

LAND CONFLICTS AND SHADY FINANCES

plague DR Congo palm oil company
backed by development funds



Photo 1. Throughout history, local communities never consented to Feronia's operations in their territories, nor did they approve of the destruction of their palm groves for the establishment of plantations. In this image, a community member in Lokutu, where Feronia operates, is surprised to find a land survey marker placed without the prior consent of affected communities. (Photo: Oskar Epelde)

European and US development funds are bankrolling palm oil company Feronia Inc despite land and labour conflicts at its plantations in the Democratic Republic of the Congo (DRC). New information now raises questions as to whether the Canadian-based company misused millions of taxpayer dollars destined for international aid by way of companies connected to a high-level DRC politician.

This report brings together new information showing how Canadian-based agribusiness company Feronia Inc, majority owned by the UK government's CDC and other European and US development banks, occupies over 100,000 ha of disputed lands in the Democratic Republic of the Congo (DRC). The report also provides evidence that raises questions about whether Feronia Inc may have misused millions in aid money destined for Africa by way of companies connected to a high-level DRC politician.

Aid money provided by government-owned European and US development finance institutions (DFIs) is supposed to alleviate poverty. However, as this report shows, the living conditions for communities within Feronia's oil palm plantation concessions remain abysmal. The company occupies lands that are essential to the livelihoods of local people and fails to provide decent wages and basic services.

This report was produced by a coalition of civil society organisations in the DRC and Europe. It builds on a June 2015 report that brought international attention to the human rights violations, poverty, labour exploitation and land grabs occurring within the company's claimed concession areas—as well as the company's connections to a high level DRC politician.¹ Despite the concerns raised by that report, Feronia's initial DFI investors continued to provide funding to the company and, in December 2015, several other DFIs agreed to provide an additional round of financing in the amount of US\$49 million. In this report we provide further evidence of Feronia's questionable land deals and poor labour practices, and expose for the first time how the company employed a complex and opaque financial mechanism that raises troubling questions about how it spent funds provided by the DFIs.

The report reveals a troubling lack of due diligence regarding the use of public funds by DFIs, all of which claim to follow high standards of responsible investment. The authors of this report therefore call for public investigations into the activities of Feronia and the involvement of DFIs by relevant government bodies. We also call for an independent international fact finding mission to investigate human rights violations and other violations allegedly committed by the company against local communities. To ensure accountability, the DFIs—as the major shareholders of Feronia and the primary providers of finance to the company—should immediately act to make public the full financial accounts of Feronia and each of its subsidiaries, as well as the legal documents that Feronia claims to possess for its land concessions in the DRC. The authors of this report also call on Feronia and its DFI owners to adhere to the longstanding demands of affected communities for the immediate return of their lands and for reparations.

What is Feronia?

Feronia Inc is a company registered in Canada that trades on the Toronto Stock Exchange. All of the company's operations, however, are handled by subsidiaries in the DRC and the UK that were, until recently, owned by Feronia's holding companies in the Cayman Islands. In 2015, in order to meet the requirements of the Belgian DFI BIO, Feronia's Cayman Islands holding companies were relocated to Belgium under a new company called Feronia Maia sprl.

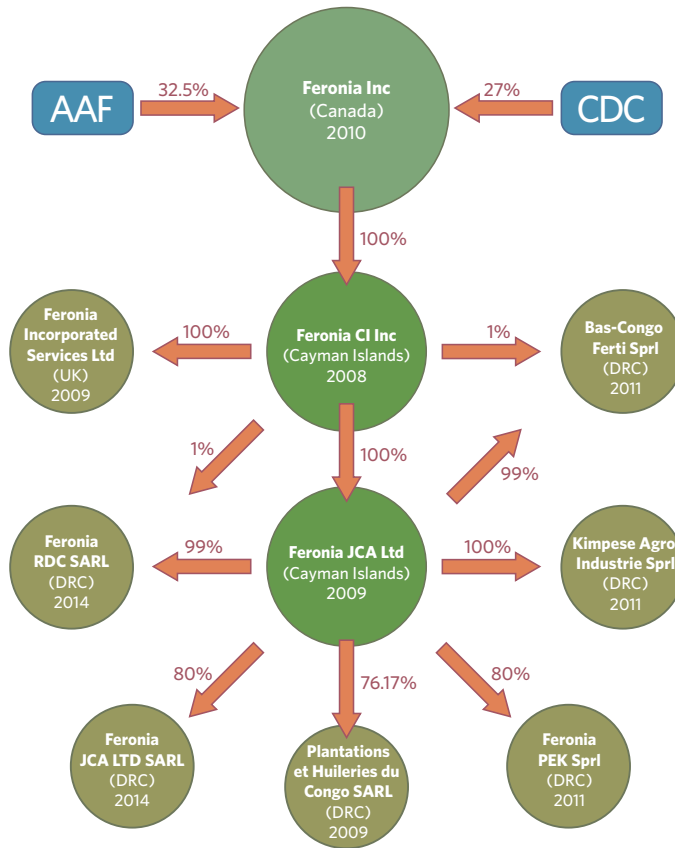
Feronia was first established as a Cayman Islands company in 2008 by a group of Canadian and UK businessmen. Its objective was to become one of the largest farming companies in Africa. So far, its activities have been limited to the DRC, where it acquired land for the farming of rice and other crops as well as three oil palm plantations that it purchased from the multinational food company Unilever in 2009. The plantations are located along the

1. RIAO-RDC and GRAIN, "Agro-colonialism in the Congo: European and US development finance bankrolls a new round of agro-colonialism in the DRC", 2 June 2015, <https://www.grain.org/e/5220>

Figure 1. Chart mapping Feronia's corporate structure.

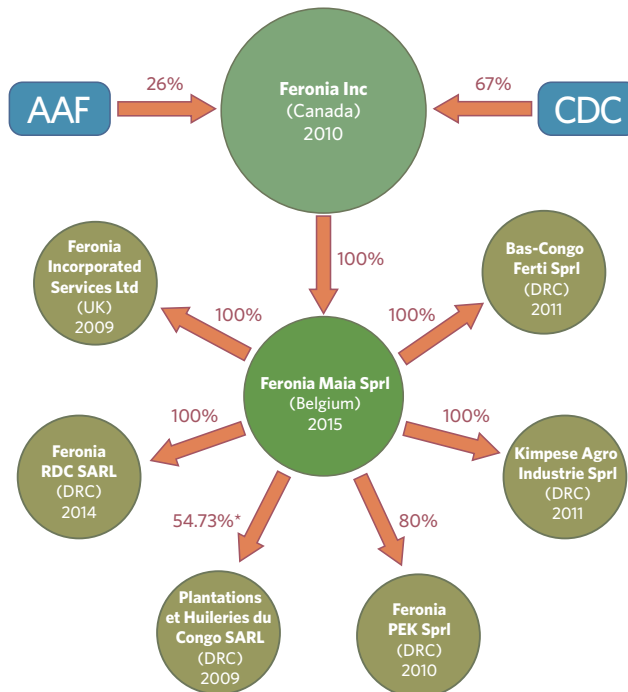
Feronia structure

April 2014



Feronia structure

April 2016



* Feronia Inc's annual report from 2015 states that it owns or controls 76.17% of Plantations et Huileries du Congo SARL, but the statutes of Feronia Maia Sprl state that Feronia Maia owns 54.73%. It is not clear how the remaining shares are held by Feronia.

