

INDEPENDENT COMPLAINTS MECHANISM (ICM)

**DEG Complaint 18-002 PHC (former Feronia)
Plantations et Huileries du Congo SA (PHC)**

Mediator's Intermediary Report No 3

Implementation Plan adopted – Monitoring Phase is starting

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Intermediary report on the implementation process of the mediation agreement through two follow up meetings held in Kinshasa for the Boteka site from January 29 to 31 and in Kisangani for the Lokutu site from February 02 to 03, 2024.

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From January 29th to 31st, 2024 a first meeting was held in Kinshasa with PHC and community leaders' representatives of the *groupement of Monkoso* for the Boteka site, and a second meeting from March 01st to 3rd, 2024 with PHC and community leaders' representatives of 7 *groupements* of the Lokutu site to discuss the implementation process of the mediation agreements reached during the March 2023 mediation tables by the two parties for each site. The two follow up meetings were facilitated by the mediation team of the ICM.

1. The follow up meeting of Kinshasa

A total of 28 participants attended a three-day follow up meeting in Kinshasa held at the Continental hotel in Lingwala. Participants to the meeting included 4 PHC representatives, 12 representing community leaders, 1 member of the civil society, and 6 members of RIAO (the local NGO that brought the complaint to ICM), 1 representative of the Governor of the Province of Equateur where the Boteka site is located, and 4 members of the ICM and the mediation team.

The aim of this meeting was to allow participants to (i) discuss all the points of the agreement for the Boteka site reached during the mediation table of Mbandaka in March 2023, and (ii) evaluate what was already implemented, what still needs to be implemented, and how to better continue the implementation process of the remaining points of the agreement to strengthen peace and harmony between the two parties.

Discussions on the implementation status of the Boteka site agreement

The implementation status of all points of the Boteka site's agreement was discussed as follows:

- 1) Establish a land commission to determine the boundaries of the plantation and check whether PHC went beyond its limits overtaking community members' lands in the *groupement* of Monkoso: The commission was established immediately after the mediation table in Mbandaka, but it took quite a moment for it to get organized and effectively start the field work. Members of the land commission included PHC representatives, community and RIAO representatives, and the administration's representatives (land registry officials at the province and local levels). These mixt members of the commission worked together for more than 60 days collecting and checking plantations titles, visiting plantations boundaries in the field, and at the end the land registry officials wrote a final report that was read and discussed during the follow up meeting in Kinshasa. The land commission also held several meetings locally in Boteka with all parties to ensure the same understanding of their work. The land commission report and outcome of discussions are highlighted below in this report. The work of this

land commission was fully funded by the ICM while several meetings and phone calls were being also held with the ICM mediation team for facilitation.

- 2) On physical abuses and the role of the police and security guards, PHC had committed during the mediation table in Mbandaka to help facilitate the release of prisoners among community members within the limits of its possibilities, while community leaders took the responsibility to identify those prisoners and share a list of their names with PHC. One member of the national parliament who attended the mediation table in Mbandaka as an observer had also committed to provide its help to also facilitate the release of those prisoners. During the follow up meeting, participants indicated that, though the list of prisoners was not shared with PHC which did not also do much for their release, all prisoners arrested before the mediation table were released with much help from the member of the national parliament.
- 3) Sensitization at the community level by community leaders against the stealing of palm nuts with the support of PHC: Participants indicated that community leaders conducted several sensitization activities at the community level to reduce the stealing of PHC palm nuts which helped PHC to triple its products. These activities include 30 radio programs as well carried out by RIAO. The civil society of Boteka indicated also that it had submitted a proposal to PHC not yet funded till today to support their sensitization campaign as well against the stealing of palm nuts. During the meeting, PHC confirmed that the level of its palm nuts production had increased and that was in part due to the reduction of the stealing of its products, and congratulated community leaders for their efforts. The success of this activity will contribute to improve a good relationship between the two parties and should continue to be done and supported.
- 4) The creation of palm oil sales canteens in Boteka: PHC informed participants that it has already built a palm oil sales canteen which will start functioning in April 2024, and where community members will have access to purchase palm oil for consumption. To the question raised by community leaders whether one palm oil sale canteen will be enough for the entire community of Boteka, PHC promised to progressively establish other canteens in other locations within the entire Boteka community.
- 5) PHC to support income-generating activities for community members through, among other things, projects to support small-scale planters, a project to improve electricity in Boteka using palm nuts waste etc. for the benefice of community members: PHC indicated that it was in the process of beginning most of these activities under its foundation including recruiting community members to hold small restaurants to provide food to its workers, and this was the most urgent activity to start soon involving community members in some direct income generating activities. By the end of 2024, PHC will start to support projects of small-scale planters at the community level, and the electricity project is scheduled to start towards the end of 2025. According to PHC, all these projects will be implemented in collaboration with community representatives. Community representatives who are eager to see all these projects being realized indicated to PHC managers that the recruitment process at the field level for such activities is not always objective, that more local people should be recruited and that this will require further attention to avoid frustration.

