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Large-scale Land Acquisition in Africa: Impacts, Conflicts and Human Rights Violations

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The Case of Feronia in DRC

“Development Finance Institutions and their national governments must respect human rights, act in a conflict-sensitive way and must take responsibility for long-term impacts.”

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Land Grabbing in Africa

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The demand for land and natural resources has significantly accelerated in the last two decades due to the 2008 food price crisis and resulting land speculations. This led to a surge in large-scale land acquisitions (LSLAs),[1] often referred to as land grabbing. Since 2000, over 25 million hectares of land deals have been carried out across the African continent.[2]

While private actors are largely the ones executing LSLAs, their land acquisitions are encouraged and financially supported by governments. This includes governments within the Global South, which reduce barriers for land transfers, as well as governments within the Global North, many of which finance these land deals via their public development banks. The policy brief series is particularly concerned with a complex web of financers, namely private equity funds and European development finance institutions, which have either indirectly or directly financed numerous land acquisition projects in Africa. These LSLAs have coincided with human rights violations and conflicts, with local communities bearing the burden of the harm generated.

[1] Land Matrix (2021). Taking stock of the global land rush. Analytical Report III. https://landmatrix.org/resources/land-matrix-analytical-report-iii-taking-stock-of-the-global-land-rush/.
See also: Neudert, R., Voget-Kleschin, L. (2021). What are the effects of large-scale land acquisitions in Africa on selected economic and social indicators? Misereor. https://www.misereor.org/fileadmin/user_upload_misereororg/publication/en/foodsecurity/study-LSLA.pdf.
[2] Land Matrix, obtained at https://landmatrix.org/observatory/africa/.

Proponents of LSLA often frame it as a development opportunity for Africa. However, the intensification of industrial agricultural practices and monoculture plantations that are associated with LSLAs have contributed to countless human rights violations and severe negative social and environmental impacts. In Africa, an additional 14.3 million hectares of land deals have failed and have never become or are no longer operational. These failed deals leave scars and the incidences of bankruptcy and serial transfers of land ownership further increase the insecurity of affected communities that live nearby and/or on the land in question.[3]

The majority of LSLAs fail to respect human rights, including the failure to uphold the key principle of Free Prior and Informed Consent when negotiating the land contracts and/or land use changes. Nor do the projects associated with most LSLAs provide guarantees to benefit local communities, as is often promised. Such deals are characterised by reduced security of land tenure, often leading to the forced eviction of rural communities, and inadequate compensation, such as for those communities evicted and/or who face reduced land access. Further, it is not uncommon for LSLAs to lead to conflicts over land and water resources, exacerbating pre-existing conflicts, violence and divisions within and between communities. This presents a real risk within fragile and conflict-affected areas.

Agricultural projects associated with LSLAs replace small-scale agriculture and therefore lead to a discharge of labour. Simultaneously, any jobs provided by companies on the land are most commonly day labourer work on an agricultural plantation, resulting in often atrocious working conditions. The loss of land for small-scale food producers, combined with the fact that many of the projects invest in producing crops for non-food purposes, decreases food production at the household and community levels and leads to higher food insecurity. Furthermore, the industrial agricultural plantations associated with many LSLAs barely achieve higher yields than small-scale food producers. Moreover, the intensive industrial agricultural model has been proven to cause environmental damage, such as pollution and the depletion of natural resources, leading to soil infertility.

Inadequate land laws as well as the insufficient implementation of land laws create perverse incentives for corruption and support efforts to weaken democratic institutions. Hence international standards are not followed - exacerbated by the culture of impunity and lack of accountability that characterizes many of these deals. The absence of meaningful access to justice and mechanisms of redress results in complicated and toothless grievance mechanisms for communities, which are often stalled, and/or coincide with accounts of repression, violence, and mistrust.

[3] Land Matrix, obtained at https://landmatrix.org/observatory/africa/. See also Grain (2018). Failed farmland deals: a growing legacy of disaster and pain. https://grain.org/en/article/5958-failed-farmland-deals-a-growing-legacy-of-disaster-and-pain.