Congo River in Lokutu, Yaligimba and Boteka. Today, all of Feronia's revenues are derived from these three plantations, as the rice farm is not operational.

How are European and US development finance institutions involved?

Since January 2013, Feronia has received US\$118 million in financing from European and US development finance institutions. DFIs now own 93 per cent of the company's shares. The largest contributor is the UK government-owned CDC, which has invested US\$41 million in the company and currently owns 67 per cent of Feronia's shares. The African Agricultural Fund (AAF)—a Mauritius-based company that manages the investments of DFIs of France, Spain and the US, as well multilateral banks such as the African Development Bank—has invested US\$27.5 million in Feronia since 2012 and currently owns approximately 26 per cent of the company (see Figure 1).²

Figure 2. Table of main investors in the African Agricultural Fund.³

Source	USD (million)
Agence française de développement (AFD)/Proparco (FISEA)	40
Overseas Private Investment Corporation (OPIC)	100
Spanish Agency for International Development Cooperation (AECID)	40
African Development Bank (AfDB)	40
European Commission (EC)	12*
Development Bank of Southern Africa (DBSA)	Not available
West African Development Bank (BOAD)	Not available
ECOWAS Bank of Investment and Development (EBID)	Not available

*EC funds are dedicated to the AAF Technical Assistance Facility

In December 2015, several other European DFIs, from Germany (DEG), Netherlands (FMO) and Belgium (BIO), as well as a consortium of other DFI investors participating in an infrastructure fund, committed to lend Feronia's DRC plantations subsidiary, Plantations et Huileries du Congo (PHC), an additional \$49 million, after "a comprehensive due diligence process" (see Figure 3). The loan is secured against the assets of PHC and a pledge of the shares of PHC by Feronia's Belgian subsidiary, Feronia Maia.⁴ As Feronia Inc has registered multi-million dollar losses in every year of its existence, the company has relied on these cash injections from DFIs to maintain its operations.⁵

Figure 3. Table of DFIs participating in Feronia's December 2015 \$US49 million loan facility

Source	USD (million)
DEG (Germany)	16.5
FMO (Netherlands)	16.5
BIO (Belgium)	11
EAIIF*	5

*The Emerging Africa Infrastructure Fund (EAIIF) is owned by the Private Infrastructure Development Group (PIDG), which is funded by KfW (Germany), FMO/DGIS (Netherlands), DFID (UK), DFAT (Australia), MFA/Norad (Norway), SECO (Switzerland), SIDA (Sweden) and others.

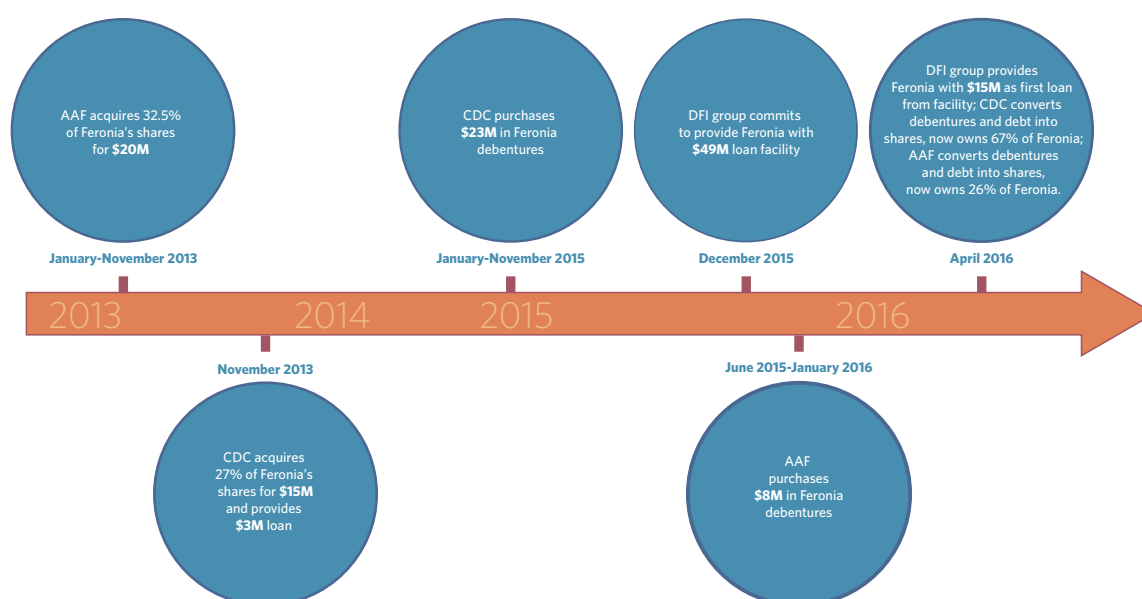
2. The initial groups of investors in the AAF is provided in the release from the AAF from 29 November 2010, http://www.afd.fr/webdav/shared/ELEMENTS_COMMUNS/AFD/Communiqués/Announcement%20Final%20-%20AAF%20First%20close.pdf

3. Based on Table 1 in: RIAO-RDC and GRAIN, "Agro-colonialism in the Congo", Op Cit.

4. Feronia PR, "Feronia secures \$49M term facility for palm oil operations", 22 December 2015: http://www.feronia.com/news/story/2015/feronia_secures_49m_term_facility_for_palm_oil_operations

5. Feronia's company reports filed on the Toronto Stock Exchange can be accessed here: <http://www.sedar.com/>

Figure 4. Timeline of DFI investments



Is Feronia's land occupation "illegal"?

Feronia claims that all of its oil palm plantations are on lands for which it possesses legally valid, 25-year renewable leases covering a total of 101,455 ha that it acquired with its purchase of Plantations et Huileries du Congo (PHC) from Unilever.⁶ Feronia has not made these leases public, and most of the affected local communities and relevant provincial authorities say they have never seen any such documents.⁷

Feronia's largest land claim covers 63,000 ha surrounding its Lokutu plantations in the Province of the Tshopo. In 2012, provincial authorities intervened in a land conflict between Feronia and the communities of Yaoselo and Yakote within the Lokutu concessions and asked Feronia to provide the legal documents pertaining to its land claims. Instead of a 25-year lease approved by the President of the Republic, which is required under law,⁸ Feronia provided only a copy of a land certificate from 1955 issued by a provincial land agent. The provincial Registrar of Lands had already stated to Feronia, in a letter in May 2012, that this certificate did not comply with the DRC's land legislation.⁹ This certificate is the only document that the communities within the Lokutu concession say they have ever seen attesting to Feronia's land claims over the area. Moreover, according to the current Registrar of Lands for the Province of the Tshopo, there are no other documents filed with the provincial registrar of lands concerning Feronia's Lokutu concessions, where all official land documents for the province must be filed.¹⁰

6. The concession claims are made in Feronia's listing document for the Toronto Stock Exchange, 2010. The documents states the Feronia has leases to 56,000 ha that expire in 2018, to 1,955 ha that expire in 2017/19, to 7,500 ha that expire in 2020, and to 36,000 ha that expire in 2030.

