

## Human Rights Watch Submission to the UK International Development Committee

May 2020

Human Rights Watch welcomes the inquiry by the International Development Committee (IDC) into the effectiveness of UK Aid, and its intention to examine whether the work of the Department for International Development (DFID) is accountable, transparent, and impactful. Our submission concerns CDC Group, a development bank owned by DFID, and the lack of adequate safeguards at the bank to prevent its investments undermining human rights and environmental protections.

This submission relates to the first two questions identified in the Inquiry's terms of reference, as they relate to accountability for UK aid spending and the effectiveness of that spending by DFID. It addresses CDC Group's human rights obligations as a development financial institution owned and funded by the UK government and for which DFID is responsible, the implications of these obligations in terms of accountability and the resulting need for reform of CDC Group's policies and complaint mechanisms. It also argues that the lack of transparency around CDC Group's operations and handling of complaints undermines the effectiveness of its investments on behalf of the UK government and ultimately the UK taxpayer.

Human Rights Watch released a report in November 2019 that showed how Feronia, a palm oil company in the Democratic Republic of Congo co-owned by CDC Group, was exposing workers to dangerous pesticides, dumping untreated industrial waste, and engaging in abusive employment practices that result in extreme poverty wages.

In our report, Human Rights Watch recommended that CDC Group undertake structural reforms to ensure that the bank is meeting its human rights obligation to prevent and mitigate abuses by companies in which it invests, such as the one documented in the report.

Specifically, Human Rights Watch recommended that CDC Group:

- Adopt human rights policies that acknowledge its extraterritorial human rights obligations;
- Consistently conduct human rights due diligence prior to investing in a project and disclose, at a minimum, summaries of these risk assessments, as well as the mitigation measures the bank has adopted to address these risks;
- Ensure this information reaches potentially affected communities, and that it is also made available to government agencies that have oversight over the companies;
- Strengthen its grievance mechanisms so they are effective accountability avenues, and adopt anti-retaliation policies that protect activists from backlash when they bring forth complaints; and
- Adopt policies on decent work that compel investees to pay living wages, so that their investments meet their development mandate.

Last year, in response to Human Rights Watch's report, CDC Group, in conjunction with three other development banks that also invest in the same enterprise, announced 14 measures to address the abuses we documented in the palm oil company in Congo. However, CDC Group did not at that time commit to address the structural deficiencies in its oversight and monitoring mechanisms to prevent human rights and environmental impacts from its investments. Our research found that the inadequate oversight and monitoring mechanisms meant the abuses that took place in the context of its investment

were left unchecked. This undermines CDC Group's capacity to carry out development work consistent with UK policy objectives on human rights and the environment.

On May 11, 2020, CDC Group informed Human Rights Watch by email that the bank is currently undertaking a review of its complaint process taking into account our report's recommendations. The bank is also reviewing its Code of Responsible Investing, as part of its five-year review cycle, to consider Human Rights Watch recommendations on drawing out an explicit policy statement on human rights, a representative of the bank said. We welcome CDC Group's initiatives on these structural issues.

We urge the International Development Committee to use its oversight authority, including in the context of this inquiry, to ensure that the bank moves forward with this important reform process, and to deliver on the concrete measures CDC undertook to address the serious human rights abuses we documented in these oil palm plantations in Congo.

### **Human Rights Watch investigation into abuses by a CDC Group-owned business**

The November 2019 Human Rights Watch report found that CDC Group, an entity wholly-owned by DFID, had failed to ensure that the palm oil company it financed and co-owned in Congo was respecting the basic rights of the people who work and live on or near their plantations. The report also examined the responsibility of three other European development banks, and their respective failures in oversight.