- 6) PHC to support communities for the evacuation of their agricultural products in setting up depots in Boteka for basic necessities and where community members will have access: According to PHC, one depot has already been built in Boteka but still needs a little more time to become operational to start the collection and transport of products to the market. PHC announced that its was currently negotiating with Equity Bank to provide some micro-credits to young entrepreneurs among community members. This project will also be coordinated under the PHC foundation.
- 7) Identification by community leaders of major thieves of the company's palm products with a view to combating theft in their respective communities: For community leaders, this task has been already completed through their sensitization activities. Most of the persons who were stealing are now doing their own small economic activities including unfortunately cutting trees to make and sale charcoal. In some places, PHC's palm products are abandoned on their own waiting to be collected and no one touches them. Other remaining thieves are among some former workers of PHC who came from outside Boteka but are still living there. Community leaders recommended that PHC organizes their repatriation to their homes and locations where they came from.
- 8) Reactivate existing mechanisms for exchanges between PHC and community members, with a view to fostering ongoing dialogue so that community members can easily address their concerns or grievances to the company: These mechanisms, namely the monthly conflict management committees, the quarterly social clause management committees, and a complaints management mechanism, were set up by PHC independently and before the mediation process to ensure the participation and representation of the entire community. However, community leaders pointed out that these mechanisms do not operate transparently, and proposals were made for their improvement. One of their weaknesses, according to community leaders, is the fact that reports of these committees' meetings do not reach PHC managers in Kinshasa who make decisions. One of the proposed solutions during the meeting was that, once all participants have signed meetings 'minutes, they should be scanned and sent immediately to the PHC in Kinshasa even via WhatsApp. PHC promised to set up a WhatsApp number available to all participants in these meetings. Another weakness identified was the fact that some members of these conflict management committees have not taken part in the conflict transformation training done by the ICM mediator and need the training for their best participation. PHC will facilitate an opportunity for a training in conflict resolution to all members of these committees. PHC will also improve participation of community members in the quarterly social clause management committees by ensuring that community members are well represented and discuss the selection and annual chronograms to implement social projects within their communities.
- 9) PHC will support the training of community members according to their expressed needs particularly of youths: PHC indicated that it's willing to support the training of community members, especially for youths interested in computers skills. It's still waiting to receive their needs.

- 10) The ICM to support 19 community leaders with the amount of one hundred dollars (USD 100) each to conduct a community gathering activity to inform other community members about the mediation outcome: Community leaders confirmed that this activity was completed in the 19 villages. They also indicated that it was a great opportunity for them to sensitise their community members against the stealing of PHC palm products according to their commitment in the agreement.

2. The follow up meeting of Kisangani

A total of 34 participants attended a two-days follow up meeting in Kisangani held at the JUCRON Restaurant. Participants to the meeting included 7 PHC representatives, 14 representing community leaders, 5 representing RIAO (the local NGO that brought the complaint to the ICM), 4 members of the administration of which 3 land registry officials and 1 representative of the Governor of the province of la Tshopo where the Lokutu site is located, and 4 members of the ICM and the mediation team.

The aim of this meeting was to allow participants to (i) discuss all the points of the agreement for the Lokutu site reached during the mediation table of Kisangani in March 2023, and (ii) evaluate what was already implemented, what still needs to be implemented, and how to better continue the implementation process of the remaining points of the agreement to strengthen peace and harmony between the two parties.

