REPORT ANNEX

A Dirty Investment

European Development Banks' Link to Abuses in the Democratic Republic of Congo's Palm Oil Industry

HRW Exchange with CDC Group

HRW Letter to CDC Group – March 2019

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Washington, D.C., March 22, 2019

HUMAN RIGHTS WATCH

HRW.org

Nick O'Donohoe
Chief Executive Officer
CDC Group Plc.
123 Victoria Street
London SW1E 6DE
United Kingdom

Re: Feronia/PHC Agricultural Concessions in the Democratic Republic of the Congo

Dear Mr. O'Donohue,

We are writing to solicit information on CDC Group's investments in Feronia, the majority stakeholder in the palm oil company Plantations et Huileries du Congo (PHC), which operates three plantations in the Democratic Republic of the Congo. Human Rights Watch conducted on-site research in these three plantations between November 2018 and February 2019.

Human Rights Watch is one of the world's leading independent organizations dedicated to protecting human rights. We conduct objective, rigorous field research in more than 90 countries worldwide and produce reports on our findings to raise awareness about human rights issues and to develop and promote policy recommendations for change. Human Rights Watch has been conducting research in the DR Congo since the 1990s and has had offices in the country for over a decade now.

Human Rights Watch is committed to producing material that is well-informed and objective. We hope you and your staff will be able to respond to the attached questions to inform our research into the health and environmental impacts of Feronia's operations. We would appreciate a written response by April 12, 2019.

We hope to continue engagement with CDC Group and plan to share an overview of our findings later in our research process. Thank you very much, and we look forward to your response.

Sincerely,

AMSTERDAM · BEIRUT · BERLIN · BRUSSELS · CHICAGO · GENEVA · GOMA · JOHANNESBURG · KIEV · KINSHASA · LONDON · LOS ANGELES · MIAMI · MOSCOW
NAIROBI · NEW YORK · PARIS · SAN FRANCISCO · SÃO PAULO · SEOUL · SILICON VALLEY · STOCKHOLM · SYDNEY · TOKYO · TORONTO · WASHINGTON · ZÜRICH

[redacted]

Mausi Segun
Executive Director, Africa Division

[redacted]

Marcos Orellana
Director, Environment and Human Rights Division

1. What are the types and amounts of investments that CDC Group has made in Feronia? Please state the amount for equity and loans, the date when the agreements were executed and the date(s) of disbursement(s) to the company. Are there any additional future or planned investments?

2. To date, what percentage of Feronia does CDC Group own?

3. What due diligence did CDC Group undertake, including but not limited to human rights and environmental impacts, prior to investing in Feronia? Please provide documentation of the risks identified in this process, and steps taken to address them.

4. Does CDC Group require Feronia to undertake any human rights or social and environmental due diligence on its operations, or comply with any human rights/social and environmental safeguards in relation to your investments? If so, please provide documentation of those requirements, any analysis of gaps in meeting social and environmental standards, and any steps to address shortcomings. We would also appreciate copies of documents provided by Feronia to fulfill these requirements. Are these safeguards part of a contractual undertaking by the company?

5. How does CDC Group monitor compliance with these safeguards? Do you use any indicators to monitor their compliance? If so, please list the indicators and their parameters. Could you share any recent monitoring and compliance reports you have carried out on Feronia's activities?

6. According to a 2015 Digby Wells' Environmental and Social Assessment of Feronia's operations, in November 2013 CDC Group invested USD 18.1 million "to help Feronia re-establish the business, secure employment and achieve its environmental and social objectives; USD 3.6 million of this was assigned to implementing Feronia's ESAP [Environmental and Social Action Plan]."

   How has CDC Group monitored the implementation of the ESAP? Specifically, which indicators did CDC use to monitor progress and how often was monitoring carried out? Please list what Feronia has delivered as a result of CDC's USD 3.6 million investment destined to the implementation of its ESAP.

7. Has CDC Group provided direct support to Feronia to help improve living or working conditions for workers and their families? If so, please provide the documentation that outlines the goals and deliverables Feronia was expected to meet in return for these investments.

8. Were any of CDC Group's investments in Feronia aimed specifically at mitigating the company operations' environmental impact? If so, please provide the documentations that outlines the goals and deliverables Feronia was expected to meet in return for these investments.

9. Does CDC communicate with the other development banks – German DEG, Dutch FMO and Belgian BIO – involved with Feronia? Have you harmonized the social and environmental safeguards attached to your participation?

10. What are CDC Group's development objectives for investing in Feronia?

CDC Group Response to HRW – April 2019

Mausi Segun, Marcos Orellana
Human Rights Watch
350 Fifth Avenue, 34th Floor
New York, NY
USA

30 April 2019

Dear Ms Segun and Mr Orellana,

Thank you for your recent correspondence regarding CDC's investment in Feronia. Thank you for allowing us a short extension to answer your questions; it was important for us to provide you with as comprehensive a response as possible. You will find attached to this letter our response to each of the ten questions you put to us.

Let me first say that I welcome the interest you and other civil society organisations have shown in Feronia and our role in providing capital and support to the company. Feronia is making a huge difference to people's lives in the Democratic Republic of the Congo (DRC). As you will know from visiting the plantations, this is a business located in a remote and very poor part of one of the poorest countries in the world. Not only does is provide almost the only economic opportunity for people for hundreds of kilometres; it has also taken on the responsibility of providing the sorts of public services that we would ordinarily expect Governments to provide for their citizens. As an investor, we are supporting Feronia to grow responsibly, and improving the conditions and rights of workers and communities is at the heart of our investment.

As you know, the PHC plantations company is over 100 years old and had been operating under the ownership of Unilever until 2009 when it was acquired by Feronia. At that time PHC had suffered years of underinvestment and disruption caused by conflict in the DRC. The two periods of major conflict in the DRC between 1996 and 2003 severely affected operations. Subsequently, while the business resumed operations, it went into a period of decline due to under-investment and lack of strategic support from Unilever.

Without Feronia's intervention to buy PHC, and the subsequent investment from CDC and other development finance institutions, it is highly unlikely that this historic company employing as many as 9,000 workers in a region where there is virtually no other formal employment would have survived. After securing its immediate financial future, our support has enabled the company to put time and money into improving the vital relationships it has with the local communities at its three plantations. When we first

invested in Feronia we immediately recognised the long-term commitment that would be needed to transform the company. Given the challenges, this is a process that will take a decade or more but is the right thing to do.

Feronia is making significant progress in a number of areas. It has replanted pre-existing oil palm acreage that was declining and was of limited productivity, restored and expanded the mills, refurbished and re-equipped health care facilities so that its workers and their families have access to free healthcare and tens of thousands of local people have access to highly subsidised treatment. They have installed 72 new drinking water boreholes, and, in securing their employees' futures, support a wider population of around 45,000 dependents, many of whom are children.

Since we made our investment, CDC's Responsible Investment team has worked closely with the company, earmarking millions of dollars of additional funds to ensure that environmental, social and governance (ESG) improvements are a key part of its operations. In that time, Feronia itself has built its own significant ESG team from scratch. Its ESG activities are subject to regular internal and external review, with independent audit and scrutiny undertaken in accordance with the social and environmental performance requirements of the World Bank's International Finance Corporation.

CDC staff visit the company's plantations at least every six months and on my own visit to the company I saw first-hand the progress being made. I was particularly struck by their commitment to community engagement. Through the appointment of area social managers at each plantation they have established a regular programme of stakeholder meetings and a grievance recourse mechanism to deal with local concerns and address possible negative impacts and sentiments where they arise. I am proud, too, of the progress being made by the company to improve wages, following collective bargaining agreements with the six unions who represent Feronia's workforce. Despite the very severe financial pressures that came with rebuilding the business, we've helped Feronia deliver improved hours of work, sick pay, overtime, maternity pay, holiday pay and other employee benefits.

We recognise that, of course, more can be done. My visit also showed me the significant external challenges that the business faces. There is a widespread lack of public services and basic infrastructure, with health and education lacking, and shortages of power and clean water. There is practically no public road network, meaning that the company's plantation infrastructure provides the main access routes for everyone. There is also the challenge of finding and retaining the experienced staff and managers to make a company based in a remote part of DRC a success. These present significant challenges, particularly when trying to make swift progress. But this is where CDC's speciality as a long-term patient investor with extensive ESG expertise can make a difference and it's why we're committed to making our investment a success. CDC's

mission is to invest in businesses in the poorest, most challenging countries in the world, creating jobs and opportunity where they don't exist. This is what we're doing with Feronia and I think it's exactly the type of investment we should be making.

Since 2013, CDC and its partners have invested significantly in Feronia, but we've not yet made any financial return. Conflict permitting, we expect the company to soon become profitable for the first time since Feronia took it over in 2009, as new infrastructure has allowed it to more than double production and as the thousands of recently planted trees reach maturity. Progress has been made, but there is more to do. I believe strongly that through continued investment in the plantations, a sustainable business that protects and improves the lives of workers and community alike can be built.

I hope that you find the answers to your questions useful. Please feel free to be in touch again should you need further clarification. And I look forward to hearing more about the progress of your report.

Yours sincerely

Nick O'Donohoe
Chief Executive

<table>
<tr><th>HRW Question</th><th>Suggested course of action/ response</th></tr>
<tr><td>1 What are the types and amounts of investments that CDC has made in Feronia? Please state the amount for equity and loans, the date when the agreements were executed and the date(s) of disbursement(s) to the company. Are there any additional future or planned investments?</td><td>
<table>
<tr><th colspan="4">Summary of CDC investments in Feronia</th></tr>
<tr><th>Date of signing</th><th>Date of disbursement</th><th>Type</th><th>Amount (US$m)</th></tr>
<tr><td>07/11/2013</td><td>08/11/2013</td><td>Equity</td><td>14.5</td></tr>
<tr><td>07/11/2013</td><td>08/11/2013</td><td>ESG loan</td><td>3.6</td></tr>
<tr><td>22/01/2015</td><td>22/01/2015</td><td>Convertible debenture</td><td>6.9</td></tr>
<tr><td>18/06/2015</td><td>19/06/2015</td><td>Convertible debenture</td><td>6.1</td></tr>
<tr><td>09/11/2015</td><td>09/11/2015</td><td>Convertible debenture</td><td>9.8</td></tr>
<tr><td>12/12/2016</td><td>12/12/2016</td><td>Equity</td><td>1.8</td></tr>
<tr><td>20/12/2018</td><td>03/01/2019</td><td>Bridge loan</td><td>1.5</td></tr>
<tr><td>14/03/2019</td><td>15/03/2019</td><td>Bridge loan</td><td>5.5</td></tr>
<tr><td colspan="3">Total CDC investment to date</td><td>49.7</td></tr>
</table>
</td></tr>
<tr><td>2 To date, what percentage of Feronia does CDC own, if any?</td><td>CDC currently owns 37.86% of Feronia.</td></tr>
<tr><td>3 What due diligence did CDC undertake, including but not limited to human rights and environmental impacts, prior to investing in Feronia? Please provide documentation of the risks identified in this process, and steps taken to address them.</td><td>At the time of CDCs investment, Feronia was the largest private sector employer in the agricultural sector in DRC, operating in a remote area with few if any other economic opportunities for local communities. Other investors were unable to meet the funding needs of the business and CDC was backing an experienced management team who were committed to bringing the company back into productive use, to securing employment and livelihoods of workers and other contractors, make progress to align the Company with E&S CDC requirements, and to undertake this without expanding the physical footprint of pre-existing plantation cover.

CDC commissioned independent third party consultants (Control Union) to undertake Environmental and Social Due Diligence (ESDD) on its proposed investment in Feronia. This work was undertaken in June 2013 and comprised an independent assessment of palm oil operations (including site visits, stakeholder meetings and satellite image analysis of land use). On the basis of this work an Environmental and Social Action Plan (ESAP) was developed to address gaps between the Company's Environmental and Social (ES) performance and CDC's requirements, including IFC Performance Standards (2012) and RSPO criteria.</td></tr>
</table>

	The ESAP that was agreed in 2013 has been updated over time to reflect completed actions and new challenges and needs , and should therefore be seen as a living document that has evolved over time. Thus the ESAP agreed at CDCs investment in 2013 does not reflect the current focus or attention of the ESAP that has been reviewed 1/4ly by the ESG committee (of which CDC is a member, and in which DFI lenders are observers). The ESAP that CDC agreed with Feronia in 2013 included an extensive set of actions comprising appointment of staff (environmental, social and occupational health and safety (OHS)), ES policies and procedures, additional surveys and assessments, implementation of an ES management system, staff training, stakeholder engagement and grievance mechanism, OHS program, and timelines for deploying Capex / infrastructure that would address environmental and social requirements. Subsequently between June 2013 and March 2014 a further assessment was commissioned (Feddersen Consulting Group) to provide additional detail and clarification on the ability and timelines needed to certify plantations according to RSPO criteria. In 2014 Digby Wells were commissioned to undertake a Focussed Environmental and Social Assessment (FESA) to further substantiate and define initial views and understanding of ES issues at all three plantations. The Digby Wells team spent a substantial amount of time at each planation (at least 2 months of consultant time) meeting community members (including 33 focal group meetings and 23 one on one meetings with key informants including union representatives, village leaders/ elders, doctors and religious leaders), undertaking stakeholder engagement and working with company staff. The Digby Wells FESA documents are available at the Company's website. CDC is unable to provide other documents which are commercially confidential between the Company and CDC. Subsequent to CDCs investment, new challenges have emerged which we have worked with the company (and DFI lenders) to resolve. These have included greater challenges in implementing housing repairs (lack of third party contractors, theft of cement and building materials), legacy community disputes regarding land use dating back to the Unilever era, rapid population growth/ in-migration, difficulty of attracting and retaining skilled E&S professionals in remote areas, culture change of local staff, logistics of security and community communications challenging, political interventions, and increasingly fragile security situation (particularly during the run up to / and aftermath of last year's election, ebola outbreak etc. Over the past six months, CDC has been supporting management to move beyond an ES management system driven by an externally imposed ESAP, towards having its own vision and strategy for ES management. To this end, we have been involved in supporting the drafting of a comprehensive ES strategy for the company, including through a two-day workshop facilitated by Earthworm Foundation (previously The Forest Trust). Whilst this is still a work in progress, we see this as an essential step in the

	evolution of ES management at the company. It is still the intention that progress will be advised and overseen by the members of the ESG Committee, and it still needs to meet the requirements set out in investors' legal agreements, but the vision should henceforth be driven by the company and supported and approved by investors.
4 Does CDC require Feronia to undertake any human rights or social and environmental due diligence on its operations, or comply with any human rights/social and environmental safeguards in relation to your investments? If so, please provide documentation of those requirements, any analysis of gaps in meeting social and environmental standards, and any steps to address shortcomings. We would also appreciate copies of documents provided by Feronia to fulfill these requirements. Are these safeguards part of a contractual undertaking by the company?	CDCs ESDD and the ESAP that was developed in 2013 and included in CDCs investment agreement with the company defined the initial scope and focus of ES and human rights commitments (which include a requirement to comply with CDC's Code of Responsible Investing (which is based on IFC Performance Standards).[i] Subsequent to CDCs investment CDC has actively monitored Feronia's ES performance including through physical site visits by CDC staff (generally every six months), our participation in the Company's Environment Social and Governance (ESG) Sub-committee (which meets quarterly and reports directly to Feronia's Board and bespoke additional surveys and assessments that the Committee investors and lenders request including but not limited to: (i) an assessment of legacy land issues at Feronia that resulted in a detailed report describing how contested land issues could be addressed – and which resulted in public facing general guidance on this issues which is available here) (2016) (ii) an assessment of RSPO certification opportunities and challenges (2017) (iii) a security assessment (with recommendations for capacity building and process adjustments to reflect expectations of UNGPs and Voluntary Principles on Security) (2018) which led to the creation of a new Head of Security position and training for senior staff on the standards. The DFI lenders also undertook their own ESDD prior to providing a debt tranche to the Company which focussed on land rights, security management and working conditions. DFI lenders have (as a normal course of action) also commissioned a Lenders Independent ES Adviser (LIESA) who visits annually and whose report is presented to lenders and discussed with the company (and ESG Committee) The Company has also developed an online ES information management system (MIS) that collates ES data from each planation (including interactions with local communities, and grievances) which is used by area social managers and environmental staff to inform priorities and forms part of the information that is provided to the ESG committee. CDC is unable to provide other documents which are commercially confidential between the Company and CDC.

5 How does CDC monitor compliance with these safeguards? Do you use any indicators to monitor their compliance? If so, please list the indicators and their parameters. Could you share any recent monitoring and compliance reports you have carried out on Feronia's activities?	In part covered by response to preceding question. In addition to the above, CDC has a range of specific KPIs (for example Lost Time Injury Frequency Rate for workers) and has access to, and reviews the 1/4ly summaries of data that are captured on the Company's MIS (that provides management with real time data on community interactions and grievances, OHS, housing refurbishments, boreholes and other social infrastructure and other matters). CDC receives a range of other documents and reports (including the papers provided to the ESG committee, the Lenders Independent Environmental and Social Adviser (LIESA) report, and reports on serious incidents (required within 3 days of the company becoming aware of an incident). Of note the Company developed a grievance recourse mechanisms (GRM) which provides an insight into company, worker and community concerns. Data and analysis on grievances are provided to the ESG committee and discussed at their meetings.
6 According to a 2015 Digby Wells' Environmental and Social Assessment of Feronia's operations, in November 2013 CDC Group invested USD 18.1 Million " to help Feronia re-establish the business, secure employment and achieve its environmental and social objectives; USD 3.6 million of this was assigned to implementing Feronia's ESAP. How has CDC Group monitored the implementation of the ESAP? Specifically, which indicators did CDC use to monitor progress and how often was monitoring carried out? Please list what Feronia has delivered as a result of CDC's USD 3.6 million investment destined to the implementation of its ESAP	CDC monitors the ESAP regularly as part of its role in the ESG Committee and engages with Company staff and management on a regular basis for updates on specific activities as needed (see comments in Q3 and Q 5 above). CDC has visited the plantations on average every 6 months since it invested (these monitoring trips are undertaken with other lenders and investors and include CDC ES staff at least annually)

CDC ESG Loan Usage Summary	US$
Surveys and Assessments (ESIA, HCV, H&S, Land Use)	586,835
Environmental Monitoring Programme (Lab Equipment/ Capex)	96,916
Staff Training on a wide range of E&S issues	66,680
Palm Oil Mill Effluent	144,667
Housing Rehabilitation	853,649
Installation of Water Boreholes for use in community and staff settlements	706,211
Hospital and health care rehabilitation at all three sites	516,565
Hospital Equipment	270,547
Hazardous Materials Storage	40,653
Personal Protective Equipment	280,475
Road Maintenance	30,000
Total	**3,593,200**

	In laying out the specific costs that were ascribed to the ESG loan above it is important to acknowledge that overall spending on ES issues has been far in excess of $3,593,200 we estimate it is in the region of $10m when healthcare, boreholes, all housing and other social infrastructure is included. To restate comments in our cover letter CDCs objective in this investment was to ensure the success and continued vitality of a major employer and significant source of both livelihood and nutrition in DRC
7 Has CDC provided direct support to Feronia to help improve living or working conditions for workers and their families? If so, please provide the documentation that outlines the goals and deliverables Feronia was expected to meet in return for these investments.	Direct support has included technical advice to the company and the application of IFC PS as part of CDCs investment requirements (including OHS. Labour and working conditions, social infrastructure etc) CDC (with FMO) is deploying a major technical assistance program that is being implemented by the Earthworm Foundation and which aims to enhance a range of social, livelihood and development challenges for Feronia's workers and wider communities (with a focus on Lokutu) as well as providing a mediation service between local communities and Company. Over the period that CDC has been invested in the Company, we have worked with them on a range of ES issues including labour and occupational health and safety, stakeholder engagement and plantation and mill environmental performance. These efforts have all been undertaken at the same time as the company undertakes large scale re-planting of oil palm, restoration of social and other infrastructure and mill renovations, and in the context of significant and ongoing socio-economic challenges in DRC. The list of activities below is indicative of the efforts that CDC and the Company have made more generally (ie beyond the scope of the ES loan) and is provided to give a flavour of the extent and type of support that CDC has been working with the Company on: • Creation of an ES team within the company (including area social managers, health and safety and environmental staff at each plantation, and an ES Director), as well as a suite of social, environmental and OHS policies and procedures that guide Company operations; • Support to health care/ services. In 2016, there were 95,353 consultations, and in 2017, 117,134 consultations in the Company's hospitals and health centres (data on 2018 are being collated) and on average c 2,000 babies are born /yr in Company hospitals. These facilities service local communities as well as workers. Additionally, in 2018, the Company formed a partnership with Marie Stopes, to raise awareness of family planning and to provide contraceptives; • Supporting the company in its negotiations with the six unions that represent worker interests resulting in significant wage increases, and establishing a grievance recourse mechanism for workers and local communities;

	• Implementing a stakeholder engagement plan, as well as a range of social and livelihood programs for and with local communities including activities such as planting of cocoa, artemisia, pepper, rice and fish farming to improve local livelihoods as well as the rebuilding of a wide range of community infrastructure such as schools, boreholes and health centres; • Working with the company to develop conservation and land use policies that aim to protect areas of High Conservation Value habitat on the plantations, while also securing livelihood opportunities for local communities; • Design solutions for waste water and palm oil mill effluent (these have not been implemented yet because of cash flow challenges, but will be implemented when these have been addressed); • Health and safety training (including NEBOSH training for managers and OHS staff and toolbox training for workers). We acknowledge that achieving international ES and labour performance across all three plantations will remain challenging but have a strong conviction that without CDCs support ES practices would be far less advanced and impactful.
8 Were any of CDC's investments in Feronia aimed specifically at mitigating the company operations' environmental impact? If so, please provide the documentations that outlines the goals and deliverables Feronia was expected to meet in return for these investments.	CDCs investment included a range of ES commitments (defined in both the ESAP and clauses in the investment agreement) that bind Feronia to international good practices over time (recognising that achieving full compliance in the context of DRC is complex and requires continuing efforts). Examples of the commitments that the company is required to achieve include: • Prohibition on deforestation / expansion of plantation area beyond the land already planted with oil palm; • Appointment of ES (including OHS) staff, training of workers and development of policies and procedures that are based on international good practices, RSPO requirements and IFC Performance Standards); • Grievance mechanisms and a commitment to enhance stakeholder engagement; • Protocols and controls on agrochemical use and management; • Requirements to manage forest assets on the plantations to protect biodiversity; • Effluent management

9 Does CDC communicate with the other development banks –German DEG, Dutch FMO and Belgian BIO – involved with Feronia? Have you harmonized the social and environmental safeguards attached to your participation?	CDC is in regular and substantive communication with DFI lenders (and DEG is the lead/ agency lender in the DFI consortia). The ESAP that the company used to report progress on ES matters was jointly agreed by DFI lenders and investors, and DFIs collaborate closely in the ES support and guidance that CDC provides to the Company. All DFIs involved in Feronia use IFC Performance Standards (2012) as a key part of the ES reference framework which underpins the ESAP, and we have jointly collaborated in the development of other guidance (for example on security management and legacy land issues).
10 What are CDC's development objectives for investing in Feronia?	Our objectives in making this investment have been emphasized in the cover letter accompanying this annex, but to re-state CDCs objective in this investment was to ensure the success and continued vitality of a major employer and significant source of both livelihood and nutrition in DRC. Overall, CDC's mission is to support the building of businesses throughout Africa and South Asia, to create jobs, and to make a lasting difference to people's lives in some of the world's poorest places. CDC invests in Africa and South Asia because over 80 percent of the world's poorest people live in these regions. We focus on investing in countries where the private sector is weak, jobs are scarce, and the investment climate is difficult, but particularly in sectors where growth leads to jobs. These sectors are financial services, infrastructure, health, manufacturing, food and agriculture, construction and real estate, and education. Regarding Feronia specifically, at the time of writing, Feronia is still the largest private sector employer in the agricultural sector in DRC, operating in a remote area with few if any other economic opportunities for local communities.

[i] CDC consider that the application of IFC Performance Standards is a good proxy for the UNGPs but over time we have supplemented our approach to ES management with specific work on security and land rights that is more reflective of a human rights approach to our expectations

HRW Letter to CDC Group – September 2019

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New York City
September 30, 2019

HUMAN RIGHTS WATCH

HRW.org

Nick O'Donohoe
Chief Executive Officer
CDC Group Plc.
123 Victoria Street
London SW1E 6DE
United Kingdom

Re: Alleged Abuses in Feronia/PHC Oil Palm Plantations in the Democratic Republic of the Congo

Dear Mr. O'Donohoe,

We are writing to share Human Rights Watch's findings on abuses documented on oil palm plantations controlled by Feronia, a company of which CDC Group owns 37.86 percent of shares and to which it has loaned over US$30 million.