7. Even Feronia's own Social Impact Assessment Report from December 2015 states that communities in the area are unaware of the boundaries of Feronia's land claims. From page 117: "The lack of understanding of which land belongs to the Company and which to the non-worker communities has resulted in misconceptions and common belief that the Company is using land that it does not own". See: [http://www.feronia.com/uploads2/V2.%20Social%20Impact%20Assessment%20\(Final\).pdf](http://www.feronia.com/uploads2/V2.%20Social%20Impact%20Assessment%20(Final).pdf)

8. Law number 73-021of 20 July 1973, <http://www.droit-afrique.com/upload/doc/rdc/RDC-Loi-1973-21-regime-foncier-et-suretes-MAJ-1980.pdf>

9. "Avis sur la conversion des titres de propriété foncière couvrant les SR86, SR709 et 12 à Basoko/PHC/Lokutu", available at: <https://www.grain.org/e/5560>

10. Personal communication with the Registrar for the Province of the Tshopo, June 2016.



Map of the DRC showing Feronia plantations

Communities throughout the Lokutu plantations area have confronted the company on numerous occasions regarding what they consider to be its illegal occupation of their lands. In one of many letters sent to Feronia by village leaders, the Chief of the District of Bolomo wrote to Feronia in July 2013 about another land conflict with the company. The letter stated that the company had no right to the lands within his territory since the company had violated its legal obligation to negotiate and agree on an MOU with the affected communities and to undertake a survey and delimitation of lands with the participation of the communities and relevant government authorities.¹¹

On 8 March 2015, over 60 customary chiefs and other community leaders from across the district of Yahuma, where 90 percent of Feronia's Lokutu plantations are located, issued a signed declaration stating that Feronia and its predecessors had illegally occupied their lands for the past 104 years. They asserted that they had never been consulted, nor had they signed any MOUs.¹² This was reiterated in a letter dated 15 September 2016 addressed to the Prime Minister of the DRC and signed by over 500 community leaders from the districts of Yahuma, Basoko and Isangi—an area covering nearly all of the Lokutu concession. The letter details a number of serious abuses committed by Feronia and accuses the company of illegally exploiting and occupying their lands and forests. The letter also states that the company has been surveying the communities' lands without their consent or cooperation.¹³

The communities also dispute Feronia's land claims at its Boteka plantations, where Feronia claims to have 31 concessions leased from the government, covering 13,542 ha. In an August 2013 letter sent to President of the Republic Joseph Kabila, the local chiefs recount how the company began operating in the area in 1912 under colonial occupation, and how it had received its first 25-year lease in 1947. They say the company has never had the consent of the local communities or their chiefs. According to the chiefs, the company claims to have obtained a collective agreement with some of the village elders in 2012, but they do not know how this could have happened. They end their letter saying: "With all of our energy, we deplore and denounce this illegal occupation of our territories, an occupation that is without titles or rights and which has made us extremely poor and will end in our collective death if this manner of operating is not stopped".¹⁴

In September 2015, the CDC stated that Feronia was working towards making "public all relevant information regarding its concessions". However, a year has passed and Feronia has yet to publish any further information about its land leases.¹⁵ Nor has Feronia made public any evidence of the agreements it supposedly negotiated with the communities within its concessions. The Director General of BIO maintains that, before investing in Feronia, they

11. "Accusé de réception de la lettre N. 304/2013/APM, AHO/LTU/FC", September 2013, available at: <https://www.grain.org/e/5560>
 12. See: "Desiderata de la population de Yahuma face à la société PHC/Feronia area Lokutu", 8 March 2015, available at: <https://www.grain.org/e/5560>
 13. "Plainte contre la Société PHC/Feronia à Lokutu", 15 September 2016, available at: <https://www.grain.org/e/5560>
 14. See: "Memo conflit entre la société PHC-Feronia, les ONG (RIAO-IHA) et les populations dans le territoire d'Ingende", 20 August 2013, available at: <https://www.grain.org/e/5560>
 15. "CDC group response" published on the website of the Business & Human Rights Resource Centre, September 2015, <https://business-humanrights.org/it/node/127821>

Box 1. What is a DFI?

Northern governments created development finance institutions (DFIs) mainly to provide financing for private sector projects in poor countries, where the anticipated returns in terms of poverty alleviation are high.¹⁶ Today these government owned and taxpayer funded institutions provide upwards of US\$100 billion to companies operating in developing countries, which is equivalent to almost two thirds of official development assistance.¹⁷ A significant share of these funds is now being channelled to companies operating in the food and agriculture sector, where land grabbing, human rights violations, labour exploitation and corruption are widespread.

DFIs have policies and standards to address environmental issues, social issues, working conditions and financial integrity, which the companies they invest in are supposed to follow. The UK's CDC, for example, has a Code of Responsible Investing that requires the institution to "promote appropriate corrective actions" when its portfolio companies are involved in incidents resulting in "a material adverse environmental or social impact, or material breach of law relating to environmental, social or business integrity matters". Spain's AECID, which invests in Feronia through the AAF, has a Code of Conduct for Responsible Investment that prohibits it from "investing in any activity that involves an unacceptable risk to contribute to or be complicit in activities or omissions that violate its principles, such as human rights violations, corruption or negative social or environmental impacts".¹⁸

Some of these principles are written into the financing agreements with Feronia. The CDC's January 2015 subscription agreement with Feronia, for instance, is conditional upon there being "no disputes regarding boundaries, rights, covenants or other matters relating to any Property or its use" and that "neither the Corporation nor any of its Subsidiaries nor, to the knowledge of the Corporation, any of their directors, employees or agents has, in connection with the business, committed any Corrupt Acts".¹⁹

confirmed that the company had agreements with the affected local communities.²⁰ When asked why these have not been made public, a representative of the DEG said the MOUs signed by the communities were stolen from Feronia's offices shortly before the company was about to make them public.²¹ Meanwhile, the communities continue to state that they have never agreed to any MOUs with the company.

The CDC and Feronia's other DFI partners must act immediately to make public all legal documents that Feronia claims to possess for its land concessions in the DRC as well as the agreements it claims to have reached with the local communities.

16. For example, the CDC's objective is "to contribute to economic growth for the benefit of the poor".

17. María José Romero, "A private affair: shining a light on the shadowy institutions giving public support to private companies and taking over the development agenda", Eurodad, 2014: <http://www.eurodad.org/Entries/view/1546237/2014/07/10/A-Private-Affair-Shining-a-light-on-the-shadowy-institutions-giving-public-support-to-private-companies-and-taking-over-the-development-agenda>

18. AECID, *Código de Financiación Responsable*, 2013, http://www.cooperacionespanola.es/sites/default/files/codigo_de_financiacion_responsable_vf.pdf

19. Purchase of Convertible Debentures Subscription Agreement between the CDC Group PLC and Feronia Inc of 22 January 2015.

20. Luuk Zonneveld and Virginie Pissoort, "La Belgique doit-elle miser sur Feronia ?", Défi Sud, August 2016, https://www.sosfaim.be/wp-content/uploads/2016/09/defis_sud_accaparement_complet_num.pdf

21. The DEG representative made this statement during an expert discussion hosted by a German parliamentarians and the DEG at the German Parliament, 26 September 2016.