Since 2013, CDC Group has invested US\$34.4 million in the palm oil company Feronia and its subsidiary Plantations et Huileries du Congo S.A. (PHC) (together "the company"), which operates three oil palm plantations spanning over 100,000 hectares in northern Congo: Boteka in Équateur province, Lokutu in Tshopo province, and Yaligimba in Mongala province.<sup>1</sup> The plantations employ a total of nearly 10,000 workers. Approximately 100,000 people live on or within five kilometers of their property. In addition to being an investor, CDC Group is also a shareholder in Feronia, owning 38 percent of the company.<sup>2</sup>

During field research in Congo between November 2018 and May 2019, Human Rights Watch visited the company's three plantations and interviewed more than 200 people, including 102 PHC employees residing on or near the plantations, 20 Feronia and PHC executives and company managers, and 25 government officials, among others. Human Rights Watch also reviewed extensive documentary evidence, including social-environmental impact reports the company submitted to Congolese authorities.

Human Rights Watch found that lack of proper oversight by the banks that invested in the company, including CDC Group, enabled the company to commit abuses and environmental harm that infringed upon health and labor rights. These abuses included exposing more than 200 employees to toxic pesticides without adequate protection; not providing employees exposed to hazardous materials with the results of medical examinations; and engaging in abusive employment practices that place many workers under the extreme poverty line. The plantations' palm oil mills also routinely dump untreated industrial waste and may have already contaminated the only drinking water source of local communities. These findings are detailed in our report, which is available here:

[https://www.hrw.org/sites/default/files/report\\_pdf/drc1119\\_web\\_0.pdf](https://www.hrw.org/sites/default/files/report_pdf/drc1119_web_0.pdf)

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<sup>1</sup> CDC Group, Feronia Inc., available at: <https://www.cdcgroup.com/en/our-investments/investment/feronia-inc/>

<sup>2</sup> Ibid.

## **Lack of Oversight and Enforcement by CDC**

CDC Group, which is wholly owned by the UK government through DFID, has an extraterritorial obligation to uphold international human rights law. International standards obligate states including the United Kingdom, and thus a bank the UK state owns, to take steps to prevent and provide redress for rights abuses that occur outside their territories due to the activities of business entities over which they can exercise control.

As a practical matter, CDC Group can exercise control on decisive operational matters through the conditions it attaches to its lending and by monitoring company compliance with these conditions – thereby taking steps to prevent and redress infringements of rights.

The banks that invested in the company, including CDC Group, conducted due diligence to assess social and environmental risks that could pose a liability to themselves as investors, and they evaluated the gap between the companies' practices and international industry standards. However, neither of these assessments are designed to prevent infringement of human rights that could result from business activity, as would human rights-specific due diligence.

An Environmental, Social and Action Plan (ESAP) was prepared based on the social and environmental assessments. The ESAP's objective is "to ensure that over time Feronia reaches compliance with international standards and law," specifically Congolese law, the 2012 IFC Performance Standards, the EHS Guidelines, and the criteria to obtain certification from the Roundtable on Sustainable Palm Oil (RSPO), a certification initiative for palm oil producers wishing to adhere to labor, social, and environmental industry-specific standards.<sup>3</sup> CDC, however, has not disclosed the full contents of the ESAP and Human Rights Watch has only been able to review a brief summary provided by the company.

The ESAP could be the instrument to ensure that the banks' investments do not support activities that cause or contribute to human rights abuses. Human Rights Watch considers that an ESAP should be prepared on the basis of environmental, social, and human rights due diligence so that the banks, including CDC Group, may fulfill their duty to protect rights. To effectively prevent abuses, an ESAP should set minimal social and environmental standards for the company's operations with a clear timeframe for these standards to be met. In addition to establishing monitoring mechanisms, it should also define consequences in the event that there are serious violations of the company's contractual obligations. In addition, an ESAP should establish enforceable and accessible remediation avenues for people who have suffered rights abuses from bank-funded commercial activities.

On grounds of commercial secrecy, CDC Group did not disclose its due diligence assessments, nor the mitigation measures it said it had agreed the company would implement, like the ESAP. So long as it does not make this information public, it is difficult – if not impossible – to effectively monitor whether CDC Group is meeting its human rights obligations. This is particularly concerning for investments that are deemed "high risk" under the IFC environmental and social categorization, as PHC has indeed been classified, because of their "potential significant adverse environmental or social risks and/or impacts that are diverse, irreversible, or unprecedented."<sup>4</sup> Disclosing such assessments would not be unusual –

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<sup>3</sup> BIO letter in response to Human Rights Watch information request, February 6, 2019, copy on file; CDC Group's response to Human Rights Watch information request, April 30, 2019, copy on file; DEG response to Human Rights Watch information request, April 17, 2019, copy on file.