Feronia has a stake of 76 percent in Plantations et Huileries du Congo (PHC), which operates three plantations in the Democratic Republic of the Congo. During a meeting on February 12, 2019 in Kinshasa, Feronia's former Chief Executive Officer, Xavier de Carnière, told Human Rights Watch that PHC's Director General "answered" to him, as the representative of the majority stakeholder, and that the PHC Director General "must do what [is] demand(ed) of him," thus indicating Feronia's operational control of its subsidiary.

Human Rights Watch conducted research in the three plantations and in five cities in northern and western Congo between November 2018 and February 2019, including over 200 interviews with plantation workers, managerial staff and public officials. We also reviewed extensive documentary evidence, including social and environmental impact reports assessing the company's operations.

Human Rights Watch is committed to producing material that is well-informed and objective. We hope you and your staff will be able to respond to the attached questions, in order for us to understand the steps CDC Group has taken to mitigate and redress alleged abuses on the three oil palm plantations.

For us to reflect your comments in our report, we ask that you provide a written response to the questions in appendix by October 22, 2019. We may publish these, as well as previous correspondence, in full.

Thank you very much, and we look forward to your response.

Sincerely,

[redacted]

Daniel Wilkinson
Acting Director
Environment and Human Rights Division

[redacted]

Mausi Segun
Executive Director
Africa Division

Appendix: Findings and Request for Information

A. CDC Groups' Human Rights Obligations

As a bank wholly owned by the UK government through its Department for International Development (DFID), CDC Group is under the obligation to conduct its business in line with the UK's commitments under international human rights law, including the provisions contained in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), among others. These obligations include that of not financing or contributing to the violation of human rights in other countries. Other domestic development banks owned by states, such as Germany's KfW Bankengruppe, have explicitly acknowledged this obligation through the adoption of human rights declarations or statements.

1. **A.** Has CDC Group adopted a human rights policy? If so, does it acknowledge CDC Group's extraterritorial obligations? If not, why not? Does CDC Group envision adopting such policy?

2. **A.** What steps does CDC Group take to ensure it is discharging its human rights obligations before and after investing in a venture?

3. **A.** Does CDC Group disclose to parties potentially affected by a venture they have invested in the results of their social and environmental impact assessment, and how it will impact them specifically? If CDC Group does not do this, does the venture CDC Group invests in do so? If the latter, how does CDC Group ensure that the venture is in fact complying with this requirement in a timely manner and that the information disclosed to potentially affected parties is comprehensive, accessible and functional?

4. **A.** Regarding its investment in Feronia, what steps has CDC Group taken to meet its human rights obligations?

5. **A.** Did CDC Group conduct its own social and environmental impact/risk assessment prior to investing in Feronia, or did it rely on an assessment conducted by the company? Could you provide us with a copy of the risk/impact assessment conducted prior to investing in Feronia?

6. **A.** Does CDC Group have policies on the social, environmental, and labor standards for its investments? Does CDC Group have policies related to transparency and disclosure of investment information, monitoring and oversight of compliance with CDC Group policies, and accountability and remedy? If so, can you provide us a copy of these policies?

7. **A.** Which international standards has CDC Group made binding on Feronia through contractual obligations? Do these include all of the International Financial

Corporation's Performance Standards? Do these include all of the World Bank Group's Environmental Health and Safety Guidelines?

8. **A.** According to CDC Group's *Code of Responsible Investing*, managers should "identify and record any serious incidents involving Portfolio Companies that result in ... permanent damage to health, a material adverse environmental or social impact, or material breach of law relating to E&S matters, and, in all cases, the promotion of appropriate corrective actions." Has CDC Group recorded any such incidents regarding Feronia's operations? If, so which corrective actions has CDC Group promoted and how? Please specify the timeline envisioned for these corrective actions, if any.

9. **A.** How does CDC Group ensure that people affected by their investments have access to remedy?

B. Practices that Endanger Workers' Health

PHC workers who apply and mix pesticides, or supervise these tasks, conduct their work with inadequate and incomplete equipment, Human Rights Watch found. The company's alleged failure to provide appropriate protective equipment exposes workers to the serious health effects associated with these toxic chemicals.

Workers told Human Rights Watch about a range of symptoms they experience immediately after applying pesticides, as well as chronic conditions they developed after they started the job. Their symptoms are consistent with exposure to the specific pesticides they spray or exposure to pesticides more generally, as described in public health literature and confirmed by public health experts consulted by Human Rights Watch. Workers interviewed by Human Rights Watch consistently reported company doctors and managers failed to disclose the results of compulsory medical tests they underwent over the course of three years in company hospitals, even after workers repeatedly requested these results.

Our findings on the inadequate and incomplete equipment of workers who apply pesticides are part of a broader problem that extends to all plantation workers, particularly day laborers and women. We are concerned that PHC is falling short of its obligations to provide adequate personal protective equipment to all plantation workers to prevent and mitigate occupational health hazards, such as machete, thorn prick and trauma injuries, snake and spider bites and exposure to chemical fertilizers. The company's failure to provide clean drinking water for workers on the plantations also exposes them to potentially unsafe water, and the health risks associated to it such as diarrhea, cholera, dysentery, typhoid and polio.

1. **B.** Please share your views regarding the findings described above.

2. **B.** Did CDC Group's assessments before investing in Feronia identify any of the issues outlined above? If so, which specific measures did CDC Group take to ensure that Feronia corrected practices that endanger workers' health? Please specify the

timeline envisioned for these measures, if any, and whether CDC Group considered any of these mitigation plans were successfully executed.

3. **B.** Did CDC Group's monitoring activities following its investment in Feronia identify any of the issues outlined above? If so, which measures did CDC Group take to ensure that PHC addressed and mitigated the issues that give rise to violations of workers right to health and labor rights? Please specify the timeline envisioned for these measures, if any, and whether CDC Group considered these mitigation plans were successfully executed.

C. Mill's Industrial Waste Contaminates Communities' Water, Environment

At least two of PHC's three palm oil mills allegedly dumped their industrial waste largely untreated, a number of Feronia and PHC staff told Human Rights Watch. The company's procedures are apparently not compliant with Congolese law, international human rights standards for the conduct of business, or commercial good practice expected from appropriately designed, operated, and maintained facilities operating under normal conditions, according to the World Bank Group's vegetable oil processing environmental health and safety guidelines.

In one case, the palm oil mill dumped putrid effluents next to a settlement of several hundred workers, with fumes pervading the residential area. Another community of several hundred downstream from the mill, located less than five kilometers outside of PHC concession area, submitted an official complaint to the company's grievance mechanism in November 2018 alleging the effluents had contaminated their only source of drinking water. A PHC representative allegedly told their community leader that the company had tested the water and found that the substance wasn't harmful, so that they would not compensate them, but the community was not shown any test results, the leader told Human Rights Watch in February 2019, and they refused to sign off their complaint as resolved. They have since been forced to continue relying on tainted water, several residents told Human Rights Watch.

1. **C.** Please share your views regarding the findings described above.

2. **C.** Did CDC Group's assessments before investing in Feronia identify any of the issues outlined above? If so, which specific measures did CDC Group take to bring Feronia's practices into compliance with Congolese law, industry good practice and international standards regarding the right to water and health? Please specify the timeline envisioned for these measures, if any.

3. **C.** Did CDC Group's monitoring activities following its investment in Feronia identify any of the abuses outlined above, including the apparent infractions of Congolese law? If so, which measures did CDC Group take to ensure that Feronia addressed and mitigated these abuses? Please specify the timeline envisioned for these measures, if any, and whether CDC Group considered these mitigation plans were successfully executed.

4. **C.** According to Feronia's grievance procedure policy, unresolved grievances are escalated to be investigated by the Company Management Committee. The ESG Board committee, on which Dave Easton of CDC Group currently sits, will also be advised, according to the policy. Furthermore, all grievances are supposed to be regularly reviewed by management and reported on a quarterly basis to the ESG Board Committee. Was CDC Group, as a member of the ESG Board Committee, aware of any allegations that the company's operations have tainted communities' water sources? If so, how did CDC Group respond to these allegations?

D. Employment Practices that Violate Labor Rights

PHC is relying on temporary contracts in an abusive manner apparently to secure the large workforce it requires at a lower cost, Human Rights Watch found. Temporary contracts preclude benefits and result in significantly lower wages for workers. The majority of PHC workers were employed under this modality in December 2018. In one of the plantations, the provincial representation of the Labor Inspectorate fined PHC for its illegal use of temporary contracts and compelled it to provide permanent contracts to nearly 1,500 day laborers over the next two years.

The impact of this practice on livelihoods is compounded by other labor rights violations reported by workers, such as underpayment of wages. It would appear that even when plantation workers meet well over 50 percent of their daily quota, they are only paid 50 percent of their daily wage. Many workers told Human Rights Watch they struggle to meet basic needs with their wages and, as a result, are shouldering significant debt with high interest to simply provide food for their families and pay school tuition for their children.

1. **D.** Please share your views regarding the findings described above.

2. **D.** CDC Group's "strategic focus on jobs" as "the main route out of poverty" prioritizes "decent work and economic growth." Does CDC Group have a "decent work" policy? If not, why not? Has CDC Group envisioned adopting such policy? Please specify the timeline for the adoption of such policy, if relevant.

3. **D.** Did CDC Group's assessments before investing in Feronia identify any of the issues outlined above? If so, which specific measures did CDC Group take to bring Feronia's practices into compliance with Congolese law and industry good practice, as defined in CDC Group's *Code of Responsible Investing*? Please specify the timeline envisioned for these measures, if any, and whether CDC Group considered these plans were successfully executed.

4. **D.** Did CDC Group's monitoring activities following its investment in Feronia identify any of the abuses outlined above, including the infractions of Congolese law? If so, which measures did CDC Group take to ensure that Feronia addressed and mitigated

these abuses? Please specify the timeline envisioned for these measures, if any, and whether CDC Group considered these mitigation plans were successfully executed.

E. CDC Group's Accountability Mechanisms

CDC Group provides an email address on its website to which anyone can submit "evidence of a breach of [their] *Code of Responsible Investing*."

1. **E.** Is this email address the only avenue for redress for a party negatively affected by a venture that CDC Group either has invested in, partly owns, or both as in the case of Feronia?

2. **E.** Which entity is responsible for assessing the admissibility of complaints alleging breaches of the *Code of Responsible Investing* submitted through the e-mail address above? Please state whether this entity lies outside of CDC Group corporate governance structure, i.e. whether it is an independent body.

3. **E.** Can CDC Group provide a description of the process it follows to resolve grievances, including the types of possible resolutions? What kind of response can a party negatively affected expect from CDC Group, following submission of a complaint to this email address? Over what timeframe?

4. **E.** Is information about the grievance mechanism process, potential resolutions, and the complaints received about CDC Group investments publicly available anywhere?

5. **E.** Which measures does CDC Group usually take, including on Feronia/PHC plantations, to divulge the existence of this mechanism among potentially affected parties?

6. **E.** Has CDC Group received any complaints alleging a breach of their *Code of Responsible Investing* in regard to their investment in Feronia? In regard to other investments? If so, what steps has CDC Group taken to respond to these complaints?

7. **E.** Has CDC Group adopted an anti-retaliation policy to protect human rights defenders threatened in the context of CDC Group's investments? If so, please share a copy. Has CDC Group implemented this anti-retaliation policy following the killing of Mr. Joël Imbangola, the RIAO activist allegedly murdered by a PHC security guard? If so, please explain which steps CDC Group has taken to implement this policy.

8. **E.** Are there other mechanisms available where people impacted by CDC Group's investments can bring their complaints and seek remedy? If so, are these operational level grievance mechanisms, judicial mechanisms, or state regulatory agencies that have oversight over the country's overseas investments? Please specify the nature, jurisdiction and competencies of these mechanisms, as well as their ability to impose binding decisions on CDC Group.

CDC Group Response to HRW – October 2019

To	Human Rights Watch
Date	22/10/2019
Subject	HRW Findings and Request for Information (sent by HRW to CDC on 01/10/19)

#	HRW questions	CDC Responses
A. CDC Groups' Human Rights Obligations As a Development Finance Institution wholly owned by the UK government through its Department for International Development (DFID), CDC Group is under the obligation to conduct its business in line with the UK's commitments under international human rights law, including the provisions contained in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), among others. These obligations include that of not financing or contributing to the violation of human rights in other countries. Other domestic development banks owned by states, such as Germany's KfW Bankengruppe, have explicitly acknowledged this obligation through the adoption of human rights declarations or statements.		
	Has CDC Group adopted a human rights policy? If so, does it acknowledge CDC Group's extraterritorial obligations? If not, why not? Does CDC Group envision adopting such policy?	CDC's Investment Policy, which is agreed by the Secretary of State for International Development incorporates at Appendix 3 a detailed Code of Responsible Investing ("the Code"), which sets out specific environmental and social standards which we and our investee companies must meet. It reflects international standards and practices including the International Finance Corporation's ("IFC") Performance Standards, and the UN Guiding Principles on Business and Human Rights. We worked with Shift to prepare guidance on the application of human rights diligence to private sector investments (available here). Human rights are an important element of the Code and this was reinforced when the Code was most recently updated in 2017. The Code of Responsible Investing is reviewed periodically (every five years) by CDC and DFID to ensure that it reflects evolving best practice. Further assessment on specific human rights related elements were carried out by CDC in case of Feronia (including the use of security personnel).
	What steps does CDC Group take to ensure it is discharging its human rights obligations before and after investing in a venture?	It is important to note that as a developmental investor, part of the impact we seek to achieve is to help the businesses we invest in to achieve the standards in our Code of Responsible Investing and the IFC Performance Standards. We very rarely invest in companies that are 'a finished article', and often the journey that companies must go on can take years.

	Our standard investment approach is to require portfolio companies to enter into contractual obligations that seek to ensure compliance with the Code of Responsible Investing. Feronia is no exception. It is contractually required to ensure that companies in the Feronia Group (including PHC) comply with the relevant requirements in the Code, including human rights related requirements. CDC's legal agreements specifically require compliance with applicable IFC Performance Standards and Environmental Health and Safety Guidelines (as stated in the Code). These obligations remain in force.
Does CDC Group disclose to parties potentially affected by a venture they have invested in the results of their social and environmental impact assessment, and how it will impact them specifically? If CDC Group does not do this, does the venture CDC Group invests in do so? If the latter, how does CDC Group ensure that the venture is in fact complying with this requirement in a timely manner and that the information disclosed to potentially affected parties is comprehensive, accessible and functional?	We require our investees to consult with individuals and communities that are affected by the company's plans or operations commensurate with the environmental and social risks to those parties. We do not generally disclose findings of our environmental and social due diligence to third parties. We (or third party advisers working on our behalf) are responsible for reviewing the quality, scope and appropriateness of such activities against IFC Performance Standards before and throughout the investment (e.g. clauses 25 to 31 of IFC PS1 related to Stakeholder Engagement activities and the establishment of a grievance mechanism).
Regarding its investment in Feronia, what steps has CDC Group taken to meet its human rights obligations?	Since we invested, we have been actively engaged with Feronia to enhance its environmental and social management, to both reduce environment and social risks and to support the company to achieve an even greater impact from it's environmental and social activities. We have done this directly and through our role on the Company's ESG committee. Much of the committee's focus is on addressing those aspects of the Company's performance that relate to human rights issues, including working conditions; health and safety; community health and safety; health, and education. Notably, we have worked with the Company to improve its engagement with local communities in order to better understand social needs, and to address issues of concern. Over time this has resulted in a greater prioritisation of funding and support for urgent social development challenges including social infrastructure such as healthcare, over investment in some business improvements such as waste water treatment, which you have raised in your questions.

	Our efforts are ongoing. The human rights elements and our support for social infrastructure development remain a priority both for the Company and CDC (see below). CDC provided a loan specifically for environmental social and governance issues which has led to overall spending on environmental and social issues far in excess of $3,500,000 (this has supported improved labour and working conditions through the provision of personal protective equipment(PPE), hospital equipment and so on). We estimate spending on human rights elements of Feronia's operation have been in the region of $10m since 2013 when healthcare, boreholes, all housing and other social infrastructure is included.
Did CDC Group conduct its own social and environmental impact/risk assessment prior to investing in Feronia, or did it rely on an assessment conducted by the company? Could you provide us with a copy of the risk/impact assessment conducted prior to investing in Feronia?	We commissioned independent third-party consultants to undertake Environmental and Social Due Diligence (ESDD) on our proposed investment in Feronia (please see our previous responses on this matter). Although this work is confidential to CDC, we recognised that subsequent investors would benefit from a publicly accessible and updated environmental and social assessment, and so worked with Feronia during 2014 to commission international environmental and social consultants to undertake an Environmental and Social Assessment of Feronia's operations and impacts. That ESA included extensive public consultation. The summary is available here, and access to all sections of the ESA is available here).
Does CDC Group have policies on the social, environmental, and labor standards for its investments? Does CDC Group have policies related to transparency and disclosure of investment information, monitoring and oversight of compliance with CDC Group policies, and accountability and remedy? If so, can you provide us a copy of these policies?	CDC's Code of Responsible Investing defines the environmental, social and labour standards for our investees. We have a transparency policy that stipulates the information we will make public about each of our investments. This is available on our website. CDC's Transparency and Disclosure Policy describes the information CDC makes available regarding its investments. Such information is available on CDC's online database (available here) and in its annual review (the most recent of which is available here).
Which international standards has CDC Group made binding on Feronia through contractual obligations? Do these include all of the International Financial	As previously stated, CDC's investment agreement cites its Code of Responsible Investing and IFC Performance Standards and applicable WB EHS Guidelines as requirements for the investment. As an impact investor, we rarely invest in companies that can achieve all these standards immediately. Our goal is to work with businesses to help them achieve, and importantly embed, high standards across their operations. This can take time, particularly in markets where such standards are unfamiliar and access to the relevant skills, knowledge or equipment is

Corporation's Performance Standards? Do these include all of the World Bank Group's Environmental Health and Safety Guidelines?	low. In Feronia's case, achieving international environmental and labour performance standards across all three plantations will remain challenging. However, Feronia's management remain committed to making improvements and we have a strong conviction that without our continued support environmental and social practices would be both far less advanced and far less impactful, particularly given how remote, deprived and neglected those communities are.
According to CDC Group's Code of Responsible Investing, managers should "identify and record any serious incidents involving Portfolio Companies that result in … permanent damage to health, a material adverse environmental or social impact, or material breach of law relating to E&S matters, and, in all cases, the promotion of appropriate corrective actions." Has CDC Group recorded any such incidents regarding Feronia's operations? If, so which corrective actions has CDC Group promoted and how? Please specify the timeline envisioned for these corrective actions, if any.	We receive notification of environmental and social issues through Serious Incident Reports(SIRs) within three days of the company becoming aware of a serious incident, and through quarterly ESG committee meetings. Over the period we have been invested in the Company we have received 53 SIRs. These are always discussed at ESG committee meetings and, where possible, result in corrective actions, the increased emphasis on the use of Personal Protective Equipment is an example of this. The Company has not submitted a SIR relating to effluent discharge or local community concerns about effluents at any stage since CDC invested, although it has been discussed at quarterly ESG committee meetings as a result of complaints?
How does CDC Group ensure that people affected by their investments have access to remedy?	It is vital that all the companies we invest in take responsibility for, and lead their own, organisation. This is because once we stop investing in a company we need them to be able to continue to run the business in a responsible way. Our role as an investor is to guide and support the company in setting up those systems, processes and behaviours. This means ensuring that the company has an appropriate complaints / grievance process, and appropriately skilled people to respond to any complaints. In Feronia's case, we have also ensured that the company employs Community Relations Managers who are able to perform outreach to communities to identify and deal with issues as early as possible. In addition, CDC has its own complaints process available to external parties. That process is described on our website (available here)
B. Practices that Endanger Workers' Health	

PHC workers who apply and mix pesticides, or supervise these tasks, conduct their work with inadequate and incomplete equipment, Human Rights Watch found. The company's alleged failure to provide appropriate protective equipment exposes workers to the serious health effects associated with these toxic chemicals. Workers told Human Rights Watch about a range of symptoms they experience immediately after applying pesticides, as well as chronic conditions they developed after they started the job. Their symptoms are consistent with exposure to the specific pesticides they spray or exposure to pesticides more generally, as described in public health literature and confirmed by public health experts consulted by Human Rights Watch. Workers interviewed by Human Rights Watch consistently reported company doctors and managers failed to disclose the results of compulsory medical tests they underwent over the course of three years in company hospitals, even after workers repeatedly requested these results. Our findings on the inadequate and incomplete equipment of workers who apply pesticides are part of a broader problem that extends to all plantation workers, particularly day laborers and women. We are concerned that PHC is falling short of its obligations to provide adequate personal protective equipment to all plantation workers to prevent and mitigate occupational health hazards, such as machete, thorn prick and trauma injuries, snake and spider bites and exposure to chemical fertilizers. The company's failure to provide clean drinking water for workers on the plantations also exposes them to potentially unsafe water, and the health risks associated to it such as diarrhoea, cholera, dysentery, typhoid and polio.	
Please share your views regarding the findings described above.	The Company advised us (September 2018) that it now has a strict policy in place stipulating that all issued PPE must be worn, or work is denied. It has also identified and sourced climate-appropriate PPE and made a firm commitment that everyone working on its sites will have access to the correct PPE early in 2020. It is also investigating how it can provide greater access to changing and washing facilities for its workers who are engaged the mixing and application of agrochemicals. CDC has supported improvements in occupational health and safety (OHS) since our involvement in the Company. This support has included training and a specific allocation of funding for personal protective equipment (PPE). The matter is also regularly discussed at the ESG committee that reports to the Board. The Company has recognised that the development and improvement in its OHS is important and has taken significant steps to put in place policies and inspection programmes and to source and provide the appropriate equipment and training to employees. While considerable progress has been made, including since Human Rights Watch's visit to Lokutu (nd Yaligimba (Jan 2018) and Boteka (Nov/ Dec 2018), we consider work in this area to be in progress and that further improvement is required. In particular, in relation to the consistent provision of PPE, there has been improvement since your team's visits to the Company's site to try to overcome some of the challenges the Company has faced in meeting its responsibilities in this area, notably the difficulty in finding PPE compatible with the local climate (waterproof, but not too hot); ensuring regular transportation of equipment from Kinshasa to the company's sites and changing attitudes and behaviours towards OHS and the use of PPE amongst parts of the workforce.

	No class Ia or Ib agrochemicals[1] are used on the Company's sites. It does use Class II agrochemicals, which can cause skin irritation, eye irritation and irritation of the respiratory tract if inhaled or swallowed. The Company has in place several measures and policies to control the risks associated with spraying the agrochemicals it does use. These include the use of PPE (work clothes, rubber boots, safety glasses, rubber gloves, respiratory masks); training for any new sprayer; refresher training for all sprayers, in line with the Company's annual health, safety and environment (HSE) training programme; regular inspections of spraying operations, in accordance with the Company's annual programme and compliance with DRC legislation about the use of buffer zones and the application of agrochemicals near villages and/or water sources. We and the Company are continuing to review how these control measures are implemented and use of agrochemicals so that we can improve safety for workers, local communities and the environment. The Company has initiated twice-yearly medical check-ups for its workers, in addition to an annual physical fitness to work assessment each year. This is a positive step in ensuring employees' health and fitness to work, although the limitations of local medical staff and the basic nature of medical facilities means they may not be equivalent to global best practice. The Company is, therefore, engaging with its medical services provider to explore how more detailed medical assessments can be implemented in future. The Company has also recently invested in and is implementing a 'Social Information Management System' which should help the Company deliver a more systematic health programme that captures all its workers. In the context of a country where access to safe drinking water is limited, even in the largest cities, since 2016 the Company has invested $1.1 million installing or rehabilitating 70 boreholes to provide clean drinking water for its workers and greater access for all the people living in the communities surrounding its three sites. Statistics from the Company's medical facilities and from conversations amongst people in communities confirms that ailments and illnesses from the consumption of poor quality water have reduced as a direct result.
Did CDC Group's assessments before investing in Feronia identify any of the issues outlined above? If so, which specific measures did CDC Group take to ensure that Feronia corrected practices that endanger workers'	Yes. As we have stated in our previous answer (please see above response), the Environment Social and Action Plan (ESAP) that was agreed with Feronia in 2013 was based on our assessment of the business prior to investment, and has been updated since investment to reflect other in-depth reviews of the company's environment and social impact, our own monitoring and to reflect changes and needs of the business. Over the period that we have been invested, US$280,475 of a CDC loan has been spent on PPE.