The case of Feronia in DRC

Overview

- Serious allegations of severe human rights violations against communities as a result of Feronia Inc.'s oil palm operations have coincided with continued financing and without meaningful investigation by the Development Finance Institutions (DFIs) financing the project. The human rights violations include a range of civil, political, economic, social, and cultural rights: killings of nearby residents (right to life), intimidation, arbitrary arrest and detention without trial (right to liberty and right to fair trial), late and below minimum wage payments (right to adequate minimum wage), as well as violations of the right to food, right to healthy environment, right to land, and the right to Free, Prior and Informed Consent (FPIC), among others.

- A complex web of financers, including private equity funds and European Development Finance Institutions (DFIs), such as DEG (Germany), FMO (The Netherlands), Proparco (France), BIO (Belgium), AECID (Spain) and CDC (United Kingdom), have either indirectly or directly financed the project, injecting over US$150 million in loans, continuing to provide support even after allegations of human rights violations and corruption surfaced.

- Members of affected communities have engaged in a formal grievance mechanism process to which European DFIs ascribe (known as the Independent Complaints Mechanism or ICM), an initiative of DEG and FMO and later joined by Proparco) to demand justice and the return of their ancestral lands. The ICM process has stalled for over two years, and has coincided with accounts of repression and violence, mistrust, and lack of transparency following visits by the ICM's Expert Panel.

- Bankruptcy and numerous transfers of ownership over time by the companies and their subsidiaries involved, and most recently, disputes in company ownership, further increase the insecurity of affected communities. The lack of transparency obscures prospects for redress and/or grievance to be realised.

- European DFIs have financially supported a destructive and colonial model of development that benefits agribusiness at the expense of the environment and communities. Hence, DFIs contribute to human rights violations whilst undermining access to productive resources and local markets for small-scale farming livelihoods.

The problem: DFIs finance a destructive model

In 2009, a Canadian company, Feronia Inc., purchased the concession rights to the Plantations et Huileries du Congo (PHC) land concessions from the multinational Unilever for US$4 million.[4] The PHC concessions cover an area of 107,000 hectares, the majority of which is forested land, while around 25,000 hectares is dedicated for industrial oil palm production by the company. Today the PHC concessions consist of hundreds of individual fixed-term, renewable land title leases each in place for 100+ years,[5] spanning across three provinces and affecting hundreds of communities.

To execute the industrial oil palm project, Feronia Inc. received the financial backing of numerous private equity funds and European DFIs. Between 2009 and 2020 - when the company became bankrupt - Feronia Inc. received over US$150 million in loans and equity investments (directly and indirectly) from European DFIs, such as DEG (Germany), FMO (The Netherlands), Proparco (France), BIO (Belgium), AECID (Spain) and CDC (United Kingdom). The injection of financial resources by European DFIs to Feronia Inc., occurred despite the fact that Feronia Inc. had no prior experience in managing oil palm production. Financing then continued despite Feronia Inc.'s reported annual losses of at least US$6 million and up to US$91 million every year between 2009 - 2019.[6]

DFI financing coincided with numerous human rights abuse allegations unfolding within the PHC concessions, a severely delayed grievance mechanism that the DFIs have themselves developed and promoted, and a complex web of actors and ownership transfers that have further increased insecurities faced by affected communities.

The case of Feronia Inc. - and their de facto acquisition of the PHC land concessions without the Free, Prior and Informed Consent of nearby communities - must be understood in the historical context of colonisation and land acquisition, which has given rise to today's large-scale land acquisitions (LSLA). The land in question was acquired by the Belgian colonial State, which thereafter granted a UK businessman named Lord Leverhulme the rights to process palm oil on a land area of 750,000 hectares in 1911.[7] Since 1911, the PHC land concessions have been repeatedly characterised by violence and human rights abuses, land dispossession, extractivism of land and labor, mistrust by hundreds of affected communities, environmental destruction, and impunity. Transfers of ownership with multiple layers of subsidiaries and investors[8] - following the merging of Lord Leverhulme's company with a Dutch company that together formed Unilever in 1930 - have prolonged the insecure access to lands. This is typical of an extractivist model of development that comes at the expense of nearby communities.