Box 2. The brutal colonial legacy behind Feronia's plantations

Long before the arrival of Unilever and its founder, British business magnate Lord Leverhulme, the people living on the lands now claimed by Feronia managed vast oil palm groves. The communities used these oil palms to produce different foods, medicines and textiles. They also produced an abundance of palm oil, which they traded in local markets and even overseas. Lord Leverhulme, however, wanted this palm oil for his UK soap factories.²²

Instead of simply buying palm oil from the local people, Leverhulme reached an agreement with the Belgian colonial administration in 1911 giving him concession rights over a massive 750,000-ha area, encompassing all of the Congo's major oil palm groves. Shortly after, the Belgian government gave Leverhulme's company, Huileries du Congo Belge, a monopoly over the production and trade of palm oil within these areas. The Belgian colonial army enforced the monopoly and the company's horrific working conditions with brutal violence.²³ The groves were eventually converted into plantations and the company was renamed Plantations et Huileries du Congo (PHC) under the ownership of Unilever. In 2009, PHC was sold to Feronia for US\$4 million.²⁴

Throughout this history the communities never consented to the company's operations on their territories, nor did they approve of the destruction of their palm groves for the establishment of plantations.

Is Feronia making local communities poor?

One of the main development objectives of DFI funding to private companies is to alleviate poverty by generating employment and improving working conditions. The German DEG, for instance, says one of the reasons it chose to finance Feronia is "because 57,000 people directly benefit economically and socially from PHC's activities".²⁵ But testimonies collected from workers at each of Feronia's three concessions; collective statements made by several communities; and even Feronia's own social impact study conducted in 2015 indicate that workers on Feronia's plantations continue to suffer from poor wages and violations of basic labour standards.²⁶

The company has admitted that wages on its plantations are "too low", and says it is committed to increasing wages as the company's financial health improves.²⁷ In September 2015, the CDC stated that the average wages for Feronia's plantation workers were increased by 70 per cent to an average of US\$4 per day following its 2014 investment in the company.²⁸ However, pay stubs from "superior" workers (*manœuvres supérieurs*) at Feronia's Lokutu plantations show that wages throughout 2015 remained at only US\$2 per day (1,921.58 CDF). Moreover, Feronia managers and workers report that the wages for daily labourers, which constitute the vast majority of Feronia's plantation workers, are even lower—at no more than US\$1.25 per day, which is below the national minimum wage of US\$1.75 (1,680 CDF) per day for a manual labourer.²⁹ This minimum wage rate came into effect on 1 January 2009, when 1,680 CDF were equivalent to US\$3. Since then, the value of the CDF has declined significantly and the DRC

22. The history of Lord Leverhulme's operations in the Congo are documented in: Jules Marchal, *Lord Leverhulme's Ghost: Colonial exploitation in the Congo*, New York: Verso, 2008.

23. Jules Marchal, *Lord Leverhulme's Ghost*, Op Cit.

24. For more information on the sale to Unilever, see: RIAO-RDC and GRAIN, "Agro-colonialism in the Congo", Op Cit.

25. See: https://www.deginvest.de/DEG-Documents-in-English/About-DEG/Responsibility/Investment-related-information/201512_Feronia_EN.pdf

26. Feronia's Environmental and Social Impact report from December 2015 lists numerous grievances from plantation workers, including lack of employment contracts and the failure to provide for permanent employment as is required by law (see page 120): [http://www.feronia.com/uploads2/V2.%20Social%20Impact%20Assessment%20\(Final\).pdf](http://www.feronia.com/uploads2/V2.%20Social%20Impact%20Assessment%20(Final).pdf)

27. Chris Arsenault, "Taxpayer funds save Congo plantation paying workers \$1/day", *Reuters*, 12 November 2014, <http://news.trust.org/item/20141112163534-sptur/>

28. See the statement from CDC (September 2015): <https://business-humanrights.org/en/dem-rep-of-congo-report-raises-concerns-about-land-grabs-inadequate-consultations-compensation-by-feronia-unilever>

29. At a January 2016 meeting with Belgian NGOs, Feronia's CEO and Belgium's BIO disclosed that BIO's December 2015 funding agreement with Feronia required the company to increase salaries for plantation workers to the minimum wage by 1 January 2016.



Photo 2. A run-down primary school in an area of Feronia operations. (Photo: Oskar Epelde)

government has failed to revise the minimum wage accordingly, as was initially intended in the legislation. It is widely acknowledged that the current minimum wage rate is insufficient to cover the basic costs of living in the DRC.³⁰

The CDC also stated in September 2015 that workers on Feronia's plantations are provided with "overtime, maternity pay, holiday pay, end of service pay, bonuses and assistance towards school fees as well as free housing and healthcare for themselves and their families". These claims were categorically refuted in a written response to the CDC statement by community leaders from Feronia's three plantation areas who met in October 2015.³¹

The problem of low wages is greatly compounded by the company's frequent failure to pay wages on time. Unlike the upper management and directors, sources say workers' wages are only paid when the company sells palm oil. As Feronia does not have fixed contracts with any buyer for the sale of its palm oil, sales are erratic and often at low prices.³² Workers are thus forced to resort to loans at high interest to cover their daily needs.³³ This system, known as *Ikotama*, is so integral to Feronia's operations that managers of the company's union reportedly provide *Ikotama* loans on the Feronia premises, near the area where the workers collect their wages.

Workers also report that a portion of their wages is paid *in kind*, with products such as refined palm oil and soap. This troubling practice, which dates back to the Unilever period, is commonly known as "the Marsavco package" (*colis Marsavco*), as the products have traditionally been produced by the Kinshasa-based company Marsavco—formerly owned by Unilever and now Feronia's principal customer.³⁴

The DEG says Feronia had stopped providing the *colis Marsavco* to its workers in lieu of cash payments, and that this was a condition of the financing it provided in December 2015.³⁵ However, communications we received from

30. "RDC: le Conseil national de travail plaide pour le réajustement du Smig", *Radio Okapi*, 1 September 2015, <http://www.radiookapi.net/2015/09/01/actualite/societe/rdc-le-conseil-national-de-travail-plaide-pour-le-reajustement-du-smig>

31. See the response from community leaders to the CDC and Feronia statements, "Analyse réponse CDC et Feronia", October 2016, available at: <https://www.grain.org/e/5560>

32. Sources from within Feronia and Feronia's main palm oil customer, Marsavco, say that Marsavco relies primarily on imported palm oil from Malaysia (*stock régulier* or "regular supply"), and only occasionally purchases from Feronia, with its palm oil categorised as "*stock irrégulier*" (irregular supply).

33. According to Feronia's own Environmental and Social Impact report from December 2015: "Low and sometimes delayed wages cause the workers and their families to purchase essentials on credit, often at a high interest rate, contributing to the cycle of poverty" (p.150). [http://www.feronia.com/uploads2/V2.%20Social%20Impact%20Assessment%20\(Final\).pdf](http://www.feronia.com/uploads2/V2.%20Social%20Impact%20Assessment%20(Final).pdf)

34. Worker testimonies indicate that Feronia now supplies plantation workers with its own palm oil and soap, which it produces at the Lokutu plantation.

35. The DEG representative made this statement during an expert discussion hosted by a German parliamentarians and attended by civil society and the DEG at the German Parliament on 26 September 2016.

Photo 3. A Pygmy living in the Lokondola plantation in Boteka.



workers and senior managers at the three Feronia plantation sites confirmed that on 23 September 2016, the day on which workers were supposed to be paid their monthly wages, daily labourers only received the *colis Marsavco*—in this case eight litres of Feronia palm oil and eight bars of Feronia soap. No cash payments were made for the wages.