Discussions on the implementation status of the Lokutu site agreement

1. Setting up a joint technical commission to visit the site and check the boundaries of the plantation in the 7 *groupements* of Lokutu to identify any alleged overruns and find out the conditions of acquisition of the plantation titles: An ad hoc technical sub-commission was set up to carry out the work, and this commission's report was produced and presented during the follow up meeting. It was reported that members of this land commission were able to see 8 land titles indicating a surface area of "more or less" 63,000 hectares of the plantation. Outcomes of this land commission's report are highlighted below in this report under the land commissions reports point for both sites (Boteka and Lokutu).
2. On physical abuses and human rights violations against the community: PHC had encouraged communities to report any cases of physical abuse or human rights violations to the Conflict Management Committee for appropriate action: According to community leaders, all community members arrested prior to the March 2023 mediation table in Kisangani were released. The release came after the unfortunate incident of the death of a community member in prison, and it was a result of the pressure surrounding this incident that all the other people arrested were released. Community leaders mentioned that after the mediation table, other arrests took place among community members, including one community leader present in the meeting room. The latter repeatedly raised his case in the hope that PHC could intervene to secure his release. However, PHC responded that his case was special, given that it was already at the court, and PHC could do nothing just as it can't do anything for those who are already convicted. PHC considers that the fact that it no longer pursues all its complaints against all the arrested persons had contributed to their release. But for community leaders, the arrested persons had to pay themselves for their release. After discussion, it was agreed that in future, to avoid

such arrests among community members, it would be necessary for all parties to consult each other regularly within a concertation committee to discuss such cases.

3. Reinstallation of a commercial service by PHC involving community members with a view to raising the community's economic level by setting up canteens to sell palm oil and other basic necessities to community members: According to PHC, the canteen for the sale of palm oil has already been installed at the Bolanga market since December 2023. The OPAs (Organizations of Agricultural Producers) members have been trained and given machetes and axes to implement what they have learned. Corn seed was also distributed and harvesting support provided to them. PHC has also contacted producers of basic necessities that will be sold in the canteens. Once these activities are up and running, PHC will approach the community to designate some of its members to take an active part. Through its foundation, which will begin operations by April 1, 2024, PHC intends to create value chains to facilitate operations of farmers among community members. The foundation intends to support young entrepreneurs in business activities to help them prosper in their respective communities. PHC is also currently in talks with the Equity Bank for micro-credits for young entrepreneurs. All these projects will be carried out in consultation with the local community through a consultation committee that will be set up. PHC also intends to support partner plantations by giving owners quality seeds that the company will buy back.

The community confirmed that PHC has already set up one canteen where the palm oil is sold but proposed that several other canteens be set up in other *groupements*. The community suggested that they should be involved in the canteen business and not just be customers and want PHC to strengthen its monitoring of OPAs activities and to start a new one in Bongemba. According to PHC, it will appoint the head of the Foundation by February 8th, 2024 to begin activities by April 1st, 2024.

4. Undertake community awareness campaigns (educational talks, radio broadcasts, evangelism against theft in communities, etc.): According to community leaders, this activity has been already completed. Every *groupement* has been sensitized and, as of today, the palm nuts theft has dropped significantly in Lokutu, which made Lokutu the leading palm nuts producer of all PHC plantations. Community leaders said that even the GIs (Industrial guards) have been sensitized against stealing palm nuts, and PHC has confirmed that the stealing of its products has significantly decreased, and that the plantation's production in Lokutu has increased. With regards to GIs, PHC promised to continue with the awareness-raising and train them to change their behavior. For the time being, PHC is in the process of terminating the contract with G4S, who are currently in a notice period.
5. On the question of defamation, yes, freedom of expression is constitutional (Art. 23 const.), but it must respect the law. PHC reserves the right to take legal action against authors in the event of defamation: On this point all parties are committed to respecting this agreement, although at times there have been violations on the part of RIAO, which the mediator has constantly reminded them of, participants especially RIAO members, committed again to avoid defamation through published articles without prior facts checking through the concertation committee (to be set up).