[4] RIAO-RDC et. al. (2021). Development Finance as Agro-Colonialism: European Development Bank funding of Feronia PHC oil palm plantations in the Democratic Republic of Congo. Op. Cit. https://www.cidse.org/wp-content/uploads/2021/02/EN-Development_Finance_as_Agro_Colonialism_Feronia_PHC.pdf.
[5] Kuramo Capital Management. "Kuramo Capital Management's commitment to improving the lives of people across sub-Saharan Africa: Our investment in Plantations et Huileries du Congo ("PHC")." March 25, 2021. https://www.kuramocapital.com/wp-content/uploads/Kuramo-PHC-Statement-Final.pdf.
[6] RIAO-RDC et. al. (2021).
[7] Ibid.
[8] GRAIN. The untold story of Feronia Inc's failed rice operations in the DR Congo. GRAIN Blog, May 18, 2021. https://grain.org/en/article/6674-the-untold-story-of-feronia-inc-s-failed-rice-operations-in-the-dr-congo.

Indeed “Historical records show that communities never consented to the companies’ operations on their territories, nor did they approve of the destruction of their oil palm groves and their replacement with oil palm plantations.”[9]

That Feronia Inc. failed to seek consent from communities is consistent with the colonial legacy of an export-driven plantation model that relies upon land dispossession and labour extraction as its basis. There is a systemic crisis of large-scale land acquisition and a consequent lack of land access by the communities in the area, who have faced overlapping injustices during and as a result of colonisation. In financing this, European DFIs have deliberately chosen to overlook the systemic nature of how the land was acquired and transferred. These DFIs have directly contributed to the perpetuation of this extractivist, colonial plantation model - a model associated with human rights abuses and environmental destruction globally, which continues to facilitate land grabs across Africa today, and which fails to generate ‘development’ or benefit communities.

Current situation: DFIs write off loans

The case of Feronia involves a complex set of companies, subsidiaries and transfers of ownership, which exacerbates issues of transparency. According to one report featured in *Monitor*: the company “started with companies in the Cayman Islands. Then come more subsidiaries, then the plantation operating company - PHC, a parent company in Canada, subsidiaries in Congo and the UK. Later a Belgian subsidiary, into which the Cayman companies are absorbed. Almost a dozen companies in five different countries, with well-paid managers. And all this to run three plantations.”[10]

The complexity has been further magnified following the bankruptcy of the parent company, Feronia Inc., in mid-2020. Feronia Inc. thereafter sold its shares of the PHC concessions to a newly-established Mauritius-based private equity company, called Straight KKM2, in November 2020. Straight KKM2 operates as an “investment vehicle”[11] of Kuramo Capital Management (KCM), an investment management company that now oversees the PHC plantations jointly with its Congolese partner, Mafuta Investment Holding Limited.[12]

[9] RIAO-RDC et. al. (2021).
[10] Spinrath, Andreas and Maus, Andreas. Africa Policy of the Federal Government: Millions for Despots. Monitor, December 8, 2016. https://www1.wdr.de/daserste/monitor/sendungen/afrika-politik-102.html. Translated with DeepL.
[11] Kuramo Capital Management, March 25, 2021.
[12] GlobeNewswire. Feronia Inc. Announces US$17.5 Million Private Placement of Common Shares. September 25, 2017, https://www.GRAIN.com/news-release/2017/09/25/1316001/0/en/Feronia-Inc-Announces-US-17-5-Million-Private-Placement-of-Common-Shares.html.

The European DFIs - which had maintained a substantial financial position within the project - agreed to transfer their assets to Straight KKM2 and write off significant debt in exchange for US$500,000.[13] Specifically, one DFI (the UK's CDC Group) wrote off US$72.1 million in debt (out of its US$76.6 million investment), while other European DFIs involved (including DEG (Germany), FMO (The Netherlands), BIO (Belgium), in conjunction with the Emerging Africa Infrastructure Fund,[14] wrote off up 50% of the debt as part of the restructuring process, with the potential to write off 80% of their joint loan worth US$49 million, if specific conditions were met.[15] These conditions included that KCM/Straight KKM2 would: a) invest US$10 million in PHC, b) commit to carrying out a new Environmental and Social Action Plan and c) continue to engage in the mediation process via the Independent Complaints Mechanism (discussed more below). The decision by DFIs to implement loan write-offs occurred despite the fact that Straight KKM2, like Feronia Inc., had no prior experience in managing oil palm plantations and despite the ongoing complaint and human rights abuse allegations. The remaining portion of the loan means that these DFIs are still linked with the PHC concessions.