[1] WHO recommended classification of pesticides by hazard

health? Please specify the timeline envisioned for these measures, if any, and whether CDC Group considered any of these mitigation plans were successfully executed.	When CDC invested in Feronia, the Company had no dedicated function to deal with E&S issues. Since our investment we have worked with the company to increase funding for environment and social improvements; significantly increase the number of staff working on E&S, and put in place a new ESG Board Committee, to ensure these issues are at the centre of the senior team's priorities. To protect workers, CDC has supported improvements in OHS, including training and a financial allocation for PPE to accelerate progress, when we updated the Company's Environmental and Social Plan (ESAP) earlier in 2019, to include (amongst other items) specific requirements to increase the availability and use of PPE. One of the requirements of the ESAP is for the Company to carry out a health and safety risk assessment of the Company's current operations. OHS (and the use of PPE) is a standing item on the ESG committee agenda and is discussed at every meeting, and CDC regularly engages with Company staff and management on specific activities. Some of the challenges the Company has faced around PPE and OHS are outlined above. The delay in supply due to problems transporting PPE to the sites has been a particular frustration, as has lost equipment or workers not wearing available equipment. As outlined above, we are making progress against these concerns and we have been in discussions with Feronia about improving the system around its PPE management.
Did CDC Group's monitoring activities following its investment in Feronia identify any of the issues outlined above? If so, which measures did CDC Group take to ensure that PHC addressed and mitigated the issues that give rise to violations of workers right to health and labor rights? Please specify the timeline envisioned for these measures, if any, and whether CDC Group considered these mitigation plans were successfully executed.	As above.

C. Mill's Industrial Waste Contaminates Communities' Water, Environment At least two of PHC's three palm oil mills allegedly dumped their industrial waste largely untreated, a number of Feronia and PHC staff told Human Rights Watch. The company's procedures are apparently not compliant with Congolese law, international human rights standards for the conduct of business, or commercial good practice expected from appropriately designed, operated, and maintained facilities operating under normal conditions, according to the World Bank Group's vegetable oil processing environmental health and safety guidelines. In one case, the palm oil mill dumped putrid effluents next to a settlement of several hundred workers, with fumes pervading the residential area. Another community of several hundred downstream from the mill, located less than five kilometers outside of PHC concession area, submitted an official complaint to the company's grievance mechanism in November 2018 alleging the effluents had contaminated their only source of drinking water. A PHC representative allegedly told their community leader that the company had tested the water and found that the substance wasn't harmful, so that they would not compensate them, but the community was not shown any test results, the leader told Human Rights Watch in February 2019, and they refused to sign off their complaint as resolved. They have since been forced to continue relying on tainted water, several residents told Human Rights Watch.	
Please share your views regarding the findings described above.	Palm Oil Mill Effluent (POME) is released into rivers and is also used as organic fertiliser around the Company's sites. This has been the practice of the Company since it was established in 1911. POME is organic effluent comprising process waters, mud, fibre residues and a small percentage of palm oil residue. POME is organic and neither toxic or hazardous. Although it might be harmful if drunk, it is strongly diluted after discharge. Water boreholes have been drilled to provide safe drinking water. While releasing POME into a river does not meet global best practice (please note that there are no Congolese laws covering this matter), the best practice treatment of POME requires the construction of an effluent treatment plant at each site at a cost of between $3m and $5m. Given the Company's financial constraints (it is not yet making a profit) and the urgent requirements to maintain and enhance other social infrastructure, the ESG Committee of the Board took the decision to prioritise other social infrastructure needs including healthcare, roads, education and boreholes, and address effluent treatment as soon as it was practical to do so. They took this decision based on knowledge of effluent composition (essentially of organic material that is not toxic or hazardous) and dilution rates which further reduces risk of effluent to human health, and in the context of the urgent need for a water borehole drilling programme to provide safe drinking water. The borehole drilling programme means that communities have access to water sources that are unaffected by the release of organic waste by the Company. The Company's monitoring and maintenance programme for its water boreholes analyses the water to check the physicochemical and microbiological quality of the water and to comply with laws and regulations on water and health standards in the DRC (Laws No 52/443 and 15/026) The water analysis is done in partnership with the

	DRC water distribution system (REGIDESO). CDC will support and monitor the Company's continuing monitoring of borehole water quality. The most recent series of testing, in September 2019, found that the vast majority of water sources met the required levels under DRC law and, in the few cases where levels were not met, remedial action was undertaken to ensure compliance and/or people were advised to boil the water before consumption. We do appreciate that the river presents a large and convenient water source, and using boreholes isn't necessarily a first choice for residents. While the waste is organic and not harmful to human health, the organic waste, notably the oil residue is clearly sub-optimal and it remains our intention to tackle this problem with Feronia as soon as it is practical to do so. There are no "limit values" in DRC law covering the quality of waste effluents from palm mills.
Did CDC Group's assessments before investing in Feronia identify any of the issues outlined above? If so, which specific measures did CDC Group take to bring Feronia's practices into compliance with Congolese law, industry good practice and international standards regarding the right to water and health? Please specify the timeline envisioned for these measures, if any.	The need to install effluent treatment works was identified during Environmental and Social Due Diligence (ESDD), and subsequently assessed in the 2015 ESA (here). As stated in the previous answer, and given the financial status of the Company, it was necessary to prioritise a range of social and environmental actions, and (given the risk to human health and life) priority was given to maintaining and enhancing social infrastructure (including healthcare, roads, education and boreholes). This decision was taken by the ESG committee (in 2016) with recognition that effluent treatment should be addressed as soon as practical.
Did CDC Group's monitoring activities following its investment in Feronia identify any of the abuses outlined above, including the apparent infractions of Congolese law? If so, which measures did CDC Group take to ensure that Feronia addressed and mitigated these abuses? Please specify	Please see the answers above.

the timeline envisioned for these measures, if any, and whether CDC Group considered these mitigation plans were successfully executed.	
According to Feronia's grievance procedure policy, unresolved grievances are escalated to be investigated by the Company Management Committee. The ESG Board committee, on which Dave Easton of CDC Group currently sits, will also be advised, according to the policy. Furthermore, all grievances are supposed to be regularly reviewed by management and reported on a quarterly basis to the ESG Board Committee. Was CDC Group, as a member of the ESG Board Committee, aware of any allegations that the company's operations have tainted communities' water sources? If so, how did CDC Group respond to these allegations?	CDC has discussed borehole water quality at the ESG committee, and Feronia has implemented an ongoing monitoring programme to ensure the potability of the supply.

D. Employment Practices that Violate Labor Rights

PHC is relying on temporary contracts in an abusive manner apparently to secure the large workforce it requires at a lower cost, Human Rights Watch found. Temporary contracts preclude benefits and result in significantly lower wages for workers. The majority of PHC workers were employed under this modality in December 2018. In one of the plantations, the provincial representation of the Labor Inspectorate fined PHC for its illegal use of temporary contracts and compelled it to provide permanent contracts to nearly 1,500 day laborers over the next two years.

The impact of this practice on livelihoods is compounded by other labor rights violations reported by workers, such as underpayment of wages. It would appear that even when plantation workers meet well over 50 percent of their daily quota, they are only paid 50 percent of their daily wage. Many workers told Human Rights

Watch they struggle to meet basic needs with their wages and, as a result, are shouldering significant debt with high interest to simply provide food for their families and pay school tuition for their children.	
Please share your views regarding the findings described above.	The Company has a stated commitment to move to a situation where the vast majority of its staff are full-time permanent workers, which it has agreed with its DFI investors, the Labour Inspectorate and the unions. The process to achieve this goal has already begun and the Company has converted more than 2,000 workers to permanent employees over the last three years. Unusually for a company operating in DRC, Feronia is fully unionised and the company has a strong relationship with the six unions that represent employee interests. It has held successful negotiations with the unions around wages, which has resulted in the Company progressively increasing wages since 2010 and paying above the statutory minimum wage for agriculture in the DRC. Daily task rates set by Feronia are low by industry standards, both globally and in Africa. For example, in Ghana the average task rates in palm oil plantations are between 60% and 150% higher than they are at Feronia. We know that these rates are low and attainable, because a condition of our investment is that they are audited every two years by an independent expert. If a worker overperforms, they're able to earn bonuses. In addition to pay, Feronia employees have access to other benefits including free healthcare for employees and their families (an average of ten people per family); a housing allowance / house; paid annual leave, and maternity pay. Feronia's average worker currently earns more than a teacher or a nurse would earn locally (CDF equivalent of $3.30 per day, which is also three times the national average income of $1 per day). We and Feronia are very aware of our responsibility to local communities as it is the only major employer in those areas. A key part of our commitment to the Company is to try to support decent livelihoods and Feronia knows that its success is dependent on supporting its dedicated workforce. The Company's tough trading environment and the wide range of operational difficulties the company faces mean that this remains both a key priority and a key challenge for the business.
CDC Group's "strategic focus on jobs" as "the main route out of poverty" prioritizes "decent work and economic growth." Does CDC Group have a "decent work" policy? If not, why not? Has CDC Group envisioned adopting such policy? Please specify	CDCs approach to labour rights and working conditions is defined in its Code of Responsible Investing, which are cross-referenced with IFC PS 2 and ESH Guidelines. CDC reviews the scope and requirements of the Code on a regular basis (the next review will take place in 2020/21)

the timeline for the adoption of such policy, if relevant.	
Did CDC Group's assessments before investing in Feronia identify any of the issues outlined above? If so, which specific measures did CDC Group take to bring Feronia's practices into compliance with Congolese law and industry good practice, as defined in CDC Group's Code of Responsible Investing? Please specify the timeline envisioned for these measures, if any, and whether CDC Group considered these plans were successfully executed.	Some of the issues above were identified during ESDD, others emerged and evolved subsequently, and were identified through monitoring and our regular engagement with the Company. Please see the answers and links above for more information.
Did CDC Group's monitoring activities following its investment in Feronia identify any of the abuses outlined above, including the infractions of Congolese law? If so, which measures did CDC Group take to ensure that Feronia addressed and mitigated these abuses? Please specify the timeline envisioned for these measures, if any, and whether CDC Group considered these mitigation plans were successfully executed.	See above comments and links.
E. CDC Group's Accountability Mechanisms CDC Group provides an email address on its website to which anyone can submit "evidence of a breach of [their] Code of Responsible Investing."	

Is this email address the only avenue for redress for a party negatively affected by a venture that CDC Group either has invested in, partly owns, or both as in the case of Feronia?	The Companies we invest in, and the intermediaries we invest through, are required to have appropriate complaints / grievance mechanisms in place, including whistle-blower procedures. As mentioned in previous answers, it is vital that companies take primary responsibility for dealing with the matters that arise about their business, so that they continue to operate responsibly after we've stopped investing. Feronia has such procedures in place. CDC will support fund managers and portfolio companies to create, adopt and implement policies promoting whistle-blowing, where they do not already exist. Our own complaints mechanism and policy are described here. Finally, our shareholder, the Department for International Development, also has a complaints procedure. Reporting of concerns relating to corruption, fraud and safeguarding can be made directly to reportingconcerns@dfid.gov.uk. People can also write to DFID via the Public Enquiries Point - Enquiry@dfid.gov.uk In line with our governance structure with DFID, which details the arm's-length nature of our relationship, the normal process would be that DFID would expect CDC to investigate and respond to any complaint through its own procedures. However, if the issue is also raised directly with DFID, this would kick-off a discussion with CDC about its handling of the complaint. Depending on the nature of the complaint, DFID may also report it to reportingconcerns@dfid.gov.uk for possible action by DFID's Internal Audit Investigations Service (IAIS).
Which entity is responsible for assessing the admissibility of complaints alleging breaches of the Code of Responsible Investing submitted through the e-mail address above? Please state whether this entity lies outside of CDC Group corporate governance structure, i.e. whether it is an independent body.	CDC's Head of Compliance is responsible for managing an appropriate response to any complaints we receive. These could capture any number of issues, situations and countries – and range in complexity from very simple through to very complex. Accordingly, we maintain a flexible and non-bureaucratic approach to allow us to take the most effective and efficient response in each circumstance. The Head of Compliance, at least once annually, reports to CDC's Board of Directors on the workings and effectiveness of the policy on whistle-blowing and complaints and any reports received.
Can CDC Group provide a description of the process it follows to resolve grievances, including the types of	Please see above.

possible resolutions? What kind of response can a party negatively affected expect from CDC Group, following submission of a complaint to this email address? Over what timeframe?	
Is information about the grievance mechanism process, potential resolutions, and the complaints received about CDC Group investments publicly available anywhere?	Please see the webpage publicising the process here, which also provides a link to our policy. This is linked from the front page of the website and can be found through a simple search on our site. We do not publish details of complaints. These are reported to our Board.
Which measures does CDC Group usually take, including on Feronia/PHC plantations, to divulge the existence of this mechanism among potentially affected parties?	As described above, the primary responsibility for dealing with stakeholders and matter affecting stakeholders, must be the investee firm itself, not only to ensure that they become and remain responsible and accountable for their own operations (including after we divest), but because they will have a recognisable name and presence with their own stakeholders. Therefore, beyond our website, we do not promote the mechanism amongst investee company stakeholders.
Has CDC Group received any complaints alleging a breach of their Code of Responsible Investing in regard to their investment in Feronia? In regard to other investments? If so, what steps has CDC Group taken to respond to these complaints?	We have not received any such complaints.
Has CDC Group adopted an anti-retaliation policy to protect human rights defenders threatened in the context of CDC Group's investments? If so, please share a copy. Has CDC Group implemented this anti-	As stated above, we require investee companies to put in place appropriate complaints and whistle-blower mechanisms, including anti-retribution provisions, and to engage appropriately with local communities and NGOs. We do not have a specific anti-retaliation policy.

retaliation policy following the killing of Mr. Joël Imbangola, the RIAO activist allegedly murdered by a PHC security guard? If so, please explain which steps CDC Group has taken to implement this policy.	
Are there other mechanisms available where people impacted by CDC Group's investments can bring their complaints and seek remedy? If so, are these operational level grievance mechanisms, judicial mechanisms, or state regulatory agencies that have oversight over the country's overseas investments? Please specify the nature, jurisdiction and competencies of these mechanisms, as well as their ability to impose binding decisions on CDC Group.	Please see the answers above. In addition to our investee complaints and whistleblowing processes, together with those of CDC and DFID, all our investees are subject to local laws, courts and regulatory decisions. Where such laws and regulations exist, they would be required to have regard to those and to comply with those rulings.

HRW Exchange with DEG

HRW Letter to DEG – March 2019

350 Fifth Avenue, 34th Floor
New York, NY 10118-3299
Tel: +1-212-290-4700
Fax: +1-212-736-1300; 917-591-3452

HUMAN RIGHTS WATCH

HRW.org

Washington, D.C., March 22, 2019

Christiane Laibach
Chairwoman, DEG Management Board
Deutsche Investitions- und
Entwicklungsgesellschaft (DEG)
Kammergasse 22
50676 Cologne
Germany

Re: Human Rights Watch research into Feronia/PHC

Dear Ms. Laibach,

We are writing to solicit information on DEG's investments in Feronia, the majority stakeholder in the palm oil company Plantations et Huileries du Congo (PHC), which operates three plantations in the Democratic Republic of the Congo. Human Rights Watch conducted on-site research in these three plantations between November 2018 and February 2019.

Human Rights Watch is one of the world's leading independent organizations dedicated to protecting human rights. We conduct objective, rigorous field research in more than 90 countries worldwide and produce reports on our findings to raise awareness about human rights issues and to develop and promote policy recommendations for change. Human Rights Watch has been conducting research in the DR Congo since the 1990s and has had offices in the country for over a decade now.

Human Rights Watch is committed to producing material that is well-informed and objective. We hope you and your staff will be able to respond to the attached questions to inform our research into the health and environmental impacts of Feronia's operations. We would appreciate a written response by April 12, 2019.

We hope to continue engagement with DEG and plan to share an overview of our findings later in our research process. Thank you very much, and we look forward to your response.

Sincerely,

[redacted]

Mausi Segun
Executive Director, Africa Division

[redacted]

Marcos Orellana
Director, Environment and Human Rights Division

1. What are the types and amounts of investments that DEG has made in Feronia? Please state the amount for equity and loans, the date when the agreements were executed and the date(s) of disbursement(s) to the company. Are there any additional future or planned investments?

2. To date, what percentage of Feronia does DEG own, if any?

3. What due diligence did DEG undertake, including but not limited to human rights and environmental impacts, prior to investing in Feronia? Please provide documentation of the risks identified in this process, and steps taken to address them.

4. Does DEG require Feronia to undertake any human rights or social and environmental due diligence on its operations, or comply with any human rights/social and environmental safeguards in relation to your investments? If so, please provide documentation of those requirements, any analysis of gaps in meeting social and environmental standards, and any steps to address shortcomings. We would also appreciate copies of documents provided by Feronia to fulfill these requirements. Are these safeguards part of a contractual undertaking by the company?

5. How does DEG monitor compliance with these safeguards? Do you use any indicators to monitor their compliance? If so, please list the indicators and their parameters. Could you share any recent monitoring and compliance reports you have carried out on Feronia's activities?

6. Has DEG provided direct support to Feronia to help improve living or working conditions for workers and their families? If so, please provide the documentation that outlines the goals and deliverables Feronia was expected to meet in return for these investments.

7. Were any of DEG's investments in Feronia aimed specifically at mitigating the company operations' environmental impact? If so, please provide the documentations that outlines the goals and deliverables Feronia was expected to meet in return for these investments.

8. Does DEG communicate with the other development banks – British CDC, Dutch FMO and Belgian BIO – involved with Feronia? Have you harmonized the social and environmental safeguards attached to your participation?

9. What are DEG's development objectives for investing in Feronia?

DEG Response to HRW – April 2019

Luciana Tellez-Chavez

From: Geiger, Martin <Martin.Geiger@deginvest.de>
Sent: Wednesday, April 17, 2019 3:46 AM
To: Luciana Tellez-Chavez
Cc: Paris, Dominik; DEG-Pressestelle; Mausi Segun; Marcos Orellana; Timo Mueller; Kaem Kapalata Machozi
Subject: AW: Human Rights Watch - Information Request re Feronia

Follow Up Flag: Follow up
Flag Status: Completed

Dear Ms. Tellez-Chavez,

Thanks for the detailed information on your research project. We are pleased to give you DEG-specific answers to your questions:

1. What are the types and amounts of investments that DEG has made in Feronia? Please state the amount for equity and loans, the date when the agreements were executed and the date(s) of disbursement(s) to the company. Are there any additional future or planned investments?

In December 2015, DEG committed a long-term loan of USD 16.5 million to Plantations et Huileries du Congo SA (PHC) - a subsidiary of Feronia - to rehabilitate the three plantations (technical equipment, replanting) and implement the environmental and social plan. DEG invested together with other Development Finance Institutions (DFI), the total investment amounted to UDS 49 million.

Information to the single disbursements is published on Feronia's website:
https://www.feronia.com/news/view/feronia_announces_closing_of_fourth_and_final_drawdown_on_49m_term_facility

2. To date, what percentage of Feronia does DEG own, if any?
DEG provided a long-term loan to PHC and is no shareholder of Feronia.

3. Has DEG provided direct support to Feronia to help improve living or working conditions for workers and their families? If so, please provide the documentation that outlines the goals and deliverables Feronia was expected to meet in return for these investments.
4. Were any of DEG's investments in Feronia aimed specifically at mitigating the company operations' environmental impact? If so, please provide the documentations that outlines the goals and deliverables Feronia was expected to meet in return for these investments.

DEG's development-policy mandate is to finance and advise private enterprises investing in developing countries as key drivers of jobs and income. Investments co-financed by DEG are subject to a comprehensive environmental and social screening process. DEG contractually obliges companies co-financed by it to comply with IFC Performance Standards, the international benchmark standard for business activity in the private sector and the ILO Core Labour Standards. The realisation of environmental and social action plans agreed upon with the co-financed companies is closely being accompanied by DEG through a team of environmental and social experts, supported by external experts. This applies also to our cooperation with PHC. DEG is involved in the project in order to help secure thousands of jobs in one of the poorest countries in the world.

The loan for PHC finances investments in plantation rehabilitation, equipment and environmental and social management. In order to continuously improve environmental and social management, issues such as occupational health and safety, sustainability and corporate governance are considered and further developed. The company has a contractual obligation to keep lenders regularly informed of developments and progress. Further information can be found in the Company's Sustainability Report: https://www.feronia.com/pages/view/sustainability-report-2017

Regards

Martin Geiger

Director Sustainability and Corporate Governance

DEG – Deutsche Investitions- und
Entwicklungsgesellschaft mbH
Sustainability and Corporate Governance
Kaemmergasse 22
50676 Cologne
Germany

Phone +49 (0) 221 4986 1525
Fax +49 (0) 221 4986 1375
Martin.Geiger@deginvest.de
www.deginvest.de

Von: Luciana Tellez-Chavez <tellezl@hrw.org>
Gesendet: Freitag, 12. April 2019 20:37
An: Geiger, Martin <Martin.Geiger@deginvest.de>
Cc: Paris, Dominik <Dominik.Paris@deginvest.de>; DEG-Pressestelle <presse@deginvest.de>; Mausi Segun <segunm@hrw.org>; Marcos Orellana <orellam@hrw.org>; Timo Mueller <muellet@hrw.org>; Kaem Kapalata Machozi <kapalak@hrw.org>
Betreff: RES: Human Rights Watch - Information Request re Feronia

Dear Mr. Geiger,

Many thanks for your message, I'm happy to answer any doubts regarding our research project and could also discuss over the phone, if you prefer.

Human Rights Watch conducts objective, rigorous field research and produce reports on our findings to raise awareness about human rights issues and to develop and promote policy recommendations for change. Human Rights Watch reports are public and accessible on our website to anyone who wishes to consult them (https://www.hrw.org/). Human Rights Watch is an independent, nongovernmental organization, supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly.

Our research focuses on the "health and environmental impacts of Feronia's operations", as specified in our letter. We also noted in our communication we would "share an overview of our findings later in our research process," as we envisioned this letter to be the first of several communications with DEG. We do not have a set date for the release of our report, but we will reach out again to share our findings in order to provide the developments banks and the company an opportunity to reply before publishing our report.

We have reached out to CDC Group, BIO, FMO and DEG individually; each of these banks has already replied or committed to reply in writing before the end of April, except for DEG. We appreciate your response and that you consider that BIO's communication represents your institutions' position regarding your investment in Feronia.

However, there are a number of our questions that address DEG's participation specifically that we'd hope you could still answer:

1. What are the types and amounts of investments that DEG has made in Feronia? Please state the amount for equity and loans, the date when the agreements were executed and the date(s) of disbursement(s) to the company. Are there any additional future or planned investments?
2. To date, what percentage of Feronia does DEG own, if any?
3. Has DEG provided direct support to Feronia to help improve living or working conditions for workers and their families? If so, please provide the documentation that outlines the goals and deliverables Feronia was expected to meet in return for these investments.
4. Were any of DEG's investments in Feronia aimed specifically at mitigating the company operations' environmental impact? If so, please provide the documentations that outlines the goals and deliverables Feronia was expected to meet in return for these investments.

We hope you and your staff will be able to respond to these questions to inform our research and enable us to accurately represent DEG's participation. Thank you very much and we look forward to your reply.

Sincerely,
Luciana

Luciana Téllez Chávez
Environment & Human Rights
Human Rights Watch
350 Fifth Avenue, 34th Floor, New York, 10118-3299
Email: tellezl@hrw.org
Tel: +1 212-377-9459
@lucianatellez
Website: http://www.hrw.org

HUMAN RIGHTS WATCH

De: Geiger, Martin <Martin.Geiger@deginvest.de>
Enviado: Friday, April 12, 2019 10:29:04 AM
Para: Luciana Tellez-Chavez
Cc: Paris, Dominik; DEG-Pressestelle; Mausi Segun; Marcos Orellana
Assunto: AW: Human Rights Watch - Information Request re Feronia

Dear Luciana Téllez Chávez,

Thanks for sending your questions to DEG. BIO provided you already with a very comprehensive response on February 6, 2019 on the same questions, including additional documentation. DEG considers that their responses and the documentation provided by them are covering all your questions well from a DEG perspective and we have nothing to add. Besides, you had the chance to visit the three plantations sites, had interviews with stakeholders, staff and PHC/Feronia management and in addition to the extensive public information available on the website you received also further documentation from PHC/Feronia.