<sup>4</sup> IFC Environmental and Social Categorization,

the IFC and World Bank publish social and environmental impact assessments, or their equivalent, for all their projects.

This opacity means that oversight agencies have had limited access to information on the human rights risks associated with investments, or the documentation that lays out the agreement between the banks and their clients. Potentially affected communities do not have access to information on how development banks identify, prevent, or mitigate the human rights impacts associated with investments, what these impacts could be, and how these impacts could affect their rights and livelihoods. Civil society groups have been prevented from scrutinizing whether public funds invested in the development banks are enabling activities that cause or contribute to human rights violations abroad.

CDC Group has complaint mechanisms that provide the bank with feedback on whether it has acted in compliance with its policies and whether these policies are adequate to prevent negative social and environmental impacts. Yet, these mechanisms have multiple weaknesses:

- They do not have the authority to compel CDC Group, or the businesses in which they invest, to participate in dispute resolution processes or to implement the agreements reached through these processes;
- They cannot reach a determination of fault or decide liability for abuses; they are only available online, and CDC Group does not publicize their existence for potentially affected people, rendering the mechanism considerably inaccessible for vulnerable rural communities;
- They do not provide any guidance to complainants on timeframes, types of resolutions they might be able expect, or guarantees against retaliation or reprisal when the complaint is brought by an external party, and the authority responsible for investigating complaints submitted through the mechanism is part of the bank's management structure, instead of being an independent authority, compromising its impartiality; and
- They operate without transparency, as CDC does not publish details of the complaints.

CDC Group said it encourages the creation and implementation of effective grievance mechanisms at the company level so that businesses continue operating responsibly after the bank divests. While it is undoubtedly important for such mechanisms to exist at the company level, this does not relieve the bank – or the government authorities that oversee them, DFID in this case – of its obligation to provide remedy and to create avenues for accountability for its role in supporting activities that caused or contributed to abuses. CDC Group and DFID should strengthen these mechanisms to create or provide genuine remediation avenues.

## **CDC Group's response**

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[https://www.ifc.org/wps/wcm/connect/topics\\_ext\\_content/ifc\\_external\\_corporate\\_site/sustainability-at-ifc/policies-standards/es-categorization](https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/es-categorization) (accessed September 30, 2019), emphasis added. FMO disclosed the risk category associated to their investment in PHC; FMO, Plantations et Huileries du Congo SA, <https://www.fmo.nl/project-detail/45017> (accessed September 30, 2019).

On November 25, 2019, CDC Group issued a joint statement with three other development banks in response to the Human Rights Watch report. CDC Group said it would require the company to take steps to redress human rights abuses documented in the report.

The measures the four banks announced included addressing labor rights violations that result in extremely low wages, ensuring wage parity between men and women, addressing villagers' concerns around water contamination, and taking steps to protect the health of laborers who spray pesticides.

Crucially, the joint statement asserted that the average worker earns US\$3.30 per day. Human Rights Watch addressed an information request to CDC Group on December 5, 2019, soliciting supporting documentation from the company or the bank that could serve as basis for evidence for this figure. To date, Human Rights Watch has not been made party to any information that substantiates this claim.

The joint statement also said that, since 2013, minimum wages for company workers have more than doubled and are now substantially above the minimum wage in Congo. Consider, however, that the national minimum wage for agricultural workers in Congo is 1,680 CDFCDF (US\$1.03) per day. The World Bank sets the extreme poverty threshold at US\$1.90 per day.