Yet, delivering on these conditionalities has been slow and further complicated by a fall out between partners involved in the project after they received the majority ownership from European DFIs in 2020. Throughout this, the situation of affected communities has been exacerbated as they face failed payments, escalating arrests and violence, unmet infrastructure promises, and a stalled grievance mechanism with significant lack of information given.

Impacted communities face repression, human rights abuses

The impacts upon local communities have been compounded by over 110 years of land dispossession and labour extraction. Those community members who are short-term wage laborers on the plantations routinely face daily exposure to toxic chemicals without adequate protective equipment, inadequate pay, late payments, and job insecurity.[16] As of late 2020, the majority of the social infrastructure projects that Feronia had promised to local communities - including several schools, health centres, boreholes - had not been completed nor even started. The company cited low funds as an excuse, yet continued to pay company managers abroad.[17]

Within the communities, there is widespread poverty, hunger and violations of the right to food exacerbated by lack of land access, violations of the right to work and right to adequate minimum wage, as well as dumping

[13] The Oakland Institute. Kuramo Capital Management Embroiled in a Legal Battle Over Ownership of PHC Oil Palm Plantations in the DRC. June 22, 2021. https://www.oaklandinstitute.org/kuramo-capital-management-legal-battle-phc-oil-palm-drc.

[14] According to the EAIF's website, it is a "Private Infrastructure Development Group, which is a multi-donor organisation with members from seven countries and the World Bank Group." Its funders include the governments of the UK, The Netherlands, Switzerland, and Sweden. "It raises its debt capital from public and private sources, including .... the German development finance institution, KFW, and FMO, the Dutch development bank."

[15] RIAO-RDC et. al. (2021).

[16] Brabant, Justine and Fouchard, Anthony. En RDC, l'huile de palme au mépris des droits humains. Mediapart, September 27, 2021. https://www.mediapart.fr/journal/international/270921/en-rdc-l-huile-de-palme-au-mepris-des-droits-humains?utm_source=global&utm_medium=social&utm_campaign=SharingApp&xtor=CS3-5.
The Oakland Institute (2021). In King Leopold's Steps: The Investors Bankrolling the PHC Oil Palm Plantation in the Democratic Republic of Congo. https://www.oaklandinstitute.org/us-based-investors-land-theft-human-rights-violations-drc.
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[17] RIAO-RDC et. al. (2021).

of untreated waste in rivers.[18] Critically, community members who have resisted the acquisition and occupation of their lands and demanded the return of their ancestral lands have suffered harassment, intimidation, beatings, arbitrary arrest, and even allegedly death at the hands of police and security guards linked to the concessions, often with little to no accountability.

There have been numerous deaths associated with the project under Feronia Inc. since 2015. During that year, a man named Jeudi Bofete Engambi, who worked at the PHC concessions, was beaten to death by police after he was accused by a company security guard for stealing palm fruits; his wife subsequently was killed by live ammunition used by police as she protested her husband's death.[19] Continued repression and the failure to return ancestral lands led members from nine communities in conjunction with a community organisation, RIAO-RDC (Réseau d'Information et d'Appui aux ONG en République Démocratique du Congo), to file a formal complaint against Feronia Inc. in November 2018, utilizing the DFI's own grievance mechanism, the Independent Complaints Mechanism (ICM) to do so.