In your letter sent out to DEG and the other lenders, you missed out to specify what the exact purpose and rational as well as the scope of your assessment and the upcoming report are and what your target audience is for the report. We would be keen to receive further details on that, including who is financing the assessment and the report and what the timeline is for publishing the report.

Best regards

Martin Geiger
Director Sustainability and Corporate Governance

DEG – Deutsche Investitions- und
Entwicklungsgesellschaft mbH
Sustainability and Corporate Governance
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Von: Luciana Tellez-Chavez <tellezl@hrw.org>
Datum Freitag, 22. März 2019, 8:02 PM
An: DEG-Pressestelle <presse@deginvest.de>
Cc: Marcos Orellana <orellam@hrw.org>, Mausi Segun <segunm@hrw.org>, Paris, Dominik <Dominik.Paris@deginvest.de>
Betreff: Human Rights Watch - Information Request re Feronia

Dear Ms. Laibach,

We are writing to solicit information on DEG's investments in Feronia, the majority stakeholder in the palm oil company Plantations et Huileries du Congo (PHC), which operates three plantations in the Democratic Republic of the Congo. Human Rights Watch conducted on-site research in these three plantations between November 2018 and February 2019.

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Human Rights Watch is committed to producing material that is well-informed and objective. We hope you and your staff will be able to respond to the attached questions to inform our research into the health and environmental impacts of Feronia's operations. We would appreciate a written response by April 12, 2019.

We hope to continue engagement with DEG and plan to share an overview of our findings later in our research process. Thank you very much, and we look forward to your response.

Sincerely,
Luciana Téllez Chávez

Luciana Téllez Chávez
Finberg Fellow
Environment & Human Rights
Human Rights Watch
350 Fifth Avenue, 34th Floor, New York, 10118-3299
Tel. +1 212-377-9459 (Office), +1 347 419 1891 (Mobile)
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Website: http://www.hrw.org

HRW Letter to DEG – September 2019

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Tel: +1-212-290-4700
Fax: +1-212-736-1300; 917-591-3452

New York City
September 30, 2019

HUMAN RIGHTS WATCH

HRW.org

Christiane Laibach
Chairwoman, DEG Management Board
Deutsche Investitions- und Entwicklungsgesellschaft (DEG)
Kammergasse 22
50676 Cologne
Germany

Re: Alleged Abuses in PHC Oil Palm Plantations in the Democratic Republic of the Congo

Dear Ms. Laibach,

We are writing to share Human Rights Watch's findings on abuses documented on oil palm plantations operated by Plantations et Huileries du Congo (PHC) in the Democratic Republic of the Congo, a company in which DEG had invested US$16.5 million dollars as of April 2019.

Human Rights Watch conducted research on the three plantations and in five cities in northern and western Congo between November 2018 and February 2019, including over 200 interviews with plantation workers, managerial staff, and public officials. We also reviewed extensive documentary evidence, including social and environmental impact reports assessing the company's operations.

Human Rights Watch is committed to producing material that is well-informed and objective. We hope you and your staff will be able to respond to the attached questions in order for us to understand the steps DEG has taken to mitigate and redress alleged abuses on the three oil palm plantations.

For us to reflect your comments in our report, we ask that you provide a written response to the questions in the appendix by October 22, 2019. We may publish these, as well as previous correspondence, in full.

Sincerely,

[redacted]

Daniel Wilkinson
Acting Director
Environment and Human Rights Division

[redacted]

Mausi Segun
Executive Director
Africa Division

Appendix: Findings and Request for Information

A. DEG's Human Rights Obligations

As a subsidiary of KfW Bankengruppe, DEG has said that it "operates in line with KfW Group's declaration on respect for human rights in its business operations," which states KfW's "obligation to conduct its business in line with Germany's commitments under ... international [human rights] agreements." These agreements include the provisions contained in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), among others. The obligation that KfW acknowledged would, in virtue of authoritative interpretations of these international agreements by United Nations treaty bodies, include that of not financing or contributing to serious abuses of human rights in other countries.

1. **A.** What steps does DEG take to ensure it meets its human rights obligations before and after investing in a venture?

2. **A.** Does DEG disclose to parties potentially affected by a venture they have invested in the results of their social and environmental impact assessment, and how it will impact them specifically? If DEG does not do this, does the venture DEG invests in do so? If the latter, how does DEG ensure that the venture is in fact complying with this requirement in a timely manner and that the information disclosed to potentially affected parties is comprehensive, accessible and functional?

3. **A.** Regarding its investment in PHC, what steps has DEG taken to discharge its human rights obligations?

4. **A.** Did DEG undertake human rights due diligence or social and environmental impact assessments prior to their initial disbursement to PHC? Did DEG conduct its own assessment prior to investing in PHC, or did it rely on an assessment conducted by the company? Could you provide us with a copy of the risk/impact assessment conducted prior to investing in PHC?

5. **A.** Which international standards has DEG made binding on PHC through contractual obligations? Do these include all of the International Financial Corporation's Performance Standards? Do these include all of the World Bank Group's Environmental Health and Safety Guidelines?

6. **A.** According to DEG's *Guideline for environment and social sustainability*, DEG expects its project partners "to thoroughly analyse the ecological and social impacts of the co-financed projects, ensure measures to mitigate any adverse effects and provide adequate information and consultation of the affected people throughout the full project term." Which actions has DEG taken to ensure that PHC has implemented measures to mitigate adverse effects and provide adequate information to people affected by the company's operations?

7. **A.** How does DEG ensure that people affected by their investments have access to remedy?

B. Practices that Endanger Workers' Health

PHC workers who apply and mix pesticides, or supervise these tasks, conduct their work with inadequate and incomplete equipment, Human Rights Watch found. The company's failure to provide appropriate protective equipment exposes workers to the serious health effects associated with these toxic chemicals.

Workers told Human Rights Watch about a range of symptoms they experience immediately after applying pesticides, as well as chronic conditions they developed after they started the job. Their symptoms are consistent with exposure to the specific pesticides they spray or exposure to pesticides more generally, as described in public health literature and confirmed by public health experts consulted by Human Rights Watch. Workers interviewed by Human Rights Watch consistently reported that company doctors and managers failed to disclose the results of compulsory medical tests they underwent over the course of three years in company hospitals, even after workers repeatedly requested these results.

Our findings on the inadequate and incomplete equipment of workers who apply pesticides are part of a broader problem that extends to all plantation workers, particularly day laborers and women. We are concerned that PHC is falling short of its obligations to provide adequate personal protective equipment to all plantation workers to prevent and mitigate occupational health hazards, such as machete, thorn prick and trauma injuries, snake and spider bites, and exposure to chemical fertilizers. The company's failure to provide clean drinking water for workers on the plantations also exposes them to potentially unsafe water, and the health risks associated with it such as diarrhea, cholera, dysentery, typhoid and polio.

1. **B.** Please share your views regarding the findings described above.

2. **B.** Did DEG's assessments before investing in PHC identify any of the issues outlined above? If so, which specific measures did DEG take to ensure that PHC corrected practices that endanger workers' health? Please specify the timeline envisioned for these measures, if any, and whether DEG considered any of these mitigation plans were successfully executed.

3. **B.** Did DEG's monitoring activities following its investment in PHC identify any of the issues outlined above? If so, which measures did DEG take to ensure that PHC addressed and mitigated the issues that give rise to violations of workers right to health and labor rights? Please specify the timeline envisioned for these measures, if any, and whether DEG considered these mitigation plans were successfully executed.

C. Mill's Industrial Waste Contaminates Communities' Water, Environment

At least two of PHC's three palm oil mills dumped their industrial waste largely untreated, a number of Feronia and PHC staff told Human Rights Watch. The company's procedures do not appear to be compliant with Congolese law, international human rights standards for the conduct of business, or commercial good practice expected from appropriately designed, operated, and maintained facilities operating under normal conditions, according to the World Bank Group's vegetable oil processing environmental health and safety guidelines.

In one case, the palm oil mill dumped putrid effluents next to a settlement of several hundred workers, with fumes pervading the residential area. Another community of several hundred downstream from the mill, located less than five kilometers outside of the PHC concession area, submitted an official complaint to the company's grievance mechanism in November 2018, alleging the effluents had contaminated their only source of drinking water. A PHC representative allegedly told their community leader that the company had tested the water and found that the substance wasn't harmful, so that they would not compensate them, but the community was not shown any test results, the leader told Human Rights Watch in February 2019, and they refused to sign off their complaint as resolved. They have since been forced to continue relying on tainted water, several residents told Human Rights Watch.

1. **C.** Please share your views regarding the findings described above.

2. **C.** Did DEG's assessments before investing in PHC identify any of the issues outlined above? If so, which specific measures did DEG take to bring PHC's practices into compliance with Congolese law, industry good practice and international standards regarding the right to water and health? Please specify the timeline envisioned for these measures, if any.

3. **C.** Did DEG's monitoring activities following its investment in PHC identify any of the abuses outlined above, including the apparent infractions of Congolese law? If so, which measures did DEG take to ensure that PHC addressed and mitigated these violations? Please specify the timeline envisioned for these measures, if any, and whether DEG considered these mitigation plans were successfully executed.

4. **C.** According to Feronia's grievance procedure policy, unresolved grievances are escalated to be investigated by the Company Management Committee. The ESG Board committee will also be advised, according to the policy. Furthermore, all grievances are supposed to be regularly reviewed by Management and reported on a quarterly basis to the ESG Board Committee. Was DEG, as an observer in the ESG Board Committee's quarterly meetings, aware of allegations that the company's operations have tainted communities' water sources? If so, how did DEG respond to these allegations?

D. Employment Practices that Violate Labor Rights

PHC is relying on temporary contracts in an abusive manner, apparently in order to secure the large workforce it requires at a lower cost, Human Rights Watch found. Temporary contracts preclude benefits and result in significantly lower wages for workers. The majority of PHC workers were employed under this modality in December 2018. In one of the plantations, the provincial representation of the Labor Inspectorate fined PHC for its illegal use of temporary contracts and compelled it to provide permanent contracts to nearly 1,500 day laborers over two years.

The impact of this practice on livelihoods is compounded by other labor rights violations reported by workers, such as underpayment of wages. It would appear that even when plantation workers meet well over 50 percent of their daily quota, they are only paid 50 percent of their daily wage. Many workers told Human Rights Watch they struggle to meet basic needs with their wages and, as a result, are shouldering significant debt with high interest to simply provide food for their families and pay school tuition for their children.

1. **D.** Please share your views regarding the findings described above.

2. **D.** DEG's stated mission is to "promote social justice as well as ecological and economical sustainability," in addition to "actively promot[ing] human rights." Does DEG have a "decent work" policy? If not, why not? Has DEG envisioned adopting such a policy? Please specify the timeline for the adoption of such policy, if relevant.

3. **D.** Did DEG's assessments before investing in PHC identify any of the issues outlined above? If so, which specific measures did DEG take to bring PHC's practices into compliance with Congolese law and international standards regarding labor rights and the right to an adequate standard of living? Please specify the timeline envisioned for these measures, if any, and whether DEG considered these plans were successfully executed.

4. **D.** Did DEG's monitoring activities following its investment in PHC identify any of the abuses outlined above, including alleged infractions of Congolese law? If so, which measures did DEG take to ensure that PHC addressed and mitigated these violations? Please specify the timeline envisioned for these measures, if any, and whether DEG considered these mitigation plans were successfully executed.

E. DEG's Accountability Mechanisms

Our understanding is that DEG and FMO have jointly created an Independent Complaint Mechanism, which allows external parties to file a complaint concerning an operation financed by either or both banks. Provided the Independent Expert Panel finds the complaint to be admissible, it will proceed with a "compliance review" or a "dispute resolution" and, in some cases, it will conduct both successively.

1. **E.** According to the Independent Complaint Mechanism's guide, dispute resolution is subject to all the parties "being willing to participate in such a process" and agreeing on a mediator. The process usually culminates with a "mutually agreed program with timelines for implementation as well as roles and responsibilities to monitor the progress made." A mutually agreed party will monitor the "follow-up to agreements." At any given point, the panel will "not take a position on particular allegations nor does it find fault with a party or decide liability."

    - Are these agreements binding on DEG and its client?
    - Are these agreements subject to a timeframe?
    - Does DEG ensure that the client is implementing the resulting agreement?
    - What steps does DEG take if its client is not following through on the agreement in good faith?

2. **E.** According to the Independent Complaint Mechanism's guide, for a compliance review, the panel will assess whether the DEG's performance aligns with its policies and may also issue recommendations for the specific case and/or recommendations for DEG to improve its existing policies and procedures. DEG's management board will publish its response to the panel's report on DEG's website. In the event "material non-compliances are identified, the [mechanism] will monitor the situation until actions taken by [DEG] assure the [mechanism] that [DEG is] addressing the material non-compliance."

    - What is the scope of what DEG defines as "material non-compliances"?
    - Given the panel can only seek assurances that DEG is addressing a material non-compliance, which entity is actually responsible for ensuring that DEG effectively addresses the material non-compliance? Which mechanisms does this entity rely on in order to accomplish this?
    - How does DEG communicate to affected parties the actions it will carry out to address material non-compliances?

3. **E.** According to the Independent Complaint Mechanism's guide, in 2014 FMO and DEG began to introduce "necessary contractual arrangements" into their client agreements, to enable the functioning of the mechanism. What do these arrangements entail and which kind of information do they provide access to for members of the independent panel of experts?

4. **E.** Has DEG adopted an anti-retaliation policy to protect human rights defenders threatened in the context of DEG's investments? If so, please share a copy. Has DEG implemented this anti-retaliation policy following the killing of Mr. Joël Imbangola, the RIAO activist allegedly murdered by a PHC security guard? If so, please explain which steps DEG has taken to implement this policy.

5. **E.** Are there other mechanisms available where people impacted by DEG investments can bring their complaints and seek remedy? If so, are these operational level grievance mechanisms, judicial mechanisms, or state regulatory agencies that have oversight over the country's overseas investments? Please specify the nature, jurisdiction and competencies of these mechanisms, as well as their ability to impose binding decisions on DEG.

DEG Response to HRW – October 2019

DEG Response to Human Rights Watch Questions of 30th September 2019

Martin Geiger, Director Sustainability and Corporate Governance on behalf of

DEG, 22 Oct 2019

A. DEG's Human Rights Obligations

1. A. What steps does DEG take to ensure it meets its human rights obligations before and after investing in a venture?

Investments financed by DEG are subject to a comprehensive environmental and social screening process. DEG contractually obliges companies financed by it to comply with IFC Performance Standards, the international benchmark standard for business activity in the private sector and the ILO Core Labour Standards as well as the ILO Basic Terms and Conditions of Employment. By applying the above-mentioned standards, DEG recognizes and honours its human rights obligations in its private sector financing activities. The realisation of environmental and social action plans agreed upon with the co-financed companies is closely being accompanied by DEG through a team of environmental and social experts, supported by external experts. Co-Financed companies have a contractual obligation to keep lenders regularly informed of developments and progress. DEG follows-up with regards to any developments or accusations that could have human rights obligations and verifies information received from co-financed companies when necessary.

2. A. Does DEG disclose to parties potentially affected by a venture they have invested in the results of their social and environmental impact assessment, and how it will impact them specifically? If DEG does not do this, does the venture DEG invests in do so? If the latter, how does DEG ensure that the venture is in fact complying with this requirement in a timely manner and that the information disclosed to potentially affected parties is comprehensive, accessible and functional?

The IFC Performance Standards, that DEG obliges co-financed companies to comply with, include requirements for Environmental and Social Impact Assessments (ESIAs) to be conducted and for associated engagement with affected communities about the ESIA results and other relevant aspects. DEG's environmental and social screening process of new investments and the monitoring of existing investments verifies if IFC Performance Standards, including those related to disclosure of information by the company, are met. As in other E&S performance areas, if a performance gap is identified, DEG can make its investment conditional on a closure of such gaps. It remains however the co-financed companies responsibility to "ensure" compliance. DEG itself does, in accordance with its disclosure policy, disclose general information of its investments on its website. The results of DEGs social and environmental due diligence and action plans agreed with companies are not disclosed publicly.

3. A. Regarding its investment in PHC, what steps has DEG taken to discharge its human rights obligations?

The answer to 1. A. applies also to our cooperation with PHC.

4. A. Did DEG undertake human rights due diligence or social and environmental impact assessments prior to their initial disbursement to PHC? Did DEG conduct its own assessment prior to investing in PHC, or did it rely on an assessment conducted by the company? Could you provide us with a copy of the risk/impact assessment conducted prior to investing in PHC?

The IFC Performance Standards require co-financed companies to conduct ESIAs. As part of the environmental and social screening process mentioned in 1. A., DEG reviews and validates such documentation in correspondence to the potential risks. In the case of PHC, the review and validation was supported by an external independent specialist consultant who conducted site visits to the plantations. DEG does not disclose environmental and social due diligence results.

5. A. Which international standards has DEG made binding on PHC through contractual obligations? Do these include all of the International Financial Corporation's Performance Standards? Do these include all of the World Bank Group's Environmental Health and Safety Guidelines?

The answer to 1. A. applies also to our cooperation with PHC. The relevant World Bank Group's Environmental Health and Safety Guidelines are part of the contractual obligations of PHC.

6. A. According to DEG's Guideline for environment and social sustainability, DEG expects its project partners "to thoroughly analyse the ecological and social impacts of the co-financed projects, ensure measures to mitigate any adverse effects and provide adequate information and consultation of the affected people throughout the full project term." Which actions has DEG taken to ensure that PHC has implemented measures to mitigate adverse effects and provide adequate information to people affected by the company's operations?

DEG has attached conditions to financing PHC. The conditions require compliance with internationally recognized E&S standards, the implementation of an Environmental and Social Action Plan and an annual independent E&S monitoring visit. DEG E&S staff have conducted multiple site visits and engage continuously and extensively with PHC and the company's owners about E&S topics and challenges.

7. A. How does DEG ensure that people affected by their investments have access to remedy?

The above cited IFC Performance Standards require companies that are co-financed by DEG to have functional external grievance mechanisms which are accessible to people affected by the respective company. Additionally, DEG has its own grievance mechanism (please refer to section E).

B. Practices that Endanger Workers' Health

C. Mill's Industrial Waste Contaminates Communities' Water, Environment

D. Employment Practices that Violate Labor Rights

DEG's independent monitoring activities (as described under A) provided no indication that the information provided by CDC to HRW with regard to questions in sections B, C and D is incorrect. The topics raised in sections B, C and D were identified during the Lenders' due diligence and addressed, as appropriate, through Lenders' requirements and advice for PHC. Specific findings of the initial E&S assessment and detailed findings of the ongoing E&S monitoring for PHC were addressed through the means described under section A and are confidential.

4. C. According to Feronia's grievance procedure policy, unresolved grievances are escalated to be investigated by the Company Management Committee. The ESG Board committee will also be advised, according to the policy. Furthermore, all grievances are supposed to be regularly reviewed by Management and reported on a quarterly basis to the ESG Board Committee. Was DEG, as an observer in the ESG Board Committee's quarterly meetings, aware of allegations that the company's operations have tainted communities' water sources? If so, how did DEG respond to these allegations?

The community grievances are regularly discussed at ESG Board Committee meetings with all participants.

2. D. DEG's stated mission is to "promote social justice as well as ecological and economical sustainability," in addition to "actively promot[ing] human rights." Does DEG have a "decent work" policy? If not, why not? Has DEG envisioned adopting such a policy? Please specify the timeline for the adoption of such policy, if relevant.

Please refer to section A with regards to the E&S relevant policies and resulting requirements for financed companies'. All key issues for private sector companies on decent work are included in the IFC Performance Standards.

E. DEG & FMO Accountability Mechanism

1. E. According to the Independent Complaint Mechanism's guide, dispute resolution is subject to all the parties "being willing to participate in such a process" and agreeing on a mediator. The process usually culminates with a "mutually agreed program with timelines for implementation as well as roles and responsibilities to monitor the progress made." A mutually agreed party will monitor the "follow-up to agreements." At any given point, the panel will "not take a position on particular allegations nor does it find fault with a party or decide liability."

- *Are these agreements binding on DEG and its client?*

The Independent Complaint Mechanism and its independent panel of experts function as a facilitator for dispute resolution. As stated in the policies, dispute resolutions aims at a program, mutually agreed amongst the parties to the dispute resolution, which incl. responsibilities, timelines and monitoring.

- *Are these agreements subject to a timeframe?*

This depends on the agreement reached between the parties in the dispute resolution process, but it will usually contain a mutually agreed program with timelines for implementation.

- *Does DEG ensure that the client is implementing the resulting agreement?*

Roles and responsibilities to monitor the progress are usually part of the agreements reached. On the basis of the monitoring agreements made, the Independent Complaints Mechanism will disclose the outcomes. It is DEG's interest that the client as well as the individuals or communities respect and honour the commitments they made in the agreement they reached. However, DEG has no legal or formal agreement with a client on the responsibilities they committed to in the dispute resolution process. The ICM role is to facilitate dispute resolution.

- *What steps does DEG take if its client is not following through on the agreement in good faith?*

The dispute resolution process with PHC/Feronia is the first of its kind since the establishment of the DEG/FMO complaint mechanism in 2014. DEG will in case parties are not respecting their commitments review options and possibilities on how to encourage implementation, also considering experiences from other complaint mechanisms like IFC's CAO Ombudsman.

2. E. According to the Independent Complaint Mechanism's guide, for a compliance review, the panel will assess whether the DEG's performance aligns with its policies and may also issue recommendations for the specific case and/or recommendations for DEG to improve its existing policies and procedures. DEG's management board will publish its response to the panel's report on DEG's website. In the event "material non-compliances are identified, the [mechanism] will monitor the situation until actions taken by [DEG] assure the [mechanism] that [DEG is] addressing the material non-compliance."

- *What is the scope of what DEG defines as "material non-compliances"?*

"Material non-compliances" in any specific case are defined by the Independent Expert Panel in their compliance review in relation to the applicable policies.

- *Given the panel can only seek assurances that DEG is addressing a material non-compliance, which entity is actually responsible for ensuring that DEG effectively addresses the material non-compliance? Which mechanisms does this entity rely on in order to accomplish this?*

In cases where material non-compliances are identified, the Independent Complaints Mechanism (ICM) will periodically monitor the situation until actions taken by DEG assure the ICM that DEG is addressing the material non-compliance(s). It is the role and responsibility of DEG management to ensure that adequate actions are taken.

- *How does DEG communicate to affected parties the actions it will carry out to address material non-compliances?*

Please refer to the principles of communication with affected partes in in the Complaint Mechanism's guide in chapter 3.2 Description of the Procedure and chapter 3.5 Reporting & Transparency. For each complaint the Independent Expert Panel is monitoring, if applicable,

how DEG is following up on the material non-compliances. This can include publishing monitoring reports on the website of DEG as practiced with previous complaints.

3. E. According to the Independent Complaint Mechanism's guide, in 2014 FMO and DEG began to introduce "necessary contractual arrangements" into their client agreements, to enable the functioning of the mechanism. What do these arrangements entail and which kind of information do they provide access to for members of the independent panel of experts?

These arrangements entail that the Independent Expert Panel has access to the premises of the client and to the information relevant for working on the complaint case. It also arranges for the disclosure of client information that is related to the complaint.

4. E. Has DEG adopted an anti-retaliation policy to protect human rights defenders threatened in the context of DEG's investments? If so, please share a copy. Has DEG implemented this anti-retaliation policy following the killing of Mr. Joël Imbangola, the RIAO activist allegedly murdered by a PHC security guard? If so, please explain which steps DEG has taken to implement this policy.

DEG has not formally adopted an anti-retaliation policy to protect human rights defenders threatened in the context of DEG's investments. However, DEG is exchanging with other mechanism on good practice experience. DEG addresses those issues with special care.

5. E. Are there other mechanisms available where people impacted by DEG investments can bring their complaints and seek remedy? If so, are these operational level grievance mechanisms, judicial mechanisms, or state regulatory agencies that have oversight over the country's overseas investments? Please specify the nature, jurisdiction and competencies of these mechanisms, as well as their ability to impose binding decisions on DEG.

As stated in the ICM policy and in line with other mechanisms: "The Independent Complaints Mechanism is not a legal enforcement mechanism. It offers an effective avenue for addressing concerns and it promotes a mutually constructive relationship between DEG and External Parties. The mechanism shall not be deemed to confer any additional rights of access to justice to the persons lodging a Complaint under the procedure set forth therein.