The lowest daily wage that PHC paid contract workers on the three PHC plantations increased from 560 CDF (US\$0.35) in July 2009 to 2,085.42 CDF (US\$1.30) in February 2018, which is above the national minimum but significantly below the extreme poverty threshold. Moreover, this minimum only applies to contract workers. At the time of publication of the report, nearly 7,000 of Feronia's more than 10,000 workers were employed as day laborers, who are not guaranteed this minimum wage. Some days, laborers reported receiving a wage of only 2,000 CDF (US\$1.20).

On December 9, 2019, the bank said it would send a letter with additional information, but Human Rights Watch has not yet received any such correspondence.

Following the publication of the report, Feronia announced it had entered a loan facility for US\$11 million provided by CDC Group.<sup>5</sup>

### **Human Rights Watch's engagement with CDC Group**

On March 22, 2019, Human Rights Watch requested information from CDC Group regarding the bank's participation in Feronia and PHC. CDC Group responded in writing on April 29, 2019. On September 30, 2019, Human Rights Watch sent a summary of our findings to CDC Group requesting information on the steps taken to address the human rights issues documented in this report, to which the bank replied on October 22, 2019.

On May 20, 2019, we also requested information from DFID, to which it responded in writing on June 10.

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<sup>5</sup> Feronia Inc., "Feronia Inc. Announces \$11 Million Short-Term Loan Facility", Globe Newswire, November 29, 2019, available at: <https://www.globenewswire.com/news-release/2019/11/29/1954042/0/en/Feronia-Inc-Announces-11-Million-Short-Term-Loan-Facility.html>

All letters sent and received by Human Rights Watch for the purposes of this report are publicly available online at:

[https://www.hrw.org/sites/default/files/supporting\\_resources/drc\\_report\\_annex.pdf](https://www.hrw.org/sites/default/files/supporting_resources/drc_report_annex.pdf).

On November 27, 2019, three staff members of Human Rights Watch met with CDC Group's General Counsel, the Director of Communications, and the Director of Environmental and Social Responsibility.

Human Rights Watch sought a meeting with the head of the DFI Team in the Private Sector Department of DFID, but he declined due to purdah ahead of the General Election.

In December 2019, and January and May 2020, Human Rights Watch reached out to CDC Group over email to request clarification on the content of their public statement, as well as follow-up on the implementation of the measures they announced to rectify the abuses we documented in the report.

## **Human Rights Watch**

Human Rights Watch defends the rights of people worldwide. We scrupulously investigate abuses, expose the facts widely, and pressure those with power to respect rights and secure justice. Human Rights Watch is an independent, international organization that works as part of a vibrant movement to uphold human dignity and advance the cause of human rights for all.

Human Rights Watch is an international organization with staff in more than 40 countries, and offices in Amsterdam, Beirut, Berlin, Brussels, Chicago, Geneva, Goma, Johannesburg, Kinshasa, London, Los Angeles, Miami, Moscow, Nairobi, New York, Paris, San Francisco, Sydney, Tokyo, Toronto, Tunis, Washington DC, and Zurich.

For more information, please visit our website: <http://www.hrw.org>

## **Annex**

Press release "DR Congo: Development Banks Linked to Palm Oil Abuses", November 25, 2019, available at: <https://www.hrw.org/news/2019/11/25/dr-congo-development-banks-linked-palm-oil-abuses>

Report "A Dirty Investment: European Development Banks' Link to Abuses in the Democratic Republic of Congo's Palm Oil Industry", November 25, 2019, available at:

<https://www.hrw.org/report/2019/11/25/dirty-investment/european-development-banks-link-abuses-democratic-republic-congos>

BBC World, "DR Congo palm-oil firm Feronia accused of abuses", November 25, 2019, available at:

<https://www.bbc.com/news/av/world-africa-50543649/dr-congo-palm-oil-firm-feronia-accused-of-abuses>

Joint statement from CDC Group, BIO, DEG and FMO in response to Human Rights Watch report, November 25, 2019, available at: <https://www.cdcgroup.com/en/news-insight/news/a-joint-statement-from-cdc-group-bio-deg-and-fmo-on-the-long-term-role-of-development-finance-institutions-in-poverty-stricken-regions-of-the-world/>