Since filing the ICM complaint to the German development bank, DEG, in 2018, communities near the plantations have faced intensified violence at the hands of police and the company's security guards. For example, on March 16, 2019, the Congolese military shot live ammunition into a group of protestors demanding the return of their lands and adequate wages in two of the villages, Bolombo and Wamba, affected by the oil palm plantations.[20] Then, on July 21, 2019, Joël Imbangola Lunea, who worked for RIAO, was killed at one of the plantations. While a PHC security guard named Mr. Ebuka was subsequently charged for Joël's murder, Mr. Ebuka was subsequently acquitted after being accompanied by a large legal team paid by Feronia's Congolese subsidiary. Suspiciously, "Several people connected with Joël Imbangola have died since his killing. These include his wife, father and sister along with her six children and his former boss."[21] Furthermore, some of those people connected with filing the 2018 complaint and meeting experts from the investigation panel have also been targeted. For example, in September 2019, police arrested several community members (from the communities of Yalifombo, Lokumete and Mwingi).

More recently, in February 2021, a 33-year-old man named Blaise Mokwe was severely beaten by the company's security guards after he crossed the plantations on the way to visit his mother in the village of Mosité and was mistaken for stealing palm fruit. After being beaten, he was arrested and died six days later from his injuries on February 21, 2021.[22] The following month, in March 2021, another man named Manu Efolafola was accused of stealing a plastic chair and was last seen being taken by company security guards to the river, where he mysteriously fell into the water with a rope around his hands. He/his body has not been seen since.[23]

According to a recent human rights investigation report carried out, there have also been a number of violations committed in Lokutu as recently as September 2021, when

[18] Human Rights Watch. (2019).
[19] Ibid p.19.
[20] Ibid p.18.
[21] Ibid p.19.
[22] Brabant, Justine and Fouchard, Anthony. September 27, 2021.
[23] Ibid.

soldiers and PHC guards allegedly carried out systematic looting, displacements, torture, and of community members and workers: "They looted an average of 100 houses and destroyed dozens of them, taking more than 1,000,000 francs, including three hunting weapons and other goods. There were also suspicions of cases of murder of communities in the PHC plantations."[24] Furthermore, it reports that PHC would have developed an intelligence system that tracks and records community activists, and uses this system to seek out breaches or violations committed by those activists to act against them.

Beyond these immediate existential threats to life, working conditions and wages paid by the company are sporadic, below minimum wage, and the majority of workers are not granted fixed contracts, which they are legally entitled to in the DRC after a certain time. Women workers on the plantations earn among the lowest - between 12,000 FC (US$7.30) and 30,000 FC (US$18.75) - per month, according to a report by Human Rights Watch: "A former manager (who supervised over 200 plantation workers in Boteka) reportedly told Human Rights Watch that women were mainly employed as fruit-picker day laborers, that the company pays them 30 FC (US$0.01) for every sac of 10 kilos, and that in his view, 15 sacs per day is already too hard to accomplish. He noted that the maximum a woman in this role can earn is 15,000 FC (US$9.04) per month."[25] One 38-year old man, who works ten hours a day from 6am, six days a week, is paid 1.23 EUR per day. This is not only three times less than the minimum wage in the DRC, but is also below the poverty threshold set by the World Bank of 1.62 EUR/day.[26]

The role of European DFIs

What has happened in the case of Feronia Inc. has been possible due to the role of Development Finance Institutions that continue to uphold and support an economic model of development that relies upon extraction, and prioritises the interests and profits of companies (namely agribusinesses) above those of affected communities and the small-scale producers within them. Case after case has demonstrated that this model of development does not benefit those it purportedly intends to benefit, and that it not only exacerbates poverty and hunger, but induces environmental destruction, conflict, violence, power inequities, and dispossession. European DFIs hold an explicit responsibility to ensure that funds they distribute - whether directly or indirectly - do not contribute to human rights abuses or corruption, and moreover that safeguards are in place to address grievances in a timely manner whilst keeping complaint-holders informed.