HRW Exchange with FMO

HRW Letter to FMO – March 2019

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Washington, D.C., March 22, 2019

HUMAN RIGHTS WATCH

HRW.org

Peter van Mierlo
Chief Executive Officer
Netherlands Development Finance Company (FMO)
Anna van Saksenlaan 71
2593 HW, The Hague
The Netherlands

Re: Feronia/PHC Agricultural Concessions in the Democratic Republic of the Congo

Dear Mr. van Mierlo,

We are writing to solicit information on FMO's investments in Feronia, the majority stakeholder in the palm oil company Plantations et Huileries du Congo (PHC), which operates three plantations in the Democratic Republic of the Congo. Human Rights Watch conducted on-site research in these three plantations between November 2018 and February 2019.

Human Rights Watch is one of the world's leading independent organizations dedicated to protecting human rights. We conduct objective, rigorous field research in more than 90 countries worldwide and produce reports on our findings to raise awareness about human rights issues and to develop and promote policy recommendations for change. Human Rights Watch has been conducting research in the DR Congo since the 1990s and has had offices in the country for over a decade now.

Human Rights Watch is committed to producing material that is well-informed and objective. We hope you and your staff will be able to respond to the attached questions to inform our research into the health and environmental impacts of Feronia's operations. We would appreciate a written response by April 12, 2019.

We hope to continue engagement with FMO and plan to share an overview of our findings later in our research process. Thank you very much, and we look forward to your response.

Sincerely,

O –

[redacted]

Mausi Segun
Executive Director, Africa Division

[redacted]

Marcos Orellana
Director, Environment and Human Rights Division

1. What are the types and amounts of investments that FMO has made in Feronia? Please state the amount for equity and loans, the date when the agreements were executed and the date(s) of disbursement(s) to the company. Are there any additional future or planned investments?

2. To date, what percentage of Feronia does FMO own, if any?

3. What due diligence did FMO undertake, including but not limited to human rights and environmental impacts, prior to investing in Feronia? Please provide documentation of the risks identified in this process, and steps taken to address them.

4. Does FMO require Feronia to undertake any human rights or social and environmental due diligence on its operations, or comply with any human rights/social and environmental safeguards in relation to your investments? If so, please provide documentation of those requirements, any analysis of gaps in meeting social and environmental standards, and any steps to address shortcomings. We would also appreciate copies of documents provided by Feronia to fulfill these requirements. Are these safeguards part of a contractual undertaking by the company?

5. How does FMO monitor compliance with these safeguards? Do you use any indicators to monitor their compliance? If so, please list the indicators and their parameters. Could you share any recent monitoring and compliance reports you have carried out on Feronia's activities?

6. Has FMO provided direct support to Feronia to help improve living or working conditions for workers and their families? If so, please provide the documentation that outlines the goals and deliverables Feronia was expected to meet in return for these investments.

7. Were any of FMO's investments in Feronia aimed specifically at mitigating the company operations' environmental impact? If so, please provide the documentations that outlines the goals and deliverables Feronia was expected to meet in return for these investments.

8. Does FMO communicate with the other development banks – British CDC, German DEG and Belgian BIO – involved with Feronia? Have you harmonized the social and environmental safeguards attached to your participation?

9. What are FMO's development objectives for investing in Feronia?

FMO Response – May 2019

FMO
Entrepreneurial
Development
Bank

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Date
07 May 2019

Page
1/4

Subject: FMO answers to HRW questions on PHC/ Feronia

HRW Question	Suggested course of action/ response
What are the types and amounts of investments that FMO has made in Feronia? Please state the amount for equity and loans, the date when the agreements were executed and the date(s) of disbursement(s) to the company. Are there any additional future or planned investments?	FMO has invested 16,5 million USD in PHC/Feronia as a loan. For more detailed information, please have a look at FMO's website: https://www.fmo.nl/project-detail/45017
To date, what percentage of Feronia does FMO own, if any?	None.

FMO
Entrepreneurial
Development
Bank

What due diligence did FMO undertake, including but not limited to human rights and environmental impacts, prior to investing in Feronia? Please provide documentation of the risks identified in this process, and steps taken to address them.	Digby Wells conducted an Environmental and Social Assessment (ESA) on PHC/Feronia. The summaries thereof be found on Feronia's website. The risks identified in that document provide a good overview of the risk profile for PHC/Feronia. FMO subsequently conducted a detailed IFC PS Gap Analysis which resulted in the contractually agreed Environmental and Social Action Plan (ESAP). This document is confidential.
Does FMO require Feronia to undertake any human rights or social and environmental due diligence on its operations, or comply with any human rights/social and environmental safeguards in relation to your investments? If so, please provide documentation of those requirements, any analysis of gaps in meeting social and environmental standards, and any steps to address shortcomings. We would also appreciate copies of documents provided by Feronia to fulfil these requirements. Are these safeguards part of a contractual undertaking by the company?	An Environmental and Social Due Diligence (ESDD) has been undertaken and an ESAP has been agreed with Feronia. The ESAP was based on conclusions of the ESDD and is contractually and legally binding. The ESAP contains several elements related to human rights, for instance land ownership and user rights, stakeholder engagement and community relations, safe working conditions and security. CDC and other investors have established an ESG committee that meets quarterly with Feronia senior management to discuss ES performance and compliance with the ESAP. The ESG Committee subsequently reports conclusions and actions to Feronia Board. The chair of the ESG committee is (currently) also Chairman of Feronia. We kindly refer to the websites of IFC, ILO and Feronia regarding documentation on standards and action plan.

FMO
Entrepreneurial
Development
Bank

How does FMO monitor compliance with these safeguards? Do you use any indicators to monitor their compliance? If so, please list the indicators and their parameters. Could you share any recent monitoring and compliance reports you have carried out on Feronia's activities?	The Development Bank lenders have (as a normal course of action) commissioned a Lenders Independent ES Adviser (LIESA) who visits Feronia annually. The LIESA monitors progress on the ESAP. Findings are presented to lenders and discussed with company (and ESG Committee). Lenders have also visited, and do visit, the Yaligimba, Lokutu and Boteka plantations. The monitoring and compliance reports cannot be shared, as Feronia is a listed company and in view of confidentiality.
Has FMO provided direct support to Feronia to help improve living or working conditions for workers and their families? If so, please provide the documentation that outlines the goals and deliverables Feronia was expected to meet in return for these investments.	FMO is supporting PHC/Feronia in its implementation of the ESAP through advisory services on environmental and social management. Improvement of living conditions and working conditions are measures mentioned in the ESAP.
Were any of FMO's investments in Feronia aimed specifically at mitigating the company operations' environmental impact? If so, please provide the documentations that outlines the goals and deliverables Feronia was expected to meet in return for these investments.	The ESAP was contractually agreed upon and is legally binding. It contains mitigation measures. Please note: The investment is a brownfield operation on existing palm oil plantations which existed for several decades, which means that environmental impacts are limited.

FMO
Entrepreneurial
Development
Bank

Does FMO communicate with the other development banks – British CDC, German DEG and Belgian BIO – involved with Feronia? Have you harmonized the social and environmental safeguards attached to your participation?	All DFI lenders have observer status at Feronia's quarterly ESG committee meetings and receive all documents related thereto. DEG, Bio and FMO are in regular contact with the Feronia and CDC. All DFI investors use the IFC PS as their reference framework and so we have a consistent and aligned set of environmental and social risk management expectations.
What are FMO's development objectives for investing in Feronia?	The financing secures approximately 3,800 permanent and up to 4,000 seasonal jobs in a least developed and post-conflict country. PHC/Feronia estimates that a total of 45,000 people directly benefit economically and socially from its activities. These positive effects are even more significant given that the DRC has an underemployment rate of 82 per cent and a poverty rate of 63 per cent. The project improves the access of the population in the DRC to staple foods including fats, oils, and basic hygiene products including soaps and detergents while displacing high cost imports. Furthermore, PHC/Feronia contributes to economic diversification in remote and underdeveloped regions. Feronia provides, and is in the process of further restoring and developing, extensive social infrastructure, including health facilities, employee housing, schools, water supplies and roads at each of its three plantation sites. PHC/Feronia is also committed to implementing IFC/World Bank standards for environmental and social sustainability and achieving certification by the Roundtable for Sustainable Palm Oil (RSPO).

HRW Letter to FMO – September 2019

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New York City
September 30, 2019

HUMAN RIGHTS WATCH
HRW.org

Peter van Mierlo
Chief Executive Officer
Netherlands Development Finance Company (FMO)
Anna van Saksenlaan 71
2593 HW, The Hague
The Netherlands

Re: Alleged Abuses in PHC Oil Palm Plantations in the Democratic Republic of the Congo

Dear Mr. van Mierlo,

We are writing to share Human Rights Watch's findings on abuses documented on oil palm plantations operated by Plantations et Huileries du Congo (PHC) in the Democratic Republic of the Congo, a company in which FMO had invested US$16.5 million as of May 2019.

Human Rights Watch conducted research in the three plantations and in five cities in northern and western Congo between November 2018 and February 2019, including over 200 interviews with plantation workers, managerial staff and public officials. We also reviewed extensive documentary evidence, including social and environmental impact reports assessing the company's operations.

Human Rights Watch is committed to producing material that is well-informed and objective. We hope you and your staff will be able to respond to the attached questions, in order for us to understand the steps FMO has taken to mitigate and redress alleged abuses on the three oil palm plantations.

For us to reflect your comments in our report, we ask that you provide a written response to the questions in appendix by October 22, 2019. We may publish these, as well as previous correspondence, in full.

Sincerely,

[redacted]

Daniel Wilkinson
Acting Director
Environment and Human Rights Division

Mausi Segun
Executive Director
Africa Division

AMSTERDAM · BEIRUT · BERLIN · BRUSSELS · CHICAGO · GENEVA · GOMA · JOHANNESBURG · KIEV · KINSHASA · LONDON · LOS ANGELES · MIAMI · MOSCOW
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Appendix: Findings and Request for Information

A. FMO's Human Rights Obligations

FMO's human rights policy states its commitment to "take measures through the due diligence process to avoid supporting activities that may contribute to or cause human rights violations" and acknowledges "the responsibility of [its] business clients to respect human rights." Furthermore, as a bank majority owned by the Dutch state, FMO is obligated to conduct its business in line with the Netherlands' commitments under international human rights law, including the provisions contained in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), among others. Other domestic development banks owned by states, such as Germany's KfW Bankengruppe, have explicitly acknowledged this obligation.

1. **A.** Does FMO acknowledge that, as a bank majority-owned by the Dutch state, it has extraterritorial human rights obligations?

2. **A.** What steps does FMO take to ensure it is discharging its human rights obligations before and after investing in a venture? Does this include human rights due diligence or an environmental and social impact assessment? If so, are these documents made publicly available?

3. **A.** Does FMO disclose to parties potentially affected by a venture they have invested in the results of their social and environmental impact assessment, and how it will impact them specifically? If FMO does not do this, does the venture FMO invests in do so? If the latter, how does FMO ensure that the venture is in fact complying with this requirement in a timely manner and that the information disclosed to potentially affected parties is comprehensive, accessible and functional?

4. **A.** Regarding its investment in PHC, what steps has FMO taken to discharge its human rights obligations? Please describe the concrete steps taken, if any.

5. **A.** Did FMO undertake human rights due diligence or social and environmental impact assessments prior to its initial disbursement to PHC? Did FMO conduct its own assessment prior to investing in PHC, or did it rely on an assessment conducted by the company? Could you provide us with a copy of the risk/impact assessment conducted prior to investing in PHC?

6. **A.** According to FMO's *Sustainability Policy*, FMO "respects internationally recognized human rights standards and takes measures to avoid supporting activities that may cause or contribute to human rights violations and acknowledges the responsibility of its clients to do the same," which "means to avoid infringing the human rights of others and to address adverse impact these businesses may cause or contribute to." Which actions has FMO taken to ensure that PHC is addressing adverse impacts to people affected by the company's operations?

7. **A.** Which international standards has FMO made binding on PHC through contractual obligations? Do these include all of the International Financial Corporation's Performance Standards? Do these include all of the World Bank Group's Environmental Health and Safety Guidelines?

8. **A.** How does FMO ensure that people affected by their investments have access to remedy?

B. Practices that Endanger Workers' Health

PHC workers who apply and mix pesticides, or supervise these tasks, conduct their work with inadequate and incomplete equipment, Human Rights Watch found. The company's apparent failure to provide appropriate protective equipment exposes workers to the serious health effects associated with these toxic chemicals.

Workers told Human Rights Watch about a range of symptoms they experience immediately after applying pesticides, as well as chronic conditions they developed after they started the job. Their symptoms are consistent with exposure to the specific pesticides they spray or exposure to pesticides more generally, as described in public health literature and confirmed by public health experts consulted by Human Rights Watch. Workers interviewed by Human Rights Watch consistently reported company doctors and managers failed to disclose the results of compulsory medical tests they underwent over the course of three years in company hospitals, even after workers repeatedly requested these results.

Our findings on the inadequate and incomplete equipment of workers who apply pesticides are part of a broader problem that extends to all plantation workers, particularly day laborers and women. We are concerned that PHC is falling short of its obligation to provide adequate personal protective equipment to all plantation workers to prevent and mitigate occupational health hazards, such as machete, thorn prick and trauma injuries, snake and spider bites and exposure to chemical fertilizers. The company's failure to provide clean drinking water for workers on the plantations also exposes them to potentially unsafe water, and the health risks associated to it such as diarrhea, cholera, dysentery, typhoid and polio.

1. **B.** Please share your views regarding the findings described above.

2. **B.** Did FMO's assessments before investing in PHC identify any of the issues outlined above? If so, which specific measures did FMO take to ensure that PHC corrected practices that endanger workers' health? Please specify the timeline envisioned for these measures, if any, and whether FMO considered any of these mitigation plans were successfully executed.

3. **B.** Did FMO's monitoring activities following its investment in PHC identify any of the issues outlined above? If so, which measures did FMO take to ensure that PHC addressed and mitigated the issues that give rise to violations of workers right to health and labor rights? Please specify the timeline envisioned for these measures, if

any, and whether FMO considered these mitigation plans were successfully executed.

C. Mill's Industrial Waste Contaminates Communities' Water, Environment

At least two of PHC's three palm oil mills allegedly dumped industrial waste largely untreated, a number of Feronia and PHC staff told Human Rights Watch. The company's procedures are allegedly not compliant with Congolese law, international human rights standards for the conduct of business, or commercial good practice expected from appropriately designed, operated, and maintained facilities operating under normal conditions, according to the World Bank Group's vegetable oil processing environmental health and safety guidelines.

In one case, the palm oil mill dumps its putrid effluents next to a settlement of several hundred workers, with fumes pervading the residential area. Another community of several hundred downstream from the mill, located less than five kilometers outside of PHC concession area, submitted an official complaint to the company's grievance mechanism in November 2018, alleging the effluents had contaminated their only source of drinking water. A PHC representative allegedly told their community leader that the company had tested the water and found that the substance wasn't harmful, so that they would not compensate them, but the community was not shown any test results, the leader told Human Rights Watch in February 2019, and they refused to sign off their complaint as resolved. They have since been forced to continue relying on tainted water, several residents told Human Rights Watch.

1. **C.** Please share your views regarding the findings described above.

2. **C.** Did FMO's assessments before investing in PHC identify any of the issues outlined above? If so, which specific measures did FMO take to bring PHC's practices into compliance with Congolese law, industry good practice and international standards regarding the right to water and health? Please specify the timeline envisioned for these measures, if any.

3. **C.** Did FMO's monitoring activities following its investment in PHC identify any of the abuses outlined above, including apparent infractions of Congolese law? If so, which measures did FMO take to ensure that PHC addressed and mitigated these violations? Please specify the timeline envisioned for these measures, if any, and whether FMO considered these mitigation plans were successfully executed.

4. **C.** According to Feronia's grievance procedure policy, unresolved grievances are escalated to be investigated by the Company Management Committee. The ESG Board committee will also be advised, according to the policy. Furthermore, all grievances are supposed to be regularly reviewed by Management and reported on a quarterly basis to the ESG Board Committee. Was FMO, as an observer in the ESG Board Committee's quarterly meetings, aware of allegations that the company's

operations have tainted communities' water sources? If so, how did FMO respond to these allegations?

D. Employment Practices that Violate Labor Rights

PHC is relying on temporary contracts in an abusive manner apparently to secure the large workforce it requires at a lower cost, Human Rights Watch found. Temporary contracts preclude benefits and result in significantly lower wages for workers. The majority of PHC workers were employed under this modality in December 2018. In one of the plantations, the provincial representation of the Labor Inspectorate fined PHC for its illegal use of temporary contracts and compelled it to provide permanent contracts to nearly 1,500 day laborers over two years.

The impact of this practice on livelihoods is compounded by other labor rights violations reported by workers, such as underpayment of wages. It would appear that even when plantation workers meet well over 50 percent of their daily quota, they are only paid 50 percent of their daily wage. Many workers told Human Rights Watch they struggle to meet basic needs with their wages and, as a result, are shouldering significant debt with high interest to simply provide food for their families and pay school tuition for their children.

1. **D.** Please share your views regarding the findings described above.

2. **D.** FMO's stated mission is to "promote social justice as well as ecological and economical sustainability," in addition to "actively promot[ing] human rights." Does FMO have a "decent work" policy? If not, why not? Has FMO envisioned adopting such policy? Please specify the timeline for the adoption of such policy, if relevant.

3. **D.** Did FMO's assessments before investing in PHC identify any of the issues outlined above? If so, which specific measures did FMO take to bring PHC's practices into compliance with Congolese law and international standards regarding labor rights and the right to an adequate standard of living? Please specify the timeline envisioned for these measures, if any, and whether FMO considered these plans were successfully executed.

4. **D.** Did FMO's monitoring activities following its investment in PHC identify any of the abuses outlined above, including alleged infractions of Congolese law? If so, which measures did FMO take to ensure that PHC addressed and mitigated these violations? Please specify the timeline envisioned for these measures, if any, and whether FMO considered these mitigation plans were successfully executed.

E. FMO's Accountability Mechanisms

Our understanding is that DEG and FMO have jointly created an Independent Complaint Mechanism, which allows external parties to file a complaint concerning an operation financed by either or both banks. Provided the Independent Expert Panel finds the complaint

to be admissible, it will proceed with a "compliance review" or a "dispute resolution" and, in some cases, it will conduct both successively.

1. **E.** According to the Independent Complaint Mechanism's guide, dispute resolution is subject to all the parties "being willing to participate in such a process" and agreeing on a mediator. The process usually culminates with a "mutually agreed program with timelines for implementation as well as roles and responsibilities to monitor the progress made." A mutually agreed party will monitor the "follow-up to agreements." At any given point, the panel will "not take a position on particular allegations nor does it find fault with a party or decide liability."

    - Are these agreements binding on FMO and its client?
    - Are these agreements subject to a timeframe?
    - Does FMO ensure that the client is implementing the resulting agreement?
    - What steps does FMO take if its client is not following through on the agreement in good faith?

2. **E.** According to the Independent Complaint Mechanism's guide, for a compliance review, the panel will assess whether the FMO's performance aligns with its policies and may also issue recommendations for the specific case and/or recommendations for FMO to improve its existing policies and procedures. FMO's management board will publish its response to the panel's report on FMO's website. In the event "material non-compliances are identified, the [mechanism] will monitor the situation until actions taken by [FMO] assure the [mechanism] that [FMO is] addressing the material non-compliance."

    - What is the scope of what FMO defines as "material non-compliances"?
    - Given that the panel can only seek assurances that FMO is addressing a material non-compliance, which entity is actually responsible for ensuring that FMO effectively addresses the material non-compliance? Which mechanisms does this entity rely on in order to accomplish this?
    - How does FMO communicate to affected parties the actions it will carry out to address material non-compliances?

3. **E.** According to the Independent Complaint Mechanism's guide, in 2014 DEG and FMO began to introduce "necessary contractual arrangements" into their client agreements, to enable the functioning of the mechanism. What do these arrangements entail and which kind of information to they provide access to for members of the independent panel of experts?

4. **E.** Has FMO adopted an anti-retaliation policy to protect human rights defenders threatened in the context of FMO's investments? If so, please share a copy. Has FMO implemented this anti-retaliation policy following the killing of Mr. Joël Imbangola,

the RIAO activist allegedly murdered by a PHC security guard? If so, please explain which steps FMO has taken to implement this policy.

5. **E.** Are there other mechanisms available where people impacted by FMO's investments can bring their complaints and seek remedy? If so, are these operational level grievance mechanisms, judicial mechanisms, or state regulatory agencies that have oversight over the country's overseas investments? Please specify the nature, jurisdiction and competencies of these mechanisms, as well as their ability to impose binding decisions on FMO.

FMO Response – October 2019

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Date	Page
22 October 2019	2/13

Subject: FMO response to questions on PHC Oil Palm Plantations in DRC

Dear Mr. Wilkinson and Mr. Segun,

Thank you for your letter of 30 September 2019 regarding the alleged abuses on oil palm plantations operated by *Plantations et Huileries du Congo* (PHC) in the Democratic Republic of the Congo, one of FMO's clients. FMO has taken note of your substantive research on the plantations and we acknowledge the importance of your explicit commitment to produce a report that is well-informed and objective.

In the annex to this letter you will find our response to your questions on (A) FMO's Human Rights Obligations, (D) FMO's Decent Work policy (questions 2-4) and (E) FMO's Accountability Mechanisms. With regards to all other questions, I kindly refer to the email shared with you by CDC earlier today, on 22 October 2019.

I trust all answers will provide you with the requested information.

Yours sincerely,

Peter van Mierlo
Chief Executive Officer FMO

NEDERLANDSE FINANCIERINGS-MAATSCHAPPIJ
VOOR ONTWIKKELINGSLANDEN N.V.

ANNEX | FMO response to (A) Human Rights Obligations, (D) Decent Work Policy and (E) FMO's Accountability Mechanisms

A. FMO's Human Rights Obligations

1. A. Does FMO acknowledge that, as a bank majority-owned by the Dutch state, it has extraterritorial human rights obligations?

As a bank licensed and supervised by the Dutch Central Bank, FMO has the duty to respect human rights.

Under the UNGPs this implies that FMO has the responsibility to avoid causing or contributing to adverse human rights impacts through their own activities and address such impacts when they occur.

Secondly, FMO should seek to prevent or mitigate adverse human rights impacts that are directly linked to its operations, products or services by its business relationships, even if FMO has not contributed to those impacts.

As a bank with a development mandate for private sector investments, FMO has a global portfolio of clients. Consequently, through this portfolio, FMO has the obligation to seek to avoid and address adverse human rights impacts outside the Kingdom of the Netherlands.

2. A. What steps does FMO take to ensure it is discharging its human rights obligations before and after investing in a venture? Does this include human rights due diligence or an environmental and social impact assessment? If so, are these documents made publicly available?

As indicated by table 1 below, FMO's investment process – from client selection in the beginning to monitoring after disbursement – entails a comprehensive environmental and social risk management approach, executed by FMO's team of environmental and social experts and often supported by external experts.

Also, FMO clients do have a contractual obligation to meet FMO Environmental and Social (E&S) requirements, including to keep FMO, and other Lenders, informed on developments and progress related to the Environmental and Social Action Plan (ESAP).

In 2017, FMO updated its policy universe and introduced the FMO Sustainability Policy (Sustainability Policy, January 2017) and the Human Rights Position Statement (HuRi PS, September 2017). The HuRi PS re-emphasizes FMO's commitment to respect human rights. This commitment is operationalized by making the Human Rights lens more explicit in our investment process, as part of our E&S risk management approach. We use the UN Guiding Principles for Business and Human Rights as our compass and the IFC Performance Standards as our operating tool.

Whereas FMO does not disclose Due Diligence and Environmental and Social Impact assessments, we do disclose to the public our planned investment 30 days prior to contracting. This disclosure on FMOs website includes information on the client, the funding objective and reasons for FMO to fund a potential project. Also, it provides for an Environmental and Social categorization and rationale; which IFC Performance Standards are triggered and/or providing explicit information on whether the project involves resettlement (IFC PS 5) and/or indigenous peoples or cultural heritage (IFC PS 7 and 8).

The objective of our disclosure is to generate greater transparency about our (planned) investments, allowing for accountability and to create an opportunity for stakeholders to provide input to FMO's investment decisions. In this way, FMO aims to advance the quality and substantiation of its work.