As per usual, they say the *colis Marsavco* will be deducted from their wages, if and when they are paid, at a rate of US\$1 (1,000 CDF) per litre of palm oil and US\$0.25 (250 CDF) per bar of soap.³⁶

Another common complaint about Feronia's labour practices is that the company refuses to hire its long term workers on a permanent basis, as required by law. Workers report that Feronia uses what they call a "reserve system" by which workers are hired for a few months and then let go for a period before being rehired. Consequently, most of the workers on Feronia's plantations are classified as day labourers and, therefore, do not have the rights and benefits they should be entitled to as permanent employees. Feronia itself admits that 80 per cent of its plantation workers are not permanent employees and are paid according to a "daily task rate system".³⁷

Beyond providing miserable wages, Feronia has also done little to improve health services, roads, schools or housing for its workers and the communities whose lands it occupies. In statement after statement, community leaders from Feronia's three plantation areas maintain that services and infrastructure have deteriorated since Feronia acquired PHC in 2009, despite the company's claims to the contrary (and its access to substantial DFI funding).³⁸

Feronia says its capacity to improve wages, benefits and basic services in its plantation areas is hindered by its ongoing losses. The company claims it must prioritise investment in its operations in order to finally turn a profit and thus start channelling more funds to workers and local communities. Yet since taking over the PHC plantations in 2009, Feronia has had no trouble finding the funds to pay its upper management and directors millions of dollars in fees and salaries.³⁹ Furthermore, as we shall see below, it appears that funds Feronia could have used for the improvement of its palm oil operations may have been allocated elsewhere through a complex and opaque company structure. Feronia appears to have had the money to improve the lives of its workers and of local communities, but it chose to spend it otherwise.

36. Community leaders report that people living within the Feronia concessions are not allowed to have palm oil in their possession that is not supplied by the company—thus making communities dependent on the company for their food needs. They also maintain that Feronia provides the palm oil and soap to workers at Kinshasa market prices, and not at a subsidised rate, as the company has claimed.

37. Feronia recognises its legal obligation: "Employment Law in the DRC prohibits the long term use of casual employees and companies are legally required to employ individuals on a permanent basis if such rules are breached". See Feronia, "Response to GRAIN report", August 2015, <https://business-humanrights.org/sites/default/files/documents/Feronia-response-to-grain-report-drc-august-2015.pdf>

38. See: "Accusé de réception de la lettre N. 304/2013/APM, AHO/LTU/FC", September 2013; "Analyse réponse CDC et Feronia", October 2016; "Desiderata de la population de Yahuma face à la société PHC/Feronia area Lokutu", 8 March 2015; "Memo conflit entre la société PHC-Feronia, les ONG (RIAO-IHA) et les populations dans le territoire d'Ingende", 20 August 2013; and "Memo", 15 April 2016; all available at: <https://www.grain.org/e/5560>

39. For example, in 2010 Feronia's top four managers were paid \$1.5 million in fees, about 1,000 times the average annual pay for 4 of their plantation workers. For an analysis of known salaries, fees and other benefits paid to Feronia executives, see: RIAO-RDC and GRAIN, "Agro-colonialism in the Congo", Op Cit, and GRAIN, "Feeding the one percent", 7 October 2014, <https://www.grain.org/e/5048>

Given the severe mismatch between what Feronia and the CDC say about the company's treatment of workers and local communities and what is said by the workers and local communities themselves—an independent, international fact finding mission to the affected areas must take place urgently.

What's behind Feronia's opaque and complex finances?

Feronia has a complex company structure, with several key subsidiaries based in jurisdictions where it is difficult to access the company's financial information. This appears to have enabled Feronia to avoid disclosing important transactions from the reports it is obligated to file and make public in Canada. Evidence of these transactions only appears in reports filed by its subsidiaries in the DRC, Belgium and the UK that are either difficult for the general public to access (DRC) or contain little information (Belgium and UK).

The reports we were able to access from the relevant business registries of the DRC, Belgium and the UK indicate that certain Feronia subsidiaries have been charging millions of dollars a year in fees for unknown services to other Feronia subsidiaries. The evidence we gathered indicates that these fees are not paid, but instead covered by loans from Feronia Cayman Islands (CI) and possibly other sources. In this manner, the subsidiaries do not report revenues and can thereby avoid paying taxes. Moreover, little information is available on how the loans they receive from Feronia CI or other sources are spent each year, as these expenditures are not documented in Feronia Inc's annual reports. The available evidence, however, suggests that the DRC politician and former Feronia director Barnabé Kikaya Bin Karubi may have derived financial benefits from this scheme (see Figure 6).

Feronia's UK subsidiary, Feronia Services Incorporated Limited (FISL), is one of the companies involved in this scheme. In company documents filed in Belgium in December 2015, Feronia states that FISL is a management company that provides services to other Feronia subsidiaries and that its only source of revenues is fees charged to these subsidiaries.⁴⁰ The nature of these "services" and the expenditures involved are not disclosed in Feronia's company reports.⁴¹

The Belgian documents and FISL's UK filings show that Feronia CI loaned FISL US\$9.5 million between 2010 and 2014 (around US\$2 million per year)—an amount roughly equal to the amount FISL is owed by other Feronia subsidiaries for "services". Since UK laws for small companies only require that such companies report their assets and liabilities, FISL's annual filings indicate a balance between assets (money it is owed for service fees) and liabilities (money it borrowed from Feronia CI). FISL does not have to disclose how it spent the US\$2 million or so it borrowed each year from Feronia CI.

We were, however, able to get more detailed company accounts for Feronia JCA Ltd (Kinshasa), another Feronia subsidiary involved in a similar financial scheme with offices in the private residence of Kikaya Bin Karubi.⁴² This company was established as the branch office for Feronia JCA Ltd in August 2009.⁴³ The 2013 financial report for Feronia JCA Ltd (Kinshasa) shows that it billed Feronia's DRC subsidiaries roughly US\$1 million for "services" in 2013 and that similar amounts were billed to subsidiaries in previous years.⁴⁴ As in the case of FISL, these

40. Here is the wording in the original French: "Feronia Inc. Services Ltd. Feronia Inc. Services Ltd est une société de management ... qui fournit des services aux autres sociétés du groupe Feronia. Sa seule source de revenus est constituée des frais refacturés aux autres sociétés du groupe Feronia. Jusqu'à ce jour, ces montants refacturés n'ont pas été réglés en espèces et le financement des frais engagés par Feronia Inc. Services Ltd a été fourni par le fondateur".

41. The only mention of FISL's activities is in Feronia's 2010 TSX filing in which it claims that FISL was established in 2010 to purchase and import pesticides, something that seems highly unlikely and at odds with the 2015 statement by Feronia Maia describing FISL as a management company.

42. Feronia's 2010 TSX filing claims that FISL was established in 2010 to purchase and import pesticides. However, in an October 2016 personal communication to GRAIN, Feronia's CEO stated that FISL has a staff of eight who provide group services to the Feronia Group and that it was "originally established to enable people to be employed in the UK to undertake functions which may not be feasible in the DRC".