In the case of Feronia Inc., the European DFIs involved included DEG (Germany), FMO (The Netherlands), Proparco (France), BIO (Belgium), AECID (Spain) and CDC (United Kingdom) - with the UK's CDC Group alone holding nearly 42% of the company's shares prior to Feronia's bankruptcy. Several of these DFIs - namely DEG, FMO, and BIO - chose to disburse a loan of US$49 million in December 2015 via the EAIF - after there were already well-known reports of serious human rights violations associated with Feronia.[27] There is also strong evidence pointing to potential corruption within the case that has been seemingly overlooked by DFIs:

[24] Lumpempe Kangamina, Dominique. Rapport Des Missions d'Enquête, de Consultation et d'Assistance Juridique et Judiciaire des Populations Riveraines des Plantations de l'Entreprise PHC/Feronia. Réseau d'Information et d'Appui aux ONG Nationales-RDC, RIAO-RDC. September 2021. To be published.
[25] RIAO-RDC et. al. (2021).
[26] Brabant, Justine and Fouchard, Anthony. September 27, 2021.
[27] RIAO-RDC et. al. (2021).

"The fact that development banks were investing in a company operating from the Cayman Islands that was partly owned by President Kabila's right hand man, someone who has publicly justified corruption among DRC politicians, should have been enough of a red light on the corruption index."[28]

At the time of Feronia Inc.'s bankruptcy mid-2020, the European DFIs owned most of the company shares. Given the significant financial ownership of the project by European DFIs, Feronia Inc.'s bankruptcy was a prime opportunity to reform the project in a way that would position community demands for land restitution at the forefront. However, they instead chose to write off significant debt in favour of companies with no experience in the oil palm plantation management. This is particularly shocking when also considering that the DFIs *own* grievance mechanism process (the ICM) had not progressed much in nearly two years, and what had taken place had resulted in deep mistrust by affected communities - especially as some of those who spoke with the ICM's appointed Expert Panel were arrested soon after.

Conclusion

Investment within projects whose core legacy has been built upon colonial models of extractive development via industrial plantations are not politically neutral nor can investors, including DFIs, ignore that restitution and justice are part and parcel for any 'development' to be realised. Critically, the case of Feronia Inc. outlined here is not the exception, but rather is the rule. Since the 2008 food crisis, speculation within land across Africa buttressed by private equity funds and DFIs has grown exponentially - in the name of large-scale development projects, leading to large-scale land acquisitions, which is a model that fails time after time to benefit communities.[29] With this trend, the negative outcomes experienced in the case of Feronia Inc. continue to be repeated across Africa, including allegations of severe human rights violations, dispossession of community land, environmental destruction and pollution, inducing conflict within local communities, creating dependency on insecure and underpaid jobs, whilst undermining food sovereignty, self-determination, and community resilience.

[28] GRAIN, May 18, 2021.
[29] The Oakland Institute (2021).

Particularly concerning is the fact that DFIs in this case have continued to support the colonial model of extractive development, even amidst clear resistance and lack of consent by the affected communities. As noted within the recent report investigating the role of European DFIs within this case, “Development banks must respect legitimate land rights of local communities, acknowledge land legacy conflicts and exploitation of communities‘ palm groves dating back to colonial era by Feronia-PHC and ensure restitution of ancestral community land to communities.”[30]

Recommendations

Specific recommendations to the Feronia case

1. We call for DFIs to identify and plan a viable exit strategy from financing the Feronia project in DRC, including how this exit will affect communities upstream.

2. We call for DFIs to formally investigate all reported incidents of human rights violations and abuse linked to the Feronia’s case. Reports of these investigations must be made public and be followed by concrete actions to sanction the wrongdoers.

3. We call for DFIs to immediately ensure the ICM complaints process related to Feronia proceeds, especially regarding the land conflict. A special attention must be paid to the security of involved community members.

Common recommendations

1. We call for an immediate end to the financing of Large-Scale Land Acquisition projects and speculative investments by public development banks.

2. We call for the creation of fully public and accountable funding mechanisms that support peoples' efforts to build food sovereignty, realize the human right to food, protect and restore ecosystems, and address the climate emergency.

3. We call for the implementation of strong and effective mechanisms that provide communities with access to justice in cases of adverse human rights impacts or social and environmental damages caused by public development bank investments.

4. We call to secure communities’ rights and access to and control over land, seeds, and water, with a specific attention towards access for women and young farmers.

5. We call for the recognition of small-scale farming as a viable structural model for agricultural development and to promote labour-intensive means of small-scale farming and agroecology.

[30] RIAO-RDC et. al. (2021).

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