Table 1: FMO Investment Process (Based on: Sustainability Policy, January 2017 and HuRi PS, September 2017)
1. Client Selection: • Phase in which our investment teams identify project opportunities to pursue. • E&S staff is part of these teams, making sure E&S considerations are included from the start. Specific actions: - Perform initial screening of country/sector/client and fit with investment criteria. - Confirm that the transaction will not breach FMO's Exclusion List.
2. Clearance in Principle: • Phase in which our investment teams perform an initial assessment of risks and opportunities, define the key terms of client engagement, and scope any further assessment needs. • Assessment is documented in a 'Clearance in Principle' proposal, informing FMO's decision to continue preparing an opportunity for a final investment decision. Specific actions: - Conduct assessment of E&S risks and opportunities, including the identification of possible red flags. Assign preliminary E&S risk category. - Conduct a human rights contextual risk assessment, including early-warning screening for risk to human rights defenders. - Perform an early assessment of community support for the project, including a preliminary assessment of whether Free, Prior and Informed Consent (FPIC) is required.
3. Detailed Assessment or "Due Diligence": • Phase in which FMO carries out a detailed project assessment, referred to by banks as 'due diligence'. • Results are documented in a Finance Proposal, informing FMO's final decision to invest. In some cases, we rely on the due diligence findings of eligible partner development finance institutions to inform our own due diligence. Specific actions: - Review of project documents, including E&S Impact Assessments. - Perform a site visit, including visits to key stakeholders and engage consultant support in various fields as needed. - Define and negotiate further E&S requirements prior to FMO's decision to invest. - Conduct further human rights contextual risk assessment as informed by Clearance in Principle. This includes on-the-ground research and consultation with local stakeholders. - Conduct further assessment of land rights if applicable, as well as a more systematic assessment of community support, including FPIC, if needed.
4. Decision to invest: • Phase in which FMO's Credit Department evaluates all Finance Proposals and writes Credits Advices in support of a final investment decision by the Investment Committee.

- After investment approval, FMO discloses proposed investments on website for at least 30 days prior to contracting.

Specific actions:
- Credit Department to reflect on Investment team E&S advice.
- Make an investment decision, including additional E&S conditions if needed.
- Provide ex-ante disclosure of proposed investments, including E&S categorization and rationale.

5. Contracting and Investment Disclosure:
- FMO includes E&S requirements and conditions in all its agreements with clients to ensure that they are legally binding.
- All contracted investments are disclosed on FMO website during the full tenor of our engagement.

Specific actions:
- Finalize and include E&S, including human rights covenants and ESAP in the legal agreement.
- Disclose signed investments on FMO website, including E&S categorization and rationale.

6. Disbursement:
- Disbursement can take place upon achievement of the disbursement related conditions, E&S and other, as set in the legal agreement.

Specific actions:
- Verify E&S conditions for disbursement and overall compliance.

7. Monitoring:
- After the agreement is signed, FMO continues to monitor and work with clients to ensure implementation of E&S requirements.

Specific actions:
- Review client's E&S monitoring reports and accident and incident reports.
- Review consultant E&S monitoring reports.
- Conduct client visits.
- Perform an annual Client Credit Review.
- Address deficiencies in the clients' discharge of its human rights obligations and human rights-related emergencies.
- Conduct a regular and more systematic ongoing community support check, including FPIC if needed.

3. A. Does FMO disclose to parties potentially affected by a venture they have invested in the results of their social and environmental impact assessment, and how it will impact them specifically? If FMO does not do this, does the venture FMO invests in do so? If the latter, how does FMO ensure that the venture is in fact complying with this requirement in a timely manner and that the information disclosed to potentially affected parties is comprehensive, accessible and functional?

As stated above, FMO discloses to the public our planned investment 30 days prior to contracting. However, the IFC Performance Standards that FMO requires its clients to adhere to, do include requirements for Environmental and Social Impact Assessments (ESIA), as well as to share such information with communities affected and consult with local stakeholders on ESIA results and other relevant aspects. FMO may require additional studies to ensure an ESIA of appropriate international standard.

For PHC, the ESIA was commissioned in 2014.The summaries thereof can be downloaded via: https://www.feronia.com/sustainability/view/environmental-and-social-baseline.

The progress on the ESAP is subsequently monitored by an E&S consultancy on an annual basis. In addition, the Lenders (DEG, BIO and FMO) regularly visit the client to assess and discuss progression. Regular interactions on ESAP further take place in parallel to the Lenders participation as observers to the quarterly PHC ESG Committee.

4. A. Regarding its investment in PHC, what steps has FMO taken to discharge its human rights obligations? Please describe the concrete steps taken, if any.

An investment like PHC requires a comprehensive environmental and social risk management approach. An extensive due diligence was performed by FMO in coordination with other E&S experts of the Lenders (DEG in the lead). This was supported by an external independent E&S specialist, also appointed by the Lenders.

5. A. Did FMO undertake human rights due diligence or social and environmental impact assessments prior to its initial disbursement to PHC? Did FMO conduct its own assessment prior to investing in PHC, or did it rely on an assessment conducted by the company? Could you provide us with a copy of the risk/impact assessment conducted prior to investing in PHC?

Please see above, FMO requires its clients to undertake these assessments, which are subsequently reviewed and validated by FMO.

In the case of PHC, the reviews and validations were performed by FMO in coordination with the Lenders and supported by an external independent E&S specialist audit. FMO does not disclose Due Diligence and Environmental and Social Impact assessments.

6. A. According to FMO's Sustainability Policy, FMO "respects internationally recognized human rights standards and takes measures to avoid supporting activities that may cause or contribute to human rights violations and acknowledges the responsibility of its clients to do the same," which "means to avoid infringing the human rights of others and to address adverse impact these businesses may cause or contribute to." Which actions has FMO taken to ensure that PHC is addressing adverse impacts to people affected by the company's operations?

When referring to FMO's Sustainability Policy, it is important to underline that the contract with PHC dates from 2015 – meaning that the Sustainability Policy cannot be applied retrospectively to existing clients. This is relevant for pre-contracting activities like Due Diligence or possible conditions for Disbursement.

However, when it comes to post-contracting activities like Monitoring, FMO does consider its Sustainability Policy relevant for investments dating before 2017, including PHC. Especially when it comes to FMO's commitment to the freedom of expression. FMO does not condone violations of human rights by its clients, including oppression of, or violence towards, those who voice their dissenting opinion in relation to FMO activities and the activities of FMO's clients.

As per IFC Performance Standard 1, FMO therefore requires its clients to create access to an effective grievance mechanism that can facilitate early indication, and prompt

remediation, of various project-related grievances. We will take seriously credible allegations that a client has acted inappropriately, examine the veracity, and instigate further action as and where appropriate.

Considering the recent reported incidents in and around Lokutu and Boteka plantation areas, whether directly linked to PHC operations or not, FMO actions are two-folded; on the one hand, the requesting of detailed information by PHC management in order to get a deeper understanding of the events occurred while, on the other, also trying to verify this information by third parties – like the Ministry of Foreign Affairs of the Netherlands.

Also, the annual independent E&S monitoring visit, as well as the Lenders multiple site visits and the quarterly PHC ESG Committee meetings, allow for FMO to engage continuously and extensively with PHC and the company's owners about Human Rights to ensure PHC is addressing adverse impacts.

7. A. Which international standards has FMO made binding on PHC through contractual obligations? Do these include all of the International Financial Corporation's Performance Standards? Do these include all of the World Bank Group's Environmental Health and Safety Guidelines?

The following international standards are referred to in the contractual obligations between the Lenders, including FMO, and PHC:

- ILO's basic terms and conditions of employment: ILO conventions 26 and 131 (on remuneration), 1 (on working hours) and 155 (on health & safety).
- Labour Organization's (ILO) Core Labour Standards: ILO Declaration on Fundamental Principles and Rights at Work, adopted in 1998 and covering: (i) freedom of association and the right to collective bargaining, (ii) the elimination of forced and compulsory labour, (iii) the abolition of child labour and (iv) the elimination of discrimination in the workplace.
- Both the IFC Performance Standards and World bank Group's Environmental, Health and Safety Guidelines are included as the Environmental and Social requirements.
- The Global Reporting Initiative's Sustainability Reporting Guidelines (G4) as a framework for sustainability reporting.

8. A. How does FMO ensure that people affected by their investments have access to remedy?

FMO requires clients to set up and operate a grievance mechanism which is consistent with the IFC Performance Standards and the UNGPs and accessible to people affected by the respective clients.

Additionally, following our commitment under the UNGPs, FMO has also established an Independent Complaints Mechanism (please refer to section E). This mechanism is open to any person living in the area of operations or to anyone who has an economic or other defined interest in the area where he or she can demonstrate to be adversely affected by the activities or impacts of operations financed by FMO.

B. Practices that Endanger Workers' Health

1. B. Please share your views regarding the findings described above.

Please refer to CDC's views regarding the findings.

2. B. Did FMO's assessments before investing in PHC identify any of the issues outlined above? If so, which specific measures did FMO take to ensure that PHC

corrected practices that endanger workers' health? Please specify the timeline envisioned for these measures, if any, and whether FMO considered any of these mitigation plans were successfully executed.

Please refer to CDC's answer on the same question.

3. B. Did FMO's monitoring activities following its investment in PHC identify any of the issues outlined above? If so, which measures did FMO take to ensure that PHC addressed and mitigated the issues that give rise to violations of workers right to health and labor rights? Please specify the timeline envisioned for these measures, if any, and whether FMO considered these mitigation plans were successfully executed.

As part of the Joint Facility Agreement with the other Lenders, DEG has the lead on all monitoring activities regarding PHC. Collaboration with the lenders takes place on a regular basis, amongst others through the attendance to quarterly PHC ESG Committees, reviews of independent monitoring reports, and feedback to PHC and its shareholders.

DEG's independent monitoring activities (as described under A) provided no indication that the information provided by CDC to HRW with regard to questions in sections B, C and D is incorrect. The topics raised in sections B, C and D were identified during the Lenders' due diligence and addressed, as appropriate, through Lenders' requirements and advice for PHC. Specific findings of the initial E&S assessment and detailed findings of the ongoing E&S monitoring for PHC were addressed through the means described under section A.

C. Mill's Industrial Waste Contaminates Communities' Water, Environment

1. C. Please share your views regarding the findings described above.

Please refer to CDC's views regarding the findings.

2. C. Did FMO's assessments before investing in PHC identify any of the issues outlined above? If so, which specific measures did FMO take to bring PHC's practices into compliance with Congolese law, industry good practice and international standards regarding the right to water and health? Please specify the timeline envisioned for these measures, if any.

Please refer to CDC's answer on the same question.

3. C. Did FMO's monitoring activities following its investment in PHC identify any of the abuses outlined above, including apparent infractions of Congolese law? If so, which measures did FMO take to ensure that PHC addressed and mitigated these violations? Please specify the timeline envisioned for these measures, if any, and whether FMO considered these mitigation plans were successfully executed.

Please refer to CDC's answer on the same question.

4. C. According to Feronia's grievance procedure policy, unresolved grievances are escalated to be investigated by the Company Management Committee. The ESG Board committee will also be advised, according to the policy. Furthermore, all grievances are supposed to be regularly reviewed by Management and reported on a quarterly basis to the ESG Board Committee. Was FMO, as an observer in the ESG Board Committee's quarterly meetings, aware of allegations that the company's operations have tainted communities' water sources? If so, how did FMO respond to these allegations?

CDC has discussed borehole water quality at the ESG committee, and Feronia has implemented an ongoing monitoring programme to ensure the potability of the supply.

Moreover, in general, FMO responds to allegations by engaging with other Lenders and the company to ensure complainants are taken seriously, and to ensure that procedures for handling grievances, including escalation of unresolved ones, are effective or improved when necessary.

D. Employment Practices that Violate Labor Rights

1. D. Please share your views regarding the findings described above.

Please refer to CDC's views regarding the findings.

2. D. FMO's stated mission is to "promote social justice as well as ecological and economical sustainability," in addition to "actively promot[ing] human rights." Does FMO have a "decent work" policy? If not, why not? Has FMO envisioned adopting such policy? Please specify the timeline for the adoption of such policy, if relevant.

FMO's policy on decent work is integrated in the Sustainability Policy. Furthermore, the human right to decent work is salient for FMO, given that the requirement for skilled and non-skilled labor underpins most of FMO's investments in emerging markets. Labor rights are therefore at the core of our due diligence activities. FMO also assesses decent working conditions beyond those of the direct employees of the company we finance to include the rights of contractors and workers in the supply chain. An initial analysis of the nature of the supply chain allows us to identify the most salient issues that need to be managed or mitigated.

With respect to Decent work, FMO requires our clients to apply IFC PC 2 (Labour and Working Conditions) and the ILO Declaration on Fundamental Principles and Rights at Work. In addition, FMO is committed to contribute to the SDG's and SDG 8 (decent Work and Economic Growth) in particular. As such, FMO actively works together with its clients to improve labor conditions and provides Technical assistance to promote decent work. FMO (in collaboration with EDFI) has published a report that describes how DFI's in general and FMO in particular contribute to decent work and includes some best practices on promoting decent work.

3 D. Did FMO's assessments before investing in PHC identify any of the issues outlined above? If so, which specific measures did FMO take to bring PHC's practices into compliance with Congolese law and international standards regarding labor rights and the right to an adequate standard of living? Please specify the timeline envisioned for these measures, if any, and whether FMO considered these plans were successfully executed.

Specific findings of the initial E&S impact assessment, against IFC Performance Standard 2 (Labour and Working Conditions) and ongoing E&S monitoring for PHC were addressed through the means described under section A.

4 D. Did FMO's monitoring activities following its investment in PHC identify any of the abuses outlined above, including alleged infractions of Congolese law? If so, which measures did FMO take to ensure that PHC addressed and mitigated these violations? Please specify the timeline envisioned for these measures, if any, and whether FMO considered these mitigation plans were successfully executed.

Specific findings during FMO's monitoring activities addressed through the means described under section A.

E. FMO's Accountability Mechanisms

1. E. According to the Independent Complaint Mechanism's guide, dispute resolution is subject to all the parties "being willing to participate in such a process" and agreeing on a mediator. The process usually culminates with a "mutually agreed program with timelines for implementation as well as roles and responsibilities to monitor the progress made." A mutually agreed party will monitor the "follow-up to agreements." At any given point, the panel will "not take a position on particular allegations nor does it find fault with a party or decide liability."

• Are these agreements binding on FMO and its client?

The Independent Complaint Mechanism (ICM) and its independent panel of experts' function as a facilitator for dispute resolution. As stated in the policies, dispute resolutions aim for a program, mutually agreed amongst the parties to the dispute resolution, which includes responsibilities, timelines and monitoring.

• Are these agreements subject to a timeframe?

This depends on the agreement reached between the parties in the dispute resolution process, but it will usually contain a mutually agreed program with timelines for implementation.

• Does FMO ensure that the client is implementing the resulting agreement?

Roles and responsibilities to monitor the progress are usually part of the agreements reached. Based on the monitoring agreements made, the ICM will disclose the outcomes. It is FMO's interest that the client as well as the individuals or communities respect and honor the commitments they made in the agreement reached. However, FMO has no legal or formal agreement with a client on the responsibilities they committed to in the dispute resolution process. The ICM role is to facilitate dispute resolution.

• What steps does FMO take if its client is not following through on the agreement in good faith?

The dispute resolution process with PHC/Feronia is the first of its kind since the establishment of the DEG/FMO complaint mechanism in 2014. FMO will in case parties are not respecting their commitments review options and possibilities on how to encourage implementation, also considering experiences from other complaint mechanisms like IFC's CAO Ombudsman.

2. E. According to the Independent Complaint Mechanism's guide, for a compliance review, the panel will assess whether the FMO's performance aligns with its policies and may also issue recommendations for the specific case and/or recommendations for FMO to improve its existing policies and procedures. FMO's management board will publish its response to the panel's report on FMO's website. In the event "material non-compliances are identified, the [mechanism] will monitor the situation until actions taken by [FMO] assure the [mechanism] that [FMO is] addressing the material non-compliance."

• What is the scope of what FMO defines as "material non-compliances"?

"Material non-compliances" in any specific case are defined by the Independent Expert Panel in their compliance review in relation to the applicable policies.

• Given that the panel can only seek assurances that FMO is addressing a material non-compliance, which entity is actually responsible for ensuring that FMO effectively addresses the material non-compliance? Which mechanisms does this entity rely on in order to accomplish this?

In cases where material non-compliances are identified, the ICM will periodically monitor the situation until actions taken by FMO assure the ICM that FMO is addressing the material non-compliance(s). It is the role and responsibility of FMO management to ensure that adequate actions are taken.

• How does FMO communicate to affected parties the actions it will carry out to address material non-compliances?

Please refer to the principles of communication with affected parties in the Complaint Mechanism's guide in chapter 3.2 Description of the Procedure and chapter 3.5 Reporting & Transparency. For each complaint, the Independent Expert Panel is monitoring, if applicable, how FMO is following up on the material non-compliances. This can include publishing monitoring reports on the website of FMO as practiced with previous complaints.

3. E. According to the Independent Complaint Mechanism's guide, in 2014 DEG and FMO began to introduce "necessary contractual arrangements" into their client agreements, to enable the functioning of the mechanism. What do these arrangements entail and which kind of information to they provide access to for members of the independent panel of experts?

These arrangements entail that the Independent Expert Panel has access to the premises of the client and to the information relevant for working on the complaint case. It also arranges for the disclosure of client information that is related to the complaint.

4. E. Has FMO adopted an anti-retaliation policy to protect human rights defenders threatened in the context of FMO's investments? If so, please share a copy. Has FMO implemented this anti-retaliation policy following the killing of Mr. Joël Imbangola,the RIAO activist allegedly murdered by a PHC security guard? If so, please explain which steps FMO has taken to implement this policy.

As stated in FMO's HuRi PS of 2017, we do not tolerate any activity by our clients that amount to the oppression of, violence towards, or any other violation of the human rights of those who voice their opinion in relation to FMO activities and the activities of our clients.

We will take seriously credible allegations that a client has acted inappropriately, examine the veracity, and instigate further action as and where appropriate. We have embedded an early warning screening for risks to human rights defenders and elements of on-the-ground research and consultation with local civil society during Due Diligence.

On the death of Mr Joël Imbangola Lunea, FMO is awaiting the conclusions of the CDC-appointed independent investigation team.

5. E. Are there other mechanisms available where people impacted by FMO's investments can bring their complaints and seek remedy? If so, are these operational level grievance mechanisms, judicial mechanisms, or state regulatory agencies that have oversight over the country's overseas investments? Please specify the nature, jurisdiction and competencies of these mechanisms, as well as their ability to impose binding decisions on FMO.

Please refer to next page.

	Nature	Jurisdiction	Competencies	Ability to impose binding decisions on FMO
Project level Grievance mechanism	Operational	• Company's operations	• Depending on the GM, but should be able to assess complaints relating to the Company's operations and provide appropriate remedy	None, GM is on the client level
Mechanism under the RSPO Complaints System	Operational	• RSPO members • Non-members, including affected communities (and their nominated representative), workers and/or other interested parties.	• RSPO Complaints and Appeals Procedures • RSPO Dispute Settlement Facility	None, GM is on the client level
NCP | National Contact Point OECD Guidelines	State regulatory agency	• Adherence to OECD guidelines by Dutch companies.	• Raising awareness of the OECD Guidelines with businesses, trade unions and non-governmental organisations; and • Contributing to the resolution of issues that arise from the alleged non-observance of the Guidelines in specific instances.	None, Cooperation to a case is voluntary
Dutch National Court	Judicial	• Operations of Dutch companies. • Foreign companies on Dutch territory.	• Depending on legal claim	Yes

HRW Exchange with BIO

HRW questions for BIO (email) – January 2019

1. What motivated BIO to invest in Feronia?
2. Which social and environmental conditions has BIO attached to the loans they approved for Feronia? Could you provide the documentation where the terms and conditions are outlined?
3. How does BIO monitor compliance with these conditions? Are there any indicators that you use to measure their performance?
4. Could you share any reports prepared by BIO on monitoring and compliance by Feronia?
5. Does BIO communicate with the other development banks – German DEG, Dutch FMO, or British CDC – involved with this project. Have you harmonized the social and environmental conditions attached to the loans?

HRW letter for BIO – April 2019

Luciana Tellez-Chavez

From: Luciana Tellez-Chavez
Sent: Friday, April 12, 2019 11:02 AM
To: Timo Mueller; Luuk Zonneveld
Subject: RE: Feronia - HRW - BIO

Dear Mr. Zonneveld,

Thank you so much for your prompt and exhaustive answers. We have now had an opportunity to conduct research in all of Feronia's three plantations as well as to reach out to the other development banks involved in this project. We have a few more questions we hope you could answer:

1. What are the types and amounts of investments that BIO has made in Feronia? Please state the amount for equity and loans, the date when the agreements were executed and the date(s) of disbursement(s) to the company. Are there any additional future or planned investments?
   NB: In your response, you noted the total amount invested by DFIs in Feronia but we would like to know the amount and types of investments that correspond to BIO's participation specifically.

2. To date, what percentage of Feronia does BIO own, if any?

3. Has BIO provided direct support to Feronia to help improve living or working conditions for workers and their families? If so, please provide the documentation that outlines the goals and deliverables Feronia was expected to meet in return for these investments.
   NB: In you response, you noted the ESAP plan includes a number of actions regarding working conditions and housing; in addition, we'd like to understand whether BIO has provided any direct financial support for the fulfilment of this plan.

4. Were any of BIO's investments in Feronia aimed specifically at mitigating the company operations' environmental impact? If so, please provide the documentations that outlines the goals and deliverables Feronia was expected to meet in return for these investments.
   NB: In your response, you noted the ESAP plan includes a number of actions to mitigate Feronia's environmental footprint; in addition, we'd like to understand whether BIO has provided any direct financial support for the implementation of these mitigation measures.

We hope to continue engagement with BIO and plan to share an overview of our findings later in our research process. Thank you very much, and we look forward to your response.

Sincerely,
Luciana

Luciana Téllez Chávez
Environment & Human Rights
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HUMAN RIGHTS WATCH

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BIO Response to HRW – February 2019

Answers from BIO to questions from Mr. Timo Mueller, Human Rights Watch, on BIO's investment in Feronia/PHC

Brussels, February 6th, 2019

1. **What motivated BIO to invest in Feronia?**

The PHC project encompasses three very old plantations: Lokutu, Yaligimba, and Boteka. They were established over a century ago and until the late 1990s they provided income and livelihood to the tens of thousands of people living in an extremely remote area, with the Congo River as the only connection to the outside world. As the plantations' former owner Unilever stopped investing and let the plantations' production implode, the very survival of these people was at stake.

With its acquisition of PHC in 2009, one of Feronia's main objectives was and continues to be to rehabilitate the source of income and livelihood of the people in the area. BIO and other investors, including other DFIs, have together invested almost 200 million Euros in PHC's endeavour to achieve decent working and living conditions. Feronia provides an income to circa 6,000 people which, given average family size, benefits approximately 50,000 people in the plantations' concession.

BIO decided to invest in PHC/Feronia because rural employment is one of its key focus areas. The project creates thousands of direct and indirect jobs in an underdeveloped region with little to no alternative employment (remember that the unemployment rate in the region is 82% and the poverty rate is 63%). Another key reason for BIO's investment decision was PHC's commitment to rehabilitate and create increased access to schools, hospitals, health centres, and infrastructure for both employees and local communities.

BIO believes that the involvement of Development Finance Institutions (DFIs) such as CDC, DEG and BIO in Feronia and PHC obliges the companies to high levels of transparency and accountability, which is extremely positive for all stakeholders.

Moreover, since edible palm oil is a staple food in the DRC, Feronia/PHC, whose production is entirely sold within RDC, significantly contributes to local food security by increasing the availability of edible oils and related products. This decreases the region's dependence on imports. It also reduces the need for the transportation of goods and leads to a lower carbon footprint. Finally, Feronia's activities have a positive effect on the DRC's balance of trade, its employment market, and its local economy.

2. **Which social and environmental conditions has BIO attached to the loans they approved for Feronia? Could you provide the documentation where the terms and conditions are outlined?**

BIO imposes requirements on investee businesses to comply with environmental and social (including labour) law, ILO conventions and work towards compliance with IFC E&S Performance Standards and other internationally-recognized standards in areas such as the environment, social matters and corporate governance. BIO is especially sensitive to the environmental and social concerns associated with palm oil plantations. Therefore, it was requested as part of the loan Environmental and Social Action Plan (ESAP), agreed between the DFI lenders and Feronia, that Feronia seeks certifications with RSPO.