43. Personal communication to GRAIN from Feronia's CEO Xavier de Carnière, 26 October 2016.

44. These "provision of services" (*prestations de services*) fees were charged to PHC (US\$400,000), Feronia PEK (US\$400,000), Kimpese Agro Industrie (US\$200,000) and Bas-Congo Ferti sprl (US\$10,000).

Photo 4. Women carry manioc leaves in disputed territory.
(Photo: Oskar Epelde)



fees went unpaid and, by 2013, the total amount in fees owed to Feronia JCA Ltd (Kinshasa) for services provided to other Feronia companies had reached US\$3.6 million. Similarly, the amounts owed by Feronia JCA Ltd (Kinshasa) to other Feronia companies also increased by roughly US\$1 million every year, such that by 2013, Feronia JCA Ltd (Kinshasa) had amassed US\$4.2 million in debts to other unnamed Feronia companies. With less than US\$100,000 in the bank and few assets, it appears the Kinshasa company had paid out most of the US\$4.2 million it borrowed by the end of 2013.⁴⁵

Without access to the company's records for the years prior to 2013, we cannot say how the company spent the money it borrowed during those years. The 2013 financial report, however, does provide a breakdown of expenditures for that year and an indication of how funds may have been spent in previous years. Of the US\$1 million that Feronia JCA Ltd (Kinshasa) borrowed in 2013 from other Feronia companies, over half was spent on payments to Kikaya Bin Karubi, his lawyer and other company owners and associates. These include:

- A \$140,000 rental payment for an apartment in the Immeuble Royal (see Photo 5), in the Gombé area of Kinshasa, belonging to Kikaya Bin Karubi;
- A \$330,000 payment to unnamed owners and associates of the company (*propriétaires et associés*); and
- A \$32,000 honorarium to the offices of Gustave Booloko, formerly the lawyer for Kikaya Bin Karubi and now the DRC's Minister of Lands.

Another 40 per cent went to a consultant from the DRC and for the salaries and benefits of 15 company directors and managers, whose names are not disclosed.⁴⁶ Feronia maintains that the money provided to Feronia JCA Ltd (Kinshasa) was to cover the costs of the operations of other group companies in the DRC. The branch office's 2013 financial report, however, does not appear to support this assertion.⁴⁷

Similar transactions, though for much larger sums, appear to have taken place through another subsidiary in the DRC in 2014. Feronia JCA Limited SARL was established in the DRC in February 2014. According to the company's statutes, it was 20 per cent owned by Kikaya Bin Karubi. This company is not mentioned in any of Feronia Inc's financial reports but Feronia's CEO maintains that the company resulted from the conversion of the Kinshasa branch office of Feronia JCA Ltd into a legal entity.⁴⁸

By September 2014, just seven months after its creation, Feronia JCA Limited SARL had amassed US\$28 million in short term debts—a \$24 million increase from the short term debts it held as a branch office at the end of 2013, according to the company's own reports. As with FISL and Feronia JCA Ltd (Kinshasa), these were balanced by US\$23 million in short term receivables (*valeurs réalisables*).

Since Feronia JCA Limited SARL's financial reports for 2014 could not be located at the DRC business registry, it was not possible to determine who loaned the US\$28 million to the company or who owed the company the US\$23 million, nor was it possible to determine what services the company performed. The financial report does, however, show that the company's real assets and cash resources stood at only US\$5 million by September 2014, meaning that around US\$23 million dollars had somehow flowed out of the company between February and September 2014.

45. See: 2013 Financial report of Feronia JCA (Kinshasa), retrieved from the Kinshasa business registry, available at: <https://www.grain.org/e/5560>

46. The report claims there are 25 employees of the company and 20 temporary employees, the latter only having been paid around US\$2,500 in total for the year. The consultant is Denis Nkazi. See: 2013 Financial report of Feronia JCA (Kinshasa), retrieved from the Kinshasa business registry, available at: <https://www.grain.org/e/5560>

47. Personal communication to GRAIN from Feronia's CEO Xavier de Carnière, 26 October 2016.

48. Personal communication to GRAIN from Feronia's CEO Xavier de Carnière, 26 October 2016.

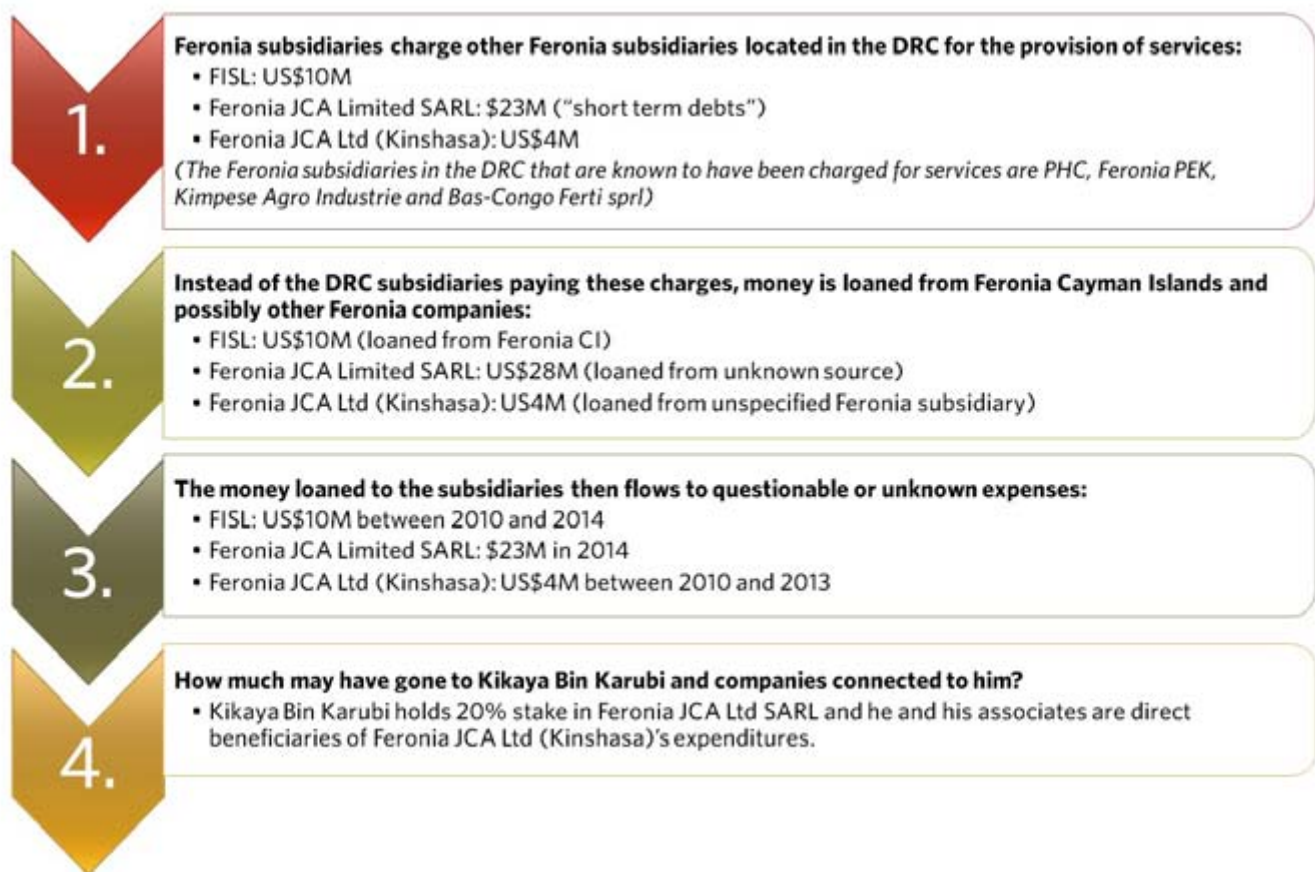
Neither Feronia JCA Limited SARL nor its financial activities are mentioned in Feronia Inc's 2014 annual report.⁴⁹

In December 2014, Feronia JCA Limited SARL was merged into another DRC company called Feronia RDC Ltd that Feronia had established in January 2014. Both companies have similar mandates and the same managing director.⁵⁰ When the two companies merged, Kikaya Bin Karubi ceded his shares in Feronia JCA Limited SARL. In exchange, Feronia RDC Ltd, a company wholly owned by Feronia CI, took over all of the company's sizeable US\$28 million in liabilities.