6. Implementation of social projects to support local community members including the development of partner plantations, seed production, biogas-based electricity generation, PDC and PDL projects, etc.: For all these projects, PHC has committed to start their design and implementation process through its foundation beginning of April 1, 2024. However, all will be done in consultation with community members and chronograms for their implementation will be discussed together to facilitate their participation in the monitoring process.
7. PHC to reactivate and operationalize, on a regular schedule, the two existing exchange frameworks, namely the Conflict Management Committee and the Social Clause Monitoring Committee: The two exchange frameworks currently functioning are the Conflict Management Committee and the Social Clause Monitoring Committee. Community leaders and RIAO seconded the PHC's intention to change the name of the conflict management committee, which implies that PHC and communities are in constant conflict. They will find together an appropriate name. It was noted that these two committees are not functioning normally, and suggestions were made to improve their operation particularly by sharing the meetings notes with the PHC managers in Kinshasa to ensure there is always a follow up.
8. The PHC's communications department should also help to ensure ongoing communication with community members is functional and transparent notably via Internet, community radio programs etc.: PHC has committed to ensure that its communication with the community to raise awareness and share information about its foundation's projects is clear and reinforced starting April 1, 2024.
9. The ICM to provide the amount of one hundred dollars (USD 100) to each community leader present at the mediation table in Kisangani, for a total of 19 leaders, to enable them to carry out the restitution of the results of the mediation upon returned to their respective communities: According to community leaders, this activity was carried out by community leaders in all *groupements* except the *groupement* of Mwando. The restitution served also to sensitize community members against the stealing of palm nuts of the plantation.
10. The mediation team to provide documentation to all participants at the end of the mediation table: Mediation documents were given to all participants immediately after the mediation table. They were helpful to community leaders for their restitution activities.

3. Land commissions reports and discussions for both sites (Boteka and Lokutu)

The Boteka site

As mentioned above on the point related to the land commission, the land registry official at the territorial level of Ingende where the Boteka site is located, and who was a member of the land commission presented the report of the land commission during the follow up meeting in Kinshasa. The major outcome of the report was the fact that PHC has a surface area for its plantation of 6.543,67 ha in Boteka known also officially by the government and for which it regularly pays its land royalties. No overtaking lands were identified and mentioned beyond these limits except for one village, in which the land size before 2015 and after 2015 differs by more than 100 % Community leaders indicated that PHC got this surface area in 2015 without a prior consultation with community members. They think the acquisition procedures in 2015 was unclear although officially known by the government. For this reason, community leaders have requested PHC to pay a compensation to community members of Boteka for this lack of prior consultation with them before getting these new titles and potential unclear overlaps. PHC has agreed to pay the requested compensation, but community leaders will have to return to discuss first with their community members to determine the type of compensation for each village according to their needs to be presented to PHC for discussions. The Community leaders agreed that – with reaching a compensation agreement – they will accept the size of the land-titles from 2015 as legitimate.

The Lokutu site

For the Lokutu site, the land registry official at the provincial level and his technical team (2 members) presented the land commission report during the follow up meeting in Kisangani. The report indicated that PHC has a surface area of “more or less” 63,000 hectares recognized by the State and for which it regularly pays its land royalties. The report also stated that there were no indications that PHC has exceeded its limits in each of the 7 *groupements* visited. However, the land registry officials recommended that there is still a need to go back to the field to measure again all the plantation boundaries to confirm or not the 63,000 hectares to avoid mentioning on the official documents “more or less” 63,000 hectares. Nonetheless, community leaders pointed out that, despite having land titles with this “more or less” 63,000-hectares surface area officially known by the government, the acquisition procedures were unclear because community members were not involved in the process, hence they requested to PHC to regularize the situation amicably through a payment of compensations to be given to community members and that the community members will accept the legitimacy of the land title of PHC from 2015.

The two parties agreed that community leaders will go back to their respective *groupements* to discuss with their community members to identify the type of compensation for each *groupement* to be presented to PHC for discussions.

4. Next steps for both sites (Boteka and Lokutu)

After discussing the land commissions’ reports and the implementation status of all other points of the agreement for each of the two sites (Boteka and Lokutu), the two parties decided:

- To set up a permanent concertation framework (PCF) structure comprising for the Boteka site 02 members of PHC at the managerial decision level (Kinshasa), 02 members of the community (01 community expert and 01 community representative), 01 member of RIAO, 01 member of the civil society, and 01 member representing the governor of Equateur.

This framework will provide a space to discuss all aspects related to the implementation process of the agreement of the Boteka site, and during its first meeting the community representative will present the identified compensations requested by community members for each of the 17 villages of Monkoso in Boteka for discussions.