Irresponsible palm oil production practices have led to unacceptable social and environmental impacts in many parts of the world. With Feronia BIO and the other lender DFIs have developed a business strategy to prevent these problems; for instance, PHC has a commitment to no burning of existing plantations and no deforestation, and intends only to rehabilitate old plantations (i.e. replanting old plantations and not expanding). Furthermore, the company will not export its palm oil, therefore helping address food security problems in DRC.

As part of DFIs' consideration to invest in Feronia/PHC, an exhaustive due diligence of the project was undertaken by an independent environmental and social consultancy. This due diligence assessed Feronia's compliance with local laws, the IFC Environmental and Social Performance Standards (IFC PS) as well as other international standards, as applicable.
Based on the result of this due diligence, a contractually binding Environmental and Social Action Plan (ESAP) was developed. This ESAP is assorted with deadlines and its objective is to ensure that over time Feronia reaches compliance with international standards and law. The requested ESG improvements and deadlines were defined taking into consideration time and financial constraints. We have made sure that the ESAP covers all actions needed to achieve legal and IFC PS compliance. The (more than 40) actions in the ESAP include for example:

- the development of an overarching Environmental and Social Management System and site- or operations-specific management plans and procedures, including around health and safety at work, workers conditions, human resources, community relations, grievance mechanism,
- biodiversity conservation, training, environmental, health and safety monitoring, etc.;
- the constitution of a dedicated E&S expert team at company, plantations and site level to ensure proper implementation of this management system;
- specific requirements such as wage increases, RSPO certification, housing and sanitation program (including access to drinking water), healthcare facilities and school commitments, etc.

We invite you to consult the following online available information provided by Feronia:
ESAP Summary : http://feronia.com/uploads/2018-02-08/summaryesapforwebsite3februaryv527108.pdf
Environmental and Social Baseline Info:
http://www.feronia.com/sustainability/view/environmental-and-social-baseline
Feronia Sustainability Reports: http://feronia.com/uploads/2018-09-11/feroniareport2017-124330.pdf

3. How does BIO monitor compliance with these conditions? Are there any indicators that you use to measure their performance?

To ensure its effective implementation, an independent lenders E&S advisor was assigned to monitor the project achievements annually, based on a thorough documentation review and site visit. This advisor's reporting confirms that in general PHC is complying with the ESAP, with significant improvements and/or expressed commitments for further improvements.
To our knowledge, no significant changes have occurred to the ESAP. However, it is true that, given the financial constraints of PHC, priority was given to the socially related investments (such as housing & social infrastructure), whereas, for example, deadlines for investments in effluent treatment systems have been extended. Likewise, as we recognize that land is a sensitive issue, it was decided not to demarcate non-plantation concessional land.
BIO as a DFI, actively reviews progress in all the areas covered by the ESAP and supports PHC in its commitment to continuous progress.

Significant elements of the monitoring by lenders include:

- Implementation of the Environmental and Social Action Plan (ESAP);
- Annual monitoring of ESAP progress and operations compliance with applicable requirements by Lenders Independents E&S Advisor;
- Quaterly reporting by Ferionia to lenders on labour, social, environmental matters and timely reporting of exceptional events
- Observer status in Feronia's ESG Board Committee, that oversees the implementation of the ESAP, and other ESG matters and attendance by lenders.
- BIO conducts on-site visits at least annually, as do the other DFIs.

4. Could you share any reports prepared by BIO on monitoring and compliance by Feronia?

Following criticism by NGOs in 2017, BIO requested Intersocial, a consultant, to perform a dedicated investigation on five main issues raised by these NGOs. This investigation effort was based on a site visit, interviews with PHC staff, consultation with communities and the documentation review by an independent expert. The Intersocial report was submitted to the NGOs together with the BIO management's response and was then followed up by a meeting on November 15, 2017.

We are pleased to submit the Intersocial report and BIO management's response to it annexed.

Since the meeting of November 15th, BIO, together with other DFIs, continues being actively involved in following up and supporting PHC on the implementation of its environmental and social commitments and several achievements have been secured by PHC. The following progress has been made on the main topics covered by the Intersocial report:

Ad 1. Assessment of the "*Cahier des charges*" (a list of demands from the local communities)

As detailed in the report, the local communities submitted a list of demands to PHC in 2013-2014. These demands were reportedly discussed a number of times between PHC and the local communities and PHC answered positively to a few of these with concrete actions. However, the report also expressed that there was a lack of clarity and communication on what demands were finally agreed on.

Then, in November 2017, and following a series of meetings between the company and local community representatives in Kisangani, hosted by the Tshopo Provincial Government, a "Protocole d'Accord" was signed with the local communities from the territories of Isangi, Basoko and Yahuma at Feronia PHC's Lokutu plantation. In January 2018, similar meetings were held with the communities in and around the company's Boteka and Yaligimba plantations.

This Protocole d'Accord formalises the way in which the company and the communities will work together in establishing or refurbishing social infrastructure. Each Protocole d'Accord (there are three in total) includes both the original wish list of the "Cahier des charges" and the final list of projects that were mutually agreed upon. Hence, the Protocole d'Accord is a joint responsibility between the company and the local communities to address an ambitious social infrastructure programme. However, in 2018 some of the targets have not been met because targets for construction goods (i.e. bricks to be made by the communities using equipment put at their disposal by Feronia) and manpower (to be mobilised by the local communities) had not been achieved.

Since the signing PHC has been making significant efforts to fulfil its obligations, as defined in the Protocole.

Ad 2. Concertation with the local communities

As reflected in the 2017 report, PHC had already achieved significant progress in concerting with local communities one year ago, including through the development of a plantation specific stakeholder engagement plan, the setting up of an ICT system to record and follow up on all communities' consultations and grievances, and the recruitment of Area Social Managers (ASM). This resulted mainly in increased engagement and consultation on site, partially due to the presence of the several Deputy ASM.

However, BIO believes that further progress is achievable and will continue to monitor the progress of the communities' concertation commitment, development and implementation, and their outcome through the annual visit of its independent expert.

Ad3. Company and Community Security

The following progress was made:

- a security risk assessment was performed by Monkey Forest Consulting over the course of 2017-2018;
- a revised Security Management Plan was drafted;
- an external specialised security contractor was contracted for the Lokutu area in replacement of the former industrial guards;
- a national security coordinator was hired recently to support the implementation of the Security Management Plan and strategy;.

However, further improvement is required in the field of training and equipping the security staff. While PHC is showing progress in its security management, BIO and the other lenders will continue to monitor and support PHC with the effective on-site implementation of its security management plan.

Ad 4. Social Infrastructure and Community Development

PHC continues to work actively in this field, mainly through the rehabilitation of workers' houses and social infrastructures, as requested by the DFIs ESAP, the implementation of the Protocole d'Accord, and the support of community development programs.

As of the first quarter of 2018, the following infrastructure has been built or rehabilitated by PHC:

	Lokutu	**Yaligimba**	**Boteka**	**Total**	***2016***	***2015***	***2014***	***2013***	***2012***	***2011***
Operational Roads (km)	900	870	356	**2126**	*2126*	*1886*	*1734*	*1670*	*1428*	*1309*
Houses	2024	1239	593	**3856**	*3812*	*3695*	*3720*	*3730*	*3725*	*3847*
Schools	60	21	14	**95**	*95*	*94*	*91*	*90*	*86*	*82*
Hospitals	2	1	1	**4**	*4*	*4*	*4*	*4*	*4*	*4*
Dispensaries	11	4	5	**20**	*19*	*19*	*15*	*14*	*14*	*14*
Health centers	2	2	2	**6**	*6*	*5*	*4*	*4*	*4*	*4*

At the moment, the following constructions are also ongoing: 5 new primary schools (1 in Boteka, 2 in Yaligimba and 2 in Lokutu), 2 Community Group Chief Houses (1 in Boteka and 1 in Yaligimba) and 2 Health Centers (2 in Lokutu).

PHC also works with the communities to establish local community development committees to provide livelihoods to those who do not work for the company. Working with local NGOs, it has

helped to establish and train 14 community development committees across the three plantation sites. These committees are fully involved in the selection and development of community-based projects to help improve livelihoods.

A number of projects were started with the company providing funding, access to equipment, materials and knowhow for rice farming, peanut farming, brick making and seed multiplication. More projects have started in 2018 with the intention that, over time, these projects will be replicated by the community development committees across different locations, enhancing livelihoods and income to many more people. there is still much to be achieved, but we believe that these projects are well received by the local communities, and that they help diversify work opportunities in these areas, ultimately contributing to further local opportunities.

5. **Does BIO communicate with the other development banks – German DEG, Dutch FMO, or British CDC – involved with this project. Have you harmonized the social and environmental conditions attached to the loans?**

The DFI's involved in the Feronia project, with the German DEG in the lead, work closely together. DEG as consortium leader shares the E&S monitoring reports, regularly requests the lenders' opinion on ESG matters, and shares Feronia monitoring reports. There is only one loan agreement, hence all E&S conditions and the ESAP are similar for all lenders.

BIO Response to HRW – April 2019

BIO
Belgian Investment Company for Developing Countries

BIO Response
to questions on Feronia
from Ms. Luciana Tellez-Chavez, HRW,
dated April 12th, 2019

1. What are the types and amounts of investments that BIO has made in Feronia? Please state the amount for equity and loans, the date when the agreements were executed and the date(s) of disbursement(s) to the company. Are there any additional future or planned investments?
   NB: In your response, you noted the total amount invested by DFIs in Feronia but we would like to know the amount and types of investments that correspond to BIO's participation specifically.

   Since 2016 BIO has provided a senior loan to Feronia's daughter company PHC, for a total amount of 9.741.280,77 Euros. (USD 11 million)

Cost Type	Date	Project	Amount LC	Amount LC Currency	Amount EUR
Disbursement	12/04/2016	Plantations et Huileries du Congo (PHC)	3367346,94	USD	2938348,12
Disbursement	13/02/2017	Plantations et Huileries du Congo (PHC)	2244897,96	USD	2112050,01
Disbursement	9/06/2017	Plantations et Huileries du Congo (PHC)	2244897,96	USD	1995464,85
Disbursement	3/11/2017	Plantations et Huileries du Congo (PHC)	3142857,14	USD	2695417,79

2. To date, what percentage of Feronia does BIO own, if any?

   Since BIO only provided loans and no equity, BIO does not own any percentage in Feronia or PHC.

3. Has BIO provided direct support to Feronia to help improve living or working conditions for workers and their families? If so, please provide the documentation that outlines the goals and deliverables Feronia was expected to meet in return for these investments.
   NB: In your response, you noted the ESAP plan includes a number of actions regarding working conditions and housing; in addition, we'd like to understand whether BIO has provided any direct financial support for the fulfilment of this plan.

   The improvement of living conditions and working conditions are measures to be taken by the company, as described in the legally binding ESAP, and monitored by the quarterly ESG Committee.

4. Were any of BIO's investments in Feronia aimed specifically at mitigating the company operations' environmental impact? If so, please provide the documentations that outlines the goals and deliverables Feronia was expected to meet in return for these investments.
   NB: In your response, you noted the ESAP plan includes a number of actions to mitigate Feronia's environmental footprint; in addition, we'd like to understand whether BIO has provided any direct financial support for the implementation of these mitigation measures.

   Through its involvement, BIO and the other DFIs promote the implementation of high environmental standards via an Environmental and Social Action Plan (ESAP). This ESAP and commitments that are agreed at the quarterly ESG Committee include a range of legally binding requirements and other activities that BIO (and other investors and lenders) agreed with the company and contain mitigation measures.

BIO
Belgian Investment Company for Developing Countries

P.S.

Technical assistance to support PHC's ESG-programme is forthcoming.

For example, Feronia has recently started partnering with the Earthworm Foundation/The Forest Trust (TFT), co-financed by the British DFI CDC, to enhance the synergies between creating a profitable agribusiness in DRC and benefiting local communities and broader society, and which inspires future investments in the region.

On top of that a "living wage study,". co-financed by the Dutch DFI FMO, will be executed in the next months by Aidenvironment in order to establish the Living Wage benchmark and to assess how the company's wages compare to the benchmark.

Another project that is being discussed by Feronia's ESG Committee includes a partnership with CARPE and the Woods Hole Research Center to support Central Africa's transition to climate-resilient, low-emissions development accelerated through sustainable management of biodiverse forests, with local communities, local economic inclusion with communities and producing oil palm without deforestation.

And finally, consultant Pierre Bois d'Enghien, co-financed by the German DFI DEG, is investigating how to reinforce Feronia's ESG Capacity.

BIO is supportive of these initiatives and might potentially support them with Technical Assistance as well. Moreover, BIO has been in touch with Feronia on other potential TA projects, like training for technical staff.

In the past BIO has not been able to support these initiatives with TA due to non-eligibility rules. With the new BIO law approved in 2019, these have now been softened, allowing BIO to offer technical assistance, a.o. for the construction of workers' houses and HR management.

Brussels, April 30th, 2019

HRW Letter 2 to BIO – September 2019

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New York City
September 30, 2019

HUMAN RIGHTS WATCH

HRW.org

Luuk Zonneveld
Chief Executive Officer
Belgian Investment Company for Developing Countries (BIO)
Rue des Petits Carmes 24 A
1000 Brussels
Belgium

Re: Alleged Abuses in PHC Oil Palm Plantations in the Democratic Republic of the Congo

Dear Mr. Zonneveld,

We are writing to share Human Rights Watch's findings on alleged abuses documented on oil palm plantations operated by Plantations et Huileries du Congo (PHC) in the Democratic Republic of the Congo, a company in which BIO had invested US$11 million as of April 2019.

Human Rights Watch conducted research in the three plantations and in five cities in northern and western Congo between November 2018 and February 2019, including over 200 interviews with plantation workers, managerial staff and public officials. We also reviewed extensive documentary evidence, including social and environmental impact reports assessing the company's operations.

Human Rights Watch is committed to producing material that is well-informed and objective. We hope you and your staff will be able to respond to the attached questions, in order for us to understand the steps BIO has taken to mitigate and redress alleged abuses on the three oil palm plantations.

For us to reflect your comments in our report, we ask that you provide a written response to the questions in appendix by October 22, 2019; we may publish these, as well as previous correspondence, in full.

Sincerely,

[redacted]

Daniel Wilkinson
Acting Director
Environment and Human Rights Division

Mausi Segun
Executive Director
Africa Division

Appendix: Findings and Request for Information

A. BIO's Human Rights Obligations

As a bank wholly owned by the Belgian state, BIO is under the obligation to conduct its business in line with Belgium's commitments under international human rights law, including the provisions contained in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), among others. These obligations include that of not financing or contributing to the violation of human rights in other countries. Other domestic development banks owned by states, such as Germany's KfW Bankengruppe, have explicitly acknowledged this obligation through the adoption of human rights declarations or statements.

1. **A.** Has BIO adopted a human rights policy? If so, does it acknowledge BIO's extra-territorial obligations? If not, why not? Does BIO envision adopting such policy?

2. **A.** What steps does BIO take to ensure it is discharging its human rights obligations before and after investing in a venture? Please describe concrete steps taken, if any.

3. **A.** Does BIO have policies on the social, environmental, and labor standards for its investments? Does BIO have policies related to transparency and disclosure of investment information, monitoring and oversight of compliance with BIO policies, and accountability and remedy? If so, can you provide us a copy of these policies?

4. **A.** Does BIO conduct human rights due diligence or social and environmental impact assessments? If so, are those publicly available? Did BIO conduct its own assessment prior to investing in PHC, or did it rely on an assessment conducted by the company? Could you provide us with a copy of the risk/impact assessment conducted prior to investing in PHC?

5. **A.** Does BIO disclose to parties potentially affected by a venture they have invested in the results of their social and environmental impact assessments, and how it will impact them specifically? If BIO does not do this, does the venture BIO invests in do so? If the latter, how does BIO ensure that the venture is in fact complying with this requirement in a timely manner and that the information disclosed to potentially affected parties is comprehensive, accessible and functional?

6. **A.** Regarding its investment in PHC, what steps has BIO taken to meet its human rights obligations? Please describe the concrete steps taken, if any.

7. **A.** Which international standards has BIO made binding on PHC through contractual obligations? Do these include all of the International Financial Corporation's Performance Standards? Do these include all of the World Bank Group's Environmental Health and Safety Guidelines?

8. **A.** According to BIO's *Principles for Responsible Financing*, BIO "ensures a preventive and precautionary approach with respect to the environmental and social impacts of investees," and "if negative environmental of social impacts are unavoidable, they must be appropriately mitigated or compensated for." Has BIO recorded any such impacts regarding PHC's operations? If so, which actions has BIO taken to ensure that PHC has mitigated the harm and that affected parties have been compensated?

9. **A.** How does BIO ensure that people affected by their investments have access to remedy?

B. Practices that Endanger Workers' Health

PHC workers who apply and mix pesticides, or supervise these tasks, conduct their work with inadequate and incomplete equipment, Human Rights Watch found. The company's alleged failure to provide appropriate protective equipment exposes workers to the serious health effects associated with these toxic chemicals.

Workers told Human Rights Watch about a range of symptoms they experience immediately after applying pesticides, as well as chronic conditions they developed after they started the job. Their symptoms are consistent with exposure to the specific pesticides they spray or exposure to pesticides more generally, as described in public health literature and confirmed by public health experts consulted by Human Rights Watch. Workers interviewed by Human Rights Watch consistently reported company doctors and managers failed to disclose the results of compulsory medical tests they underwent over the course of three years in company hospitals, even after workers repeatedly requested these results.

Our findings on the inadequate and incomplete equipment of workers who apply pesticides are part of a broader problem that extends to all plantation workers, particularly day laborers and women. We are concerned that PHC is falling short of its obligations to provide adequate personal protective equipment to all plantation workers to prevent and mitigate occupational health hazards, such as machete, thorn prick and trauma injuries, snake and spider bites and exposure to chemical fertilizers. The company's failure to provide clean drinking water for workers on the plantations also exposes them to potentially unsafe water, and the health risks associated to it such as diarrhea, cholera, dysentery, typhoid and polio.

1. **B.** Please share your views regarding the findings described above.

2. **B.** Did BIO's assessments before investing in PHC identify any of the issues outlined above? If so, which specific measures did BIO take to ensure that PHC corrected practices that endanger workers' health? Please specify the timeline envisioned for these measures, if any, and whether BIO considered any of these mitigation plans were successfully executed.

3. **B.** Did BIO's monitoring activities following its investment in PHC identify any of the issues outlined above? If so, which measures did BIO take to ensure that PHC addressed and mitigated the issues that give rise to violations of workers right to

health and labor rights? Please specify the timeline envisioned for these measures, if any, and whether BIO considered these mitigation plans to be successfully executed.

C. Mill's Industrial Waste Contaminates Communities' Water, Environment

At least two of PHC's three palm oil mills allegedly dumped their industrial waste largely untreated, a number of Feronia and PHC staff told Human Rights Watch. The company's procedures do not appear to meet Congolese law, international human rights standards for the conduct of business, or commercial good practice expected from appropriately designed, operated, and maintained facilities operating under normal conditions, according to the World Bank Group's vegetable oil processing environmental health and safety guidelines.

In one case, the palm oil mill dumped putrid effluents next to a settlement of several hundred workers, with fumes pervading the residential area. Another community of several hundred downstream from the mill, located less than five kilometers outside of PHC concession area, submitted an official complaint to the company's grievance mechanism in November 2018, alleging the effluents had contaminated their only source of drinking water. A PHC representative allegedly told their community leader that the company had tested the water and found that the substance wasn't harmful, so that they would not compensate them, but the community was not shown any test results, the leader told Human Rights Watch in February 2019, and they refused to sign off their complaint as resolved. They have since been forced to continue relying on tainted water, several residents told Human Rights Watch.

1. **C.** Please share your views regarding the findings described above.

2. **C.** Did BIO's assessments before investing in PHC identify any of the issues outlined above? If so, which specific measures did BIO take to bring PHC's practices into compliance with Congolese law, industry good practice and international standards regarding the right to water and health? Please specify the timeline envisioned for these measures, if any.

3. **C.** Did BIO's monitoring activities following its investment in PHC identify any of the abuses outlined above, including apparent infractions of Congolese law? If so, which measures did BIO take to ensure that PHC addressed and mitigated these violations? Please specify the timeline envisioned for these measures, if any, and whether BIO considered these mitigation plans were successfully executed.

4. **C.** According to Feronia's grievance procedure policy, unresolved grievances are escalated to be investigated by the Company Management Committee. The ESG Board committee will also be advised, according to the policy. Furthermore, all grievances are supposed to be regularly reviewed by Management and reported on a quarterly basis to the ESG Board Committee. Was BIO, as an observer in the ESG Board Committee's quarterly meetings, aware of any allegations that the company's

operations have tainted communities' water sources? If so, how did BIO respond to these allegations?

D. Employment Practices that Violate Labor Rights

PHC is relying on temporary contracts in an abusive manner, apparently to secure the large workforce it requires at a lower cost, Human Rights Watch found. Temporary contracts preclude benefits and result in significantly lower wages for workers. The majority of PHC workers were employed under this modality in December 2018. In one of the plantations, the provincial representation of the Labor Inspectorate fined PHC for its illegal use of temporary contracts and compelled it to provide permanent contracts to nearly 1,500 day laborers over two years.

The impact of this practice on livelihoods is compounded by other labor rights violations reported by workers, such as underpayment of wages. It would appear that even when plantation workers meet well over 50 percent of their daily quota, they are only paid 50 percent of their daily wage. Many workers told Human Rights Watch they struggle to meet basic needs with their wages and, as a result, are shouldering significant debt with high interest to simply provide food for their families and pay school tuition for their children.

1. **D.** Please share your views regarding the findings described above.

2. **D.** BIO's aim is to "have a positive impact on the local communities where it invests, including promoting sustainable and decent employment." Does BIO have a "decent employment" policy? If not, why not? If not, has BIO envisioned adopting such policy? Please specify the timeline for the adoption of such policy, if relevant.

3. **D.** Did BIO's assessments before investing in PHC identify any of the issues outlined above? If so, which specific measures did BIO take to bring PHC's practices into compliance with Congolese law and international standards regarding labor rights and the right to an adequate standard of living? Please specify the timeline envisioned for these measures, if any, and whether BIO considered these plans were successfully executed.

4. **D.** Did BIO's monitoring activities following its investment in PHC identify any of the abuses outlined above, including the infractions of Congolese law? If so, which measures did BIO take to ensure that PHC addressed and mitigated these violations? Please specify the timeline envisioned for these measures, if any, and whether BIO considered these mitigation plans were successfully executed.

E. BIO's Accountability Mechanisms

To the best of our knowledge, BIO's grievance mechanism consists of a page on its website where complainants may submit information about "material adverse effects with respect to environmental and social matters: labour and working conditions, resource efficiency, pollution, etc." or "non-compliance with legal provisions and deviations from good practices

with respect to money laundering, fraud, corruption, bribery, etc." Furthermore, our understanding is that the management of BIO's Grievance Mechanism is assigned to BIO's Internal Auditor.

1. **E.** Is this web-based form the only avenue for redress for a party negatively affected by a venture that BIO has invested in, such as PHC?

2. **E.** Does BIO's Internal Auditor lie outside of BIO corporate governance structure? In other words, is it an independent body?

3. **E.** Can BIO provide a description of the process it follows to resolve grievances, including the types of possible resolutions? What kind of response can a party negatively affected expect from BIO, following submission of a complaint through this form? Over what timeframe?

4. **E.** Is information about the grievance mechanism process, potential resolutions, and the complaints received about BIO investments publicly available anywhere?

5. **E.** Which measures does BIO usually take, including in PHC plantations, to divulge the existence of this grievance mechanism among potentially affected parties?

6. **E.** Has BIO received complaints alleging material adverse effects or non-compliance with legal provisions regarding its investment in PHC? Regarding other investments? If so, what steps has BIO taken to respond to these complaints?

7. **E.** Has BIO adopted an anti-retaliation policy to protect human rights defenders threatened in the context of BIO's investments? If so, please share a copy. Has BIO implemented this anti-retaliation policy following the killing of Mr. Joël Imbangola, the RIAO activist allegedly murdered by a PHC security guard? If so, please explain which steps BIO has taken to implement this policy.