In total, over US\$40 million in borrowed funds appears to have flowed out of FISL, Feronia JCA Limited SARL and Feronia JCA Ltd (Kinshasa) for the provision of unknown services to other Feronia subsidiaries between 2012 and 2015. During that same period, Feronia Inc received nearly US\$66 million in DFI funding from the CDC and the AAF, money meant to help the company bring economic benefits to local people.⁵¹

The DFIs, as the major shareholders and primary funders of Feronia, should immediately make public the company's full financial accounts and those of its subsidiaries, as well as any reviews they conducted as part of the DFI financing process. They should also provide a detailed accounting of the expenditures involved in the provision of services between the company's subsidiaries.

Figure 6. Feronia's service fee-loan scheme



49. See: "Traité relatif à la fusion - absorption de Feronia JCA Ltd SARL par Feronia RDC SARL", 10 December 2016, available at: <https://www.grain.org/e/5560>

50. The managing director is Raymond Batanga, who is also Feronia Inc's Chief Operating Officer.

51. In a press release announcing its initial investment in Feronia in November 2013, the CDC wrote: "CDC's investment will help the company accelerate the restoration of its three palm oil plantations, support its replanting programme and increase production efficiencies... CDC will provide this long-term capital to Feronia, supporting growth and development to create a sustainable and profitable business that continues to contribute significantly to local employment and to local communities". See: <http://www.cdcgroup.com/Media/News/CDC-invests-US181m-in-agribusiness-in-the-Democratic-Republic-of-Congo/#sthash.IWGDFFP6.dpuf>

Box 3. Feronia and Barnabé Kikaya Bin Karubi

Barnabé Kikaya Bin Karubi is the chief diplomatic advisor to the President of the DRC, Joseph Kabila, and a key member of his cabinet. He was also one of the co-founders of Kabila's PPRD party. Kikaya Bin Karubi was previously the DRC's Ambassador to the UK from May 2009 to at least the end of 2014, and prior to his posting abroad he served as Private Secretary to Kabila and as Minister of Information. He was also one of the founding directors of Feronia and remained on the company's board until June 2014.



Photo 5. The Immeuble Royal is a well known apartment complex in the Gombé neighbourhood of Kinshasa that was constructed in the 1950s. Formerly the seat of UN in the DRC, in 2013 it was occupied mainly by tenants, most of whom were said to be sub-leasing at “affordable” rates.⁵²

In a 2009 cable released by Wikileaks, the US Ambassador to the UK, William J. Garvelink, reports on his meeting with Kikaya Bin

Karubi, who was then the DRC's Ambassador to the UK. Gravelink writes: “His remarks about the ineffectiveness of non-violence... and matter-of-fact dismissal of transparency vis-à-vis Parliament, provide an enlightening, if disconcerting, glimpse into what are probably common views about the nature of politics among the political elite in Kinshasa, although most would never dare to speak so bluntly about these issues to us”.⁵³ In September 2016, President Kabila dispatched Kikaya Bin Karubi on a “pleading mission” to Washington to press US officials not to impose sanctions against key political figures involved in Kabila's efforts to extend his second term.⁵⁴

For reasons Feronia has never explained, Kikaya Bin Karubi held a 20 per cent stake in Feronia JCA, the Cayman Islands subsidiary that Feronia used to purchase the PHC plantations from Unilever in 2009. Once the deal with Unilever went through, Feronia Inc acquired Kikaya Bin Karubi's shares of Feronia JCA in exchange for issuing 8,894,344 shares in Feronia Inc, valued by the company at over US\$2.2 million. He also received an annual director's fee and a rental payment for the use of his home residence in Kinshasa of between US\$120,000 and US\$150,000 per year.⁵⁵

In a September 2015 statement, the CDC and Feronia stated that they “wholeheartedly refute any suggestion of impropriety or corruption with regards to [Feronia's] relationship or dealings with Kikaya Bin Karubi”

52. “Les locataires du Building Royal sommés de déguerpir”, *ImmoRDC*, 9 November 2013, http://www.immordc.net/details_news.php?id=2170

53. See: https://wikileaks.org/plusd/cables/09KINSHASA453_a.html

54. Jason Burke, “Clashes in Kinshasa leave 50 dead, say DRC opposition groups”, *The Guardian*, 20 September 2016, <https://www.theguardian.com/world/2016/sep/19/democratic-republic-congo-demonstrations-banned-police-killed-joseph-kabila-etienne-tshisekedi>

55. These transactions are documented in RIAO-RDC and GRAIN, “Agro-colonialism in the Congo”, Op Cit, and GRAIN, “Feeding the one percent”, Op Cit.

and that “all of the transactions related to Mr Karubi have been published by [Feronia] as per its disclosure requirements”.⁵⁶

However, the information provided in this report from recently accessed company documents reveals significant financial transactions between Feronia and Kikaya Bin Karubi that were not disclosed by Feronia Inc and that occurred after 2012, when Feronia was over 50 per cent owned by the CDC and the AAF.

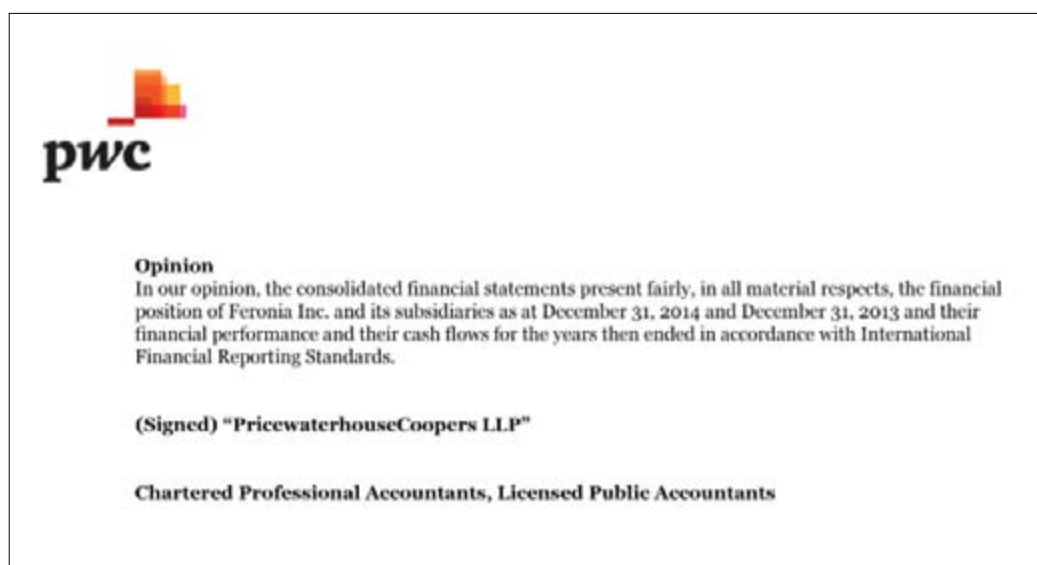
Most troubling is the US\$28 million in loans that appear to have been run through Feronia JCA Limited SARL and the absence of any mention of this company or its 20 per cent ownership by Kikaya Bin Karubi in Feronia Inc’s company reports. Another glaring inconsistency is the record in Feronia JCA Ltd (Kinshasa)’s 2013 financial report of a \$140,000 rental payment for an apartment owned by Kikaya Bin Karubi in a delapidated apartment complex in Kinshasa (see Photo 5)⁵⁷. This payment was also not disclosed in Feronia’s company reports.