- For Lokutu, the PCF structure to be set up will comprise 02 members of PHC at the managerial decision level (Kinshasa), 03 members representing community leaders from the three territories of Lokutu (Yahuma, Isangi, and Basoko), 01 member of RIAO, 01 member of the civil society, and 01 member representing the governor of La Tshopo. This framework will provide a space to discuss all aspects related to the implementation of the agreement of the Lokutu site, and during its first meeting the 03 community representatives will present the identified compensations requested by community members for each of the 7 *groupements* of the Lokutu site for discussions.
- In addition, for Lokutu, it was recommended to PHC to send as quick as possible the land registry officials to the field to take precise measures of the surface area of the plantation to avoid mentioning in the official plantation's titles "more or less" 63,000 ha of its surface area.
- For both sites (Lokutu and Boteka), a small technical committee of 3 members comprising 01 technical expert from PHC, 01 community representative, and 01 member of RIAO was set up to prepare the concertation framework structure's Terms of References (TORs) which will include its objectives, meetings periodicity, functional budgets, meetings' locations, etc..
These TORs will be submitted to PHC, community leaders, and ICM within a period of one to two months maximum.
- PHC will be responsible for financially supporting the functionality of the permanent concertation framework (PCF) structure for each site (Boteka and Lokutu) and ensure they are functioning regularly.
- At the end of each of the two follow up meetings, ICM provided again a financial support of 100 \$ to each of the 14 community leaders of Boteka and to each of the 12 Community leaders of Lokutu to ensure they communicate the outcomes of the follow up meetings to their community members after returning home, and to discuss with them about the compensations that each village (for Boteka) and *groupement* (Lokutu) will request to PHC. Community leaders for the two sites requested a period of two months maximum to come up with these compensation requests.
- The ICM and the mediation team consider to attend the first PCF meetings for both sites (Boteka and Lokutu) the last week of June 2024 and will continue to monitor the good implementation of the agreement for each of the two sites (Boteka and Lokutu) from distance and through periodic visits attending, when possible, the PCF of both sites.

5. Conclusions and recommendations for both sites (Boteka and Lokutu)

During the two follow up meetings in Kinshasa and Kisangani, participants interacted constructively and in a peaceful atmosphere although from time to time there were hot discussions around sensitive topics such as the land issue. These hot discussions were marked sometimes by community leaders leaving the meeting room, and the mediator had to meet both parties separately using some cultural languages and practices such as how to reunite an upset couple together (the two parties representing a couple) to bring them back in the discussions. However, both parties showed their willingness to live together in peace and harmony. Community leaders had several times said that PHC is their company since their ancestors, and they had no interest in destroying it. They just want the company to consider their needs and dignity as their partner. The company has also repeatedly mentioned its goal of sharing its prosperity with community members surrounding the plantation.

It's clear that despite their willingness to peacefully resolve their differences, due to their difficult past relationships, community leaders particularly, still don't trust the good will of the company and continue to ask for more assurance that PHC will respect its commitments. To restore or build this trust, it's recommended to PHC to:

- Establish as quick as possible the concertation framework (PCF) that will help to address peacefully and in a constructive manner all issues related to the agreements for both sites, including the requested compensations, and any conflicts or violent acts affecting the two parties as indicated during the mediation process;
- Implement as soon as possible all its promises of socio-economic projects under its foundation that will benefit directly to community members as indicated under the agreement of each of the two sites;
- Ensure all collaboration and communication structures between the company and community leaders are functional and in a participatory manner to engage all parties to remain committed to their engagements;
- Enhance a respectful and transparent communication approach with community members particularly by the local company managers and staff while interacting with them on community projects for a common interest;
- Ensure that the land registry official quickly goes to the field to measure again the plantation boundaries in Lokutu to avoid any confusion around a "more or less" figure language in its titles as indicated during the follow up meeting of Kisangani;
- Ensure a strong involvement of the PHC managers at the high level (Kinshasa) in the follow up of the implementation of the agreement for each of the two sites.

With the results of the mediation tables in 2023 and the two implementation meetings in January 2024, the mediation formally comes to an end. Implementation is the task of the parties and the ICM will monitor the implementation of the agreements by regular visits (probably annually).

6. Annexes

- Report of the follow up meeting in Kinshasa
- Report of the follow up meeting in Kisangani