “concertation committees”, which will discuss the demands from communities. The available land titles and the land legacy before and during 2015 were highlighted in the two land commissions reports and discussed during the last two meetings.

The letter from NGOs also mentions “other legal battles” the company might have. The ICM would like to clarify that these are matters that fall outside of the Dispute Resolution process.

**Next Steps:**

A final consensus was agreed by all parties to the mediation table in January - February 2024. They expressed their willingness to find a long-lasting solution for the two locations and to create a new spirit of cooperation. The process will be successful if all parties cooperate in the implementation and refrain from acting against the consensus they have reached. All parties have had the possibility to raise all their potential concerns during the mediation process including by making comments in the draft report that was shared.

The communities have started to collect their demands to be discussed in the concertation committee framework. The ICM will support local communities in this process of collecting their demands.

In June 2024, the first meeting of the two concertation committees will be held and the ICM plans to participate in these meetings to again facilitate the process. The ICM hopes that the positive spirit among the parties will remain, and that good outcomes will be achieved in June. After that step, the ICM will monitor the future implementation of the mediation outcomes on a regular basis.

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