A much more complete picture of the accounts of Feronia’s DRC subsidiaries is needed in order to determine the full extent of payments made directly to Kikaya Bin Karubi or indirectly to him through family members and associates.

Public investigations into Feronia and its DFI partners are urgently needed to clarify the relationship between Feronia and Kikaya Bin Karubi and to hold the company and its owners and financiers to account for any involvement in corruption or bribery.

What do the communities want?

Based on the communications that we have received from communities in all three concession areas, it appears that they are united under a common understanding that Feronia (and its predecessors Unilever and Lord Leverhulme) has illegally occupied their lands for over 100 years without compensation. There also appears to be strong consensus that the company’s plantations and mills have not brought them benefits. Rather, the company’s takeover of their traditional palm groves and forests has greatly undermined their livelihoods and food security, and left them with little alternative but to work in the company’s plantations under extremely poor conditions.



PricewaterhouseCoopers, a major proponent of foreign agribusiness investment in Africa, has been the auditor of Feronia Inc’s annual reports since 2011. The Kinshasa office of PricewaterhouseCoopers also received a payment for the 2013 audit of Feronia JCA Ltd (Kinshasa).

56. Statements from CDC (September 2015) and Feronia (August 2015) can be found here: <https://business-humanrights.org/en/dem-rep-of-congo-report-raises-concerns-about-land-grabs-inadequate-consultations-compensation-by-feronia-unilever>

57. “Habitat: 833 000 ménages vivent dans des conditions inhumaines en RDC”, *Radio Okapi*, 5 October 2009, <http://reliefweb.int/report/democratic-republic-congo/habitat-833-000-m%C3%A9nages-vivent-dans-des-conditions-inhumaines-en>



Photo 6. Production of traditional palm oil for local consumption.

Adding to this tremendous injustice, company security guards routinely arrest local people for having a few palm nuts in their possession. This harassment, which is often violent and at times deadly, underlines the company's historic theft of their lands and resources.⁵⁸ In one recent case, in October 2014, police and villagers from Lokutu and Yambi Enene clashed for three days when protests erupted after four villagers were arrested by Feronia's security guards for "theft of oil palm nuts".⁵⁹

In their various attempts to demand justice from the company, communities have called for:

- the return of their lands;
- compensation for years of forced labour, the occupation of their lands, the destruction of their palm groves and the resulting loss of revenues;
- the construction of schools, hospitals, roads, hydroelectric dams, decent houses and community centres; and
- the freedom to use their forests and cultivate their lands as they wish.⁶⁰

Communities have stressed on multiple occasions that any discussion of the terms for Feronia's continued operations has to begin with an understanding that they are the only legitimate occupants of the lands on which Feronia operates. Therefore, we believe it is up to the communities to dictate under what terms the company can operate on their lands, if at all.

Any negotiations between Feronia and the communities must take place under conditions of transparency. To date, Feronia has failed to share critical information with the communities regarding its finances or documentation concerning its land concessions. The communities know that they have not benefitted from the company's

58. The communities of Bolesa and Bokola in the Lokutu plantation area, for example, maintain that the PHC security guards (*Gardes Industrielles*) and the national police killed four people in separate instances between 1986 and 2007 within the PHC plantations: Ms Sophie Longanza in 1986, the child of Mr Lomami in 1992, Mr Bwanga Ambito in 2006 and Mr Georges Bokuta Elambo in 2007.

59. "Reprise des activités après des accrochages entre policiers et populations à Lokutu", *Radio Okapi*, 6 October 2010, <http://www.radio-okapi.net/actualite/2014/10/06/reprise-des-activites-apres-des-accrochages-entre-policiers-populations-lokutu>

60. See: "Pétition contre société PHC/Feronia: Lokutu", 8 March 2016; "Accusé de réception de la lettre N. 304/2013/APM, AHO/LTU/FC", September 2013; "Desiderata de la population de Yahuma face à la société PHC/Feronia area Lokutu", 8 March 2015; "Analyse réponse CDC et Feronia", October 2016; and "Memo", 15 April 2016; all available at: <https://www.grain.org/e/5560>

operations, but they do not know how much the company's owners and managers have profited from these operations nor how the US\$118 million that DFIs have provided to Feronia are being spent.

Feronia and its DFI owners must adhere to the longstanding demands of the affected communities for the immediate return of their lands and the payment of reparations.

The DFIs and their government owners must act now

There is strong evidence that Feronia engaged in actions that not only violate the objectives and guidelines of the CDC and other DFI owners, but that could be in violation of national laws to which Feronia and its various subsidiaries are bound. These actions transpired before and after significant financial involvement by the various DFIs. After allegations of Feronia's mistreatment of workers and communities and its connections with Kikaya Bin Karubi were brought to the attention of DFIs in a June 2015 report, the CDC and the AAF increased their financial participation in Feronia. Moreover, a new set of DFIs, mainly from the Netherlands, Germany and Belgium, provided Feronia's subsidiary PHC with an additional \$49 million in financing at the end of 2015. These DFIs claim to have pursued rigorous due diligence before deciding to invest in Feronia and should therefore have been aware of the problems on the ground as well as the loan scheme involving companies connected to Kikaya Bin Karubi.

DFIs are accountable to their governments. The CDC, for instance, is owned by the Department for International Development (DFID) and accountable to the UK Parliament. It is the responsibility of DFID and the UK Parliament, therefore, to launch a full and open inquiry into Feronia's operations. Similar investigations should be carried out in complete transparency by the other governments of DFIs that have provided funding to Feronia.

The DFIs also have a historical responsibility to address community demands for the return of their territories; reparations relating to the illegal occupation of their lands and forests since 1911; and to the long-standing use of forced labour and violence on the company's plantations.



Photo 7. First meeting of community leaders from Feronia's three plantation areas, Kampala, October 2015. In a final declaration, the leaders stated: "The money you have given to Feronia for the well being of the local communities and its workers has not reached its destination".

The following organisations collaborated in the production of this report: RIAO-RDC, Africa Europe Faith & Justice Network, Entraide et Fraternité, GRAIN, SOS Faim, UMOYA, urgewald, War on Want and World Rainforest Movement.

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