8. **E.** Are there other mechanisms available where people impacted by BIO's investments can bring their complaints and seek remedy? If so, are these operational level grievance mechanisms, judicial mechanisms, or state regulatory agencies that have oversight over the country's overseas investments? Please specify the nature, jurisdiction and competencies of these mechanisms, as well as their ability to impose binding decisions on BIO.

BIO Response to HRW – October 2019

BIO
Development
Through Investment

Ms. Mausi Segun, Executive Director Africa Division
Mr. Daniel Wilkinson, Acting Director Environment and Human Rights Division

Human Rights Watch
350 Fifth Avenue, 34th Floor
New York, NY 10118-4700
United States of America

Brussels, 22nd October 2019

Re: Alleged Abuses in PHC Oil Palm Plantations in the Democratic Republic of the Congo

Dear Mrs. Segun, Dear Mr. Wilkinson,

We would like to thank you for sharing your questions in conjunction with your research concerning the alleged abuses in PHC palm plantations in the Democratic Republic of the Congo. We greatly appreciate Human Rights Watch's commitment to producing well-informed and objective material.

Annexed you will find our replies to your questions of September 30th, 2019. We hope these will help you to better understand the steps that BIO has taken to ensure the respect of human rights in the PHC concession and to address any alleged abuses.

May we also remind you that, at the time of the exit of Unilever from the plantations concession a dozen years ago, over 100,000 people were abandoned to their fates. There were (or are) no other work opportunities for hundreds of miles other than in relation to the concession, and the government is barely present in the region.

Since Feronia took over the concession, its primary concern has been to re-establish the oil-production by replacing the old, barren palm trees, to rebuild and refurbish the processing plants, and to relaunch the sales in Kinshasa (as the palm oil is destined exclusively for the local market, it contributes significantly to food security in the DRC), creating much-needed employment and income for the local population. At the moment, the plantations provide direct jobs to around 8,000 people, supporting more than 50,000 family members.

In this challenging environment some standards are not easy to apply. Still, we believe it is crucial that PHC continues to provide jobs and income for these 50,000 people, while we keep working and pressuring the company to abide by all the agreed standards and conditions.

Should you need any additional information, or clarification, please do not hesitate to contact us again.

Finally, as agreed, we are looking forward to receiving the draft report prior to publication.

Sincerely yours,

[redacted]

Luuk Zonneveld,
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October 22nd, 2019

BIO's reply to Human Rights Watch's Questions on the Alleged Abuses in PHC Oil Palm Plantations in DRC

A. *BIO's Human Rights Obligations*

1. A. Has BIO adopted a human rights policy? If so, does it acknowledge BIO's extraterritorial obligations? If not, why not? Does BIO envision adopting such policy?

BIO has not explicitly adopted a dedicated human rights policy. However, BIO's Environmental and Social (E&S) policy (https://www.bio-invest.be/files/BIO-invest/Our-Impact/ES/BIO-ES-Policy_BOD-approved-27.11-2018_V2.pdf) refers to the International Bill of Human Rights and the United Nations Guiding Principles on Business and Human Rights (UNGP). It describes BIO's approach to human rights as follows :

"Alongside the state duty to protect, respect and enforce human rights, businesses have the responsibility to respect these rights as well. Each of the IFC Performance Standards has elements related to human rights dimensions and are expected to cover most human rights that are relevant to our clients' operations. In higher risk contexts or if BIO considers that IFC Performance Standards do not sufficiently cover a human right in a given investment, BIO will give special attention to this right and adopt specific measures in connection with the E&S assessment and monitoring of such investment. In line with the IFC Performance Standards, higher risk clients are required to have a grievance mechanism that can facilitate early indication and prompt remediation. BIO also has its own whistle blowing mechanism providing an online platform for third parties to submit grievances."

2. A. What steps does BIO take to ensure it is discharging its human rights obligations before and after investing in a venture? Please describe concrete steps taken, if any.

BIO has embedded E&S-management into its organizational structure and investment process. Moreover, investment review processes, contracts, and portfolio monitoring include environmental and social considerations. These are detailed in the form of a procedure in BIO's internal E&S Investment Manual. As a matter of fact, E&S obligations are included in our agreements with our clients.

A dedicated team of E&S specialists works with BIO's investment and portfolio teams, as well as with our clients, on the management of E&S-risks and opportunities throughout the investments' life-cycle, thus adding value to BIO's operations and clients' businesses. Detailed information on how BIO exactly operationalizes these E&S and human rights commitments and principles may be found in BIO's E&S-policy, in particular in section 3.

3. A. Does BIO have policies on the social, environmental, and labor standards for its investments? Does BIO have policies related to transparency and disclosure of investment information, monitoring and oversight of compliance with BIO policies, and accountability and remedy? If so, can you provide us a copy of these policies?

BIO's E&S-policy was updated at the end of 2018 and has recently been made available to the public on our new website (see 1.A.). As a principle, BIO also discloses its investments on its website. However, as we recently launched a new website, we are still in the process of uploading all of our investment portfolio information online (https://www.bio-invest.be/en/investments).

Over the course of the investment period, BIO's portfolio and E&S-teams monitor compliance by the investees with contractually agreed E&S-requirements, action plans and reporting undertakings. To the extent feasible, support will be provided to investees to help them improve their E&S-performance. In this context, BIO has developed a monitoring framework and a tool that defines the applicable level of monitoring to be applied, based on the investment risk, E&S performance, E&S-Action Plan (ESAP) completion, and the occurrence of possible incidents. Projects with significant E&S and reputational risks or with a track record of E&S-incidents or non-compliance with contractually agreed E&S-requirements are given special attention and are closely monitored by dedicated teams.

As far as compliance and support are concerned, BIO maintains an ongoing relationship with its clients to monitor their E&S-compliance and require corrective actions as necessary to cure defaults, but also to support improvements. BIO supports the improvement of its investees' E&S-performance and takes action to correct non-compliance when this occurs through various means. More information on how BIO takes actions to correct non-compliances may be found in our E&S-policy.

4. A. Does BIO conduct human rights due diligence or social and environmental impact assessments? If so, are those publicly available? Did BIO conduct its own assessment prior to investing in PHC, or did it rely on an assessment conducted by the company? Could you provide us with a copy of the risk/impact assessment conducted prior to investing in PHC?

The IFC Performance Standards require financed companies to conduct an Environmental and Social Impact Assessment (ESIA).

BIO conducts E&S-due diligence for all its investments, as explained above. This due diligence is conducted by our E&S-expert staff and is supported by an external E&S-audit for projects with higher E&S or contextual risks.

In the case of PHC, an extensive E&S-due diligence was performed by an external E&S-consultancy appointed by the lenders' consortium and led by DEG. DEG does not disclose environmental and social due diligences since we are bound by non-disclosure agreements with our clients.

5. A. Does BIO disclose to parties potentially affected by a venture they have invested in the results of their social and environmental impact assessments, and how it will impact them specifically? If BIO does not do this, does the venture BIO invests in do so? If the latter, how does BIO ensure that the venture is in fact complying with this requirement in a timely manner and that the information disclosed to potentially affected parties is comprehensive, accessible and functional?

Confidentiality agreements do not permit BIO to disclose its E&S-due diligence assessments.

However, in line with IFC E&S Performance Standard (PS) 1, our investees are required to have a process for identifying E&S-risks and impacts (requirement #7), to disclose such information (requirement # 29), and to consult with local stakeholders (requirement #30).

BIO's team verifies that IFC Performance Standards, including those related to disclosure of information by the company, are met by the investee during the approval process of new investments and the monitoring of existing investments. If a gap is identified, it will be included in an ESAP that is contractually binding for our client.

For higher risk projects this may include a full scale ESIA and a community consultation process. In the case of PHC, such an assessment was performed in 2014, at the time of investment by the DFIs (https://www.feronia.com/sustainability/view/environmental-and-social-baseline), and included consultations with many stakeholders, including communities.

6. A. Regarding its investment in PHC, what steps has BIO taken to meet its human rights obligations? Please describe the concrete steps taken, if any.

As explained above, an extensive due diligence was performed by the lenders' E&S-experts, led by DEG. This was supported by an external E&S-audit appointed by the lenders as well as by an Environmental and Social Impact Assessment performed by the client. The results of the due diligence have been incorporated into the lenders' contract by adding several E&S-requirements, including compliance with E&S-laws and standards and an E&S-Action Plan (ESAP) with binding recommendations.

Since the investment, PHC's compliance with E&S-requirements and its progress with ESAP-implementation is monitored by the lenders' E&S-experts, through frequent interactions with PHC and its shareholders, observer's participation to PHC's quarterly ESG Committee, and by means of an annual monitoring audit by an independent E&S-consultancy.

7. A. Which international standards has BIO made binding on PHC through contractual obligations? Do these include all of the International Financial Corporation's Performance Standards? Do these include all of the World Bank Group's Environmental Health and Safety Guidelines?

There is only one contract between the lenders' consortium and PHC. This requires compliance with the DRC's environmental, social, and labor laws, and also with the IFC Performance Standards and the World Bank Group's EHS Guidelines. Further requirements are defined by ILO Core Labour Standards and conventions, the ESAP, and all of the company's E&S-permits. These standards are described in our E&S-policy.

8. A. According to BIO's Principles for Responsible Financing, BIO "ensures a preventive and precautionary approach with respect to the environmental and social impacts of investees," and "if negative environmental of social impacts are unavoidable, they must be appropriately mitigated or compensated for." Has BIO recorded any such impacts regarding PHC's operations? If so, which actions has BIO taken to ensure that PHC has mitigated the harm and that affected parties have been compensated?

Please refer to our website for a more recent version of our E&S-policy, in particular *Section 3, Monitoring our Portfolio,* which describes BIO's monitoring framework and the means BIO can use to ensure E&S-compliance.

Each year an independent E&S-consultancy monitored the progress made by PHC with respect to the lenders' ESAP. In addition, DEG, FMO, and BIO have regularly visited the client to assess and support progress, and engage continuously and extensively with PHC and its shareholders about E&S topics and challenges. In parallel, lenders participate in PHC's ESG Committee as observers. Finally, PCH is also required to inform its lenders of any serious incident through a report detailing the incident. This includes a root cause analysis as well as any preventive and remediation measures required.

Since our investment, PHC has made significant progress with respect to improved living conditions for the local communities (renovating hospitals and health centers and making them accessible to the public; launching a borehole program; renovating and constructing schools; upgrading roads; creating income-generating community development programs; etc.). Moreover, workers' salaries have been increased, and their rights have been improved through collective conventions and renovated housing.

We strongly believe that without the DFIs' investments the company would not be operating anymore and that this would have had dramatic social consequences. In addition, the strong focus from DFIs on E&S and development requirements has contributed to increased achievements by PHC in these areas.

A summary of the ESAP-status as of September 2018 is available on Feronia's website (https://www.feronia.com/sustainability-policies/view/summary-environmental-and-social-action-plan). Most of the ESAP-actions are now completed. However, the casual workers' conversion plan, the workers' housing renovation plan, the treatment of effluents, and RSPO-certification are still work in progress.

We recognize that there is still a lot to do. Some ESAP-requirements are still in progress and their implementation is too slow. There have also been delays in the implementation of the social protocols (which are not an ESAP-requirement as they were concluded only after the initial investment). We believe that the slow progress on a number of items is due to a combination of a very difficult and complex operating environment, and the fact that PHC is still not profitable.

9. A. How does BIO ensure that people affected by their investments have access to remedy?

The above cited IFC Performance Standards require companies that are financed by BIO to have functional external grievance mechanisms which are accessible to people affected by the respective company. Additionally, BIO has its own grievance mechanism (please refer to section E). Moreover, these mechanisms do not replace the country's own judicial system.

B. ***Practices that Endanger Workers' Health***

1. B. Please share your views regarding the findings described above.

As part of the Joint Facility Agreement with the other Lenders, DEG has the lead on all monitoring activities regarding PHC. Collaboration with the lenders takes place on a regular basis, amongst others through the attendance to quarterly PHC ESG Committees, reviews of independent monitoring reports, and feedback to PHC and its shareholders.

DEG's independent monitoring activities provided no indication that the information provided by CDC to HRW with regard to questions in sections B, C and D is incorrect. The topics raised in sections B, C and D were identified during the Lenders' due diligence and addressed, as appropriate, through Lenders' requirements and advice for PHC. Specific findings of the initial E&S assessment and detailed findings of the ongoing E&S monitoring for PHC were addressed through the means described under section A and are confidential.

2. B. Did BIO's assessments before investing in PHC identify any of the issues outlined above? If so, which specific measures did BIO take to ensure that PHC corrected practices that endanger workers' health? Please specify the timeline envisioned for these measures, if any, and whether BIO considered any of these mitigation plans were successfully executed.

As stated above, an Environment Social and Action Plan (ESAP) was agreed with Feronia in 2015, and was based on the Lenders' assessment of the business prior to investment, including the items raised in this question.

Please refer to CDC's answer on the current status of these ESAP items.

3. B. Did BIO's monitoring activities following its investment in PHC identify any of the issues outlined above? If so, which measures did BIO take to ensure that PHC addressed and mitigated the issues that give rise to violations of workers right to health and labor rights? Please specify the timeline envisioned for these measures, if any, and whether BIO considered these mitigation plans to be successfully executed.

This issue was raised during due diligence, prior to our investment, and was included in the ESAP.

As described above, PHC's compliance with E&S-requirements and its progress with ESAP-implementation is monitored by the lenders' E&S-experts, through frequent interactions, observer's participation to PHC's quarterly ESG Committee, and by means of an annual monitoring audit by an independent E&S-consultancy.

C. *Mill's Industrial Waste Contaminates Communities' Water, Environment*

1. C. Please share your views regarding the findings described above.

As part of the Joint Facility Agreement with the other Lenders, DEG has the lead on all monitoring activities regarding PHC.

DEG's independent monitoring activities provided no indication that the information provided by CDC to HRW with regard to questions in sections B, C and D is incorrect. The topics raised in sections B, C and D were identified during the Lenders' due diligence and addressed, as appropriate, through Lenders' requirements and advice for PHC. Specific findings of the initial E&S assessment and detailed findings of the ongoing E&S monitoring for PHC were addressed through the means described under section A and are confidential.

2. C. Did BIO's assessments before investing in PHC identify any of the issues outlined above? If so, which specific measures did BIO take to bring PHC's practices into compliance with Congolese law, industry good practice and international standards regarding the right to water and health? Please specify the timeline envisioned for these measures, if any.

As stated above, an ESAP was agreed with Feronia in 2015, and was based on the Lenders' assessment of the business prior to investment, including the items raised in this question.

Please refer to CDC's answer on the current status of these ESAP items.

3. C. Did BIO's monitoring activities following its investment in PHC identify any of the abuses outlined above, including apparent infractions of Congolese law? If so, which measures did BIO take to ensure that PHC addressed and mitigated these violations? Please specify the timeline envisioned for these measures, if any, and whether BIO considered these mitigation plans were successfully executed.

This issue was raised during due diligence, prior to our investment, and was included in the ESAP.

As described above, PHC's compliance with E&S-requirements and its progress with ESAP-implementation is monitored by the lenders' E&S-experts, through frequent interactions, observer's participation to PHC's quarterly ESG Committee, and by means of an annual monitoring audit by an independent E&S-consultancy.

4. C. According to Feronia's grievance procedure policy, unresolved grievances are escalated to be investigated by the Company Management Committee. The ESG Board committee will also be advised, according to the policy. Furthermore, all grievances are supposed to be regularly reviewed by Management and reported on a quarterly basis to the ESG Board Committee. Was BIO, as an observer in the ESG Board Committee's quarterly meetings, aware of any allegations that the company's operations have tainted communities' water sources? If so, how did BIO respond to these allegations?

As an observer to the PHC ESG Board Committee BIO is generally not in a position to "respond" to allegations. The community grievances are regularly discussed at ESG Board Committee meetings.

D. ***Employment Practices that Violate Labor Rights***

1. D. Please share your views regarding the findings described above.

As part of the Joint Facility Agreement with the other Lenders, DEG has the lead on all monitoring activities regarding PHC.

DEG's independent monitoring activities provided no indication that the information provided by CDC to HRW with regard to questions in sections B, C and D is incorrect. The topics raised in sections B, C and D were identified during the Lenders' due diligence and addressed, as appropriate, through Lenders' requirements and advice for PHC. Specific findings of the initial E&S assessment and detailed findings of the ongoing E&S monitoring for PHC were addressed through the means described under section A and are confidential.

2. D. BIO's aim is to "have a positive impact on the local communities where it invests, including promoting sustainable and decent employment." Does BIO have a "decent employment" policy? If not, why not? If not, has BIO envisioned adopting such policy? Please specify the timeline for the adoption of such policy, if relevant.

Please refer to section A with regards to the E&S relevant policies and resulting requirements for financed companies'. BIO does not have a stand-alone "decent work" policy, because all key issues for private sector companies on decent work are included in the IFC Performance Standards and ILO Core Conventions.

3. D. Did BIO's assessments before investing in PHC identify any of the issues outlined above? If so, which specific measures did BIO take to bring PHC's practices into compliance with Congolese law and international standards regarding labor rights and the right to an adequate standard of living? Please specify the timeline envisioned for these measures, if any, and whether BIO considered these plans were successfully executed.

As stated above, an ESAP was agreed with Feronia in 2015, and was based on the Lenders' assessment of the business prior to investment, including the items raised in this question.

Please refer to CDC's answer on the current status of these ESAP items.

4. D. Did BIO's monitoring activities following its investment in PHC identify any of the abuses outlined above, including the infractions of Congolese law? If so, which measures did BIO take to ensure that PHC addressed and mitigated these violations? Please specify the timeline envisioned for these measures, if any, and whether BIO considered these mitigation plans were successfully executed.

This issue was raised during due diligence, prior to our investment, and was included in the ESAP.

As described above, PHC's compliance with E&S-requirements and its progress with ESAP-implementation is monitored by the lenders' E&S-experts, through frequent interactions, observer's participation to PHC's quarterly ESG Committee, and by means of an annual monitoring audit by an independent E&S-consultancy.

E - BIO's Accountability Mechanisms

1. E. Is this web-based form the only avenue for redress for a party negatively affected by a venture that BIO has invested in, such as PHC?

We refer to the operating rules of BIO's Grievance Mechanism available on BIO's website (cf. Section 6, Sub-section '*How to submit a complaint*'):

If necessary, grievances can also be sent to BIO's Grievance Mechanism by sending an email or a letter. Please find below the contact details:

BIO's Grievance Mechanism
Belgian Investment Company for Developing Countries SA/NV
Rue des Petits Carmes 24A
1000 Brussels
Belgium

grievance@bio-invest.be

2. E. Does BIO's Internal Auditor lie outside of BIO corporate governance structure? In other words, is it an independent body?

BIO's Internal Audit function adheres to the mandatory elements of the Institute of Internal Auditors' International Professional Practices Framework, including the Core Principles for the Professional Practice of Internal Auditing, the Code of Ethics, the International Standards for the Professional Practice of Internal Auditing (the 'IA Standards'), and the Definition of Internal Auditing.

More specifically, BIO's Internal Auditing function complies with the IA Standard 1100 relating to independence and objectivity. BIO's Internal Auditor reports functionally to BIO's Audit Committee, which is a committee entrusted by BIO's Board of Directors to manage matters relating to audit and risk management. BIO's Audit Committee is composed of a chairman and two members, who are all non-executive directors, and two commissioners from the Belgian

government are observers. As such, BIO's Internal Auditor is free from any internal interference (e.g. from BIO's management) in determining the scope of internal auditing, performing work, and communicating results.

These are the reasons why the daily management of BIO's Grievance Mechanism is assigned to BIO's Internal Audit function. They ensure independence and impartiality in handling any complaint lodged through the mechanism.

3. E. Can BIO provide a description of the process it follows to resolve grievances, including the types of possible resolutions? What kind of response can a party negatively affected expect from BIO, following submission of a complaint through this form? Over what timeframe?

We refer to the process description included in the operating rules of BIO's Grievance Mechanism available on BIO's website (cf. Section 6).

4. E. Is information about the grievance mechanism process, potential resolutions, and the complaints received about BIO investments publicly available anywhere?

The operating rules of BIO's Grievance Mechanism are available on BIO's website and describe the process and the possible actions for resolution.

As of 2018, the complaints received are disclosed in the Grievance Mechanism's section of BIO's Annual Report.

5. E. Which measures does BIO usually take, including in PHC plantations, to divulge the existence of this grievance mechanism among potentially affected parties?

The level of publicity about BIO's Grievance Mechanism among potentially affected parties depends on several factors, including:

- The level of environmental and/or social risk assessed prior to investing, which determines the level of due diligence carried out, the contracting of external expertise, the enforcement rights in the contractual provisions, the level of monitoring (e.g. frequency), etc.
- The existence or implementation of a grievance mechanism at the company/project level, which should be communicated in priority as part of the company's/project sponsor's responsibility.
- The role of BIO in the investment transaction, either leading it or following one or several other financier(s), usually of larger size and structure.
- The financing instrument (equity or debt), which affects the ability of BIO to require actions from the company to resolve any infringement to out investing standards (incl. IFC's Performance Standards).

In the case of PHC, the German and Dutch development finance institutions, DEG and FMO, were leading the investment process and their joint mechanism (the so-called '*Independent Complaints Mechanism*') was applicable, with all related procedures. A complaint was lodged through this mechanism on November 5th, 2018.

Broadly speaking, BIO's Grievance Mechanism being implemented rather recently (April 2018), BIO is still exploring the most suitable ways to communicate on our grievance mechanism among potentially affected parties in case of higher risk projects where BIO is leading the investment transaction.

6. E. Has BIO received complaints alleging material adverse effects or non-compliance with legal provisions regarding its investment in PHC? Regarding other investments? If so, what steps has BIO taken to respond to these complaints?

BIO's Grievance Mechanism has never received any complaint lodged through the mechanism regarding BIO's investment in PHC.

BIO's Grievance Mechanism has received a couple of complaints concerning other investments. Most of them were either irrelevant or not fully aligned with the primary purpose of the mechanism. For the steps taken by BIO, we refer to the process description included in the operating rules of BIO's Grievance Mechanism available on BIO's website (cf. Section 6).

7. E. Has BIO adopted an anti-retaliation policy to protect human rights defenders threatened in the context of BIO's investments? If so, please share a copy. Has BIO implemented this anti-retaliation policy following the killing of Mr. Joël Imbangola, the RIAO activist allegedly murdered by a PHC security guard? If so, please explain which steps BIO has taken to implement this policy.

BIO has no anti-retaliation policy enforced, but we are exchanging with others on good practice experiences.

With respect to BIO's Grievance Mechanism, specific measures are taken to protect any complainant. The most obvious one is the strict confidentiality of the complainants' identity. Practice has also shown that contacting the management of a company linked to a complaint (or the project sponsor) without divulging having received a complaint also works pretty well.

Regarding the death of Mr. Joël Imbangola BIO's response has been published on our website and may be consulted there. (https://www.bio-invest.be/en/news/a-message-on-the-tragic-death-of-mr-jo%C3%ABl-imbangola-lokwa)

8. E. Are there other mechanisms available where people impacted by BIO's investments can bring their complaints and seek remedy? If so, are these operational level grievance mechanisms, judicial mechanisms, or state regulatory agencies that have oversight over the country's overseas investments? Please specify the nature, jurisdiction and competencies of these mechanisms, as well as their ability to impose binding decisions on BIO.

BIO's Grievance Mechanism is not intended to be the first reporting channel to be used in case of any infringement to human rights in a company or project. Other actions should be taken first, where possible.

First of all, affected people should in priority contact the company itself since it is responsible for the adverse effects if any and it is better positioned to remedy the problems in an

appropriate and timely manner. Prior to investing, BIO makes it very clear to any company requesting a financing that it has a corporate responsibility towards its stakeholders, including on human rights, and that it should address any adverse effects with which it is involved. For riskier investments, BIO requires the implementation and maintenance of a formal grievance mechanism at the company/project level which conforms with the applicable IFC Performance Standards.

Should the actions taken with the company itself fail it becomes then relevant to contact the financiers. Such contact could be made through the grievance mechanism, but also directly to BIO's staff members working on the projects, either electronically or during a field visit for instance, or to any third party appointed by BIO (e.g. environmental expert).

Alternatively, most development finance institutions have their own accountability mechanism too and people adversely affected by any project in which BIO is co-financier could also contact the mechanism of any other financier of the company/project concerned.

Last but not least, any action with the company, with BIO or with any other co-investor does not supersede the legal rights for the affected people to file a lawsuit and request for redress in court. Any State has the duty to protect against human rights abuse within their territory and/or jurisdiction by any company. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.