



## **GHANA**

# **TECHNICAL FORM FOR THE PRESENTATION OF A CASE**

## **Chapter I – Characteristics of the Case**

### **Organisation(s) or group(s) responsible for presenting the case**

Friends of the Earth (FoE) – Ghana

Youth Volunteers for the Environment (YVE) – Ghana

### **Accused**

Ghana Oil Palm Development company Ltd (GOPDC) is wholly owned by Société d'Investissement en Agriculture Tropical (SIAT SA) with its headquarters in Belgium.<sup>1</sup> The company was set up in 1975 and registered as a limited liability company on December 6, 1985 with registration number 28,602 from the Registrar General's department. The company was also registered on the Ghana Standards Board on 25 July 2007.<sup>2</sup>

GOPDC operates in Okumaning, a small community in the town of Kade, located in the Eastern Region of the south of Ghana. In this community, GOPDC developed palm oil plantations and recently started rubber plantations. According to the company, it has a 14,026 hectare concession and planted a 7994 hectare palm oil plantation and 779 hectares of rubber.<sup>3</sup> The company website states that it has two plantation estates in the Eastern region: Kwae and Okumaning, mainly consisting of industrial plantations, but also with 349 hectares of smallholder plantations in the concession. Next to the concession GOPDC runs an outgrower programme with around 7,000 farmers under contract within a radius of 30km from the processing plant. GOPDC has an industrial site including a mill, palm kernel cake plant and refinery.<sup>4</sup>

## **Chapter II – Characteristics of the Company / Consortium**

GOPDC is wholly owned by Belgium based SIAT SA, and is registered in Ghana. SIAT SA is 86.73% owned by Fimave NV<sup>5</sup> and the remaining 13.27% stake is held by Wienco Holding NL (11.58%) and three people who also have operational functions in the SIAT group.<sup>6</sup> According to the Dutch chamber of commerce, Wienco Holding BV is divided into Namaka BV, Lysithea BV and Themisto BV.<sup>7</sup> The Ghana-based Wienco Holding NV does not appear to have a Dutch base despite the "NV" status, and according to Orbis is called Wienco (Ghana) Ltd,<sup>8</sup> and operates as an agricultural commodity trading company with a focus on rice, maize and cotton.

<sup>1</sup> SIAT SA Financial Year Report June 2019. Pg. 1

<sup>2</sup> RSPD public summary report GOPDC, TUV Rheinland, Report no.: ASA1\_15027 (2016)

<sup>3</sup> The Siat Group, Sustainability Report 2019, <http://www.siat-group.com/downloads/sustainability-report-20191>

<sup>4</sup> <http://www.gopdc-ltd.com/plantation/> (accessed 3 November 2020)

<sup>5</sup> SIAT Orbis (17 02 2020)

<sup>6</sup> G. Vandersmissen, E. Mansholt and A. Van Damme, The Siat Group, Sustainability Report 2019, <http://www.siat-group.com/downloads/sustainability-report-20191>

<sup>7</sup> <https://www.kvk.nl/zoeken/handelsregister/?handelsnaam=wienco&kvknummer=&straat=&postcode=&huisnummer=&plaats=&hoofdvestiging=1&rechtspersoon=1&nevenvestiging=1&zoekervallen=1&zoekultgeschreven=1&start=0> (accessed 3 November 2020)

<sup>8</sup> Wienco Ghana Ltd Orbis (25 February 2020)

This firm has two shareholders, including the Mauritius-based RMG Concept Limited (76.53%)<sup>9</sup> and an individual called Mark Antoon Kok, who, according to Orbis, is a director shareholder in at least eight Ghana-based companies.<sup>10</sup> Fimave NV is the Belgian Vandebecck family's privately owned holding company.<sup>11</sup> Founded in 1994, Fimave NV is located in Zavente, Belgium, and according to the filings at the Belgian Chamber of Commerce, has been registered there since 2018.<sup>12</sup> It holds four direct subsidiaries, including SIAT SA, SIAT Gabon, PRESCO PLC and Verbinvest.<sup>13</sup>

SIAT SA has key operations in Asia (China and Cambodia) as well as in Africa (Ghana, Ivory Coast, Gabon and Nigeria).<sup>14</sup> According to Orbis, SIAT SA is the company that directly owns GOPDC in Ghana (100%), SIAT Nigeria Ltd (100%), SIAT Gabon (99.49%), Presco Plc in Nigeria (60%), and the Ivory Coast-based companies CHC and CHP (100%)<sup>15</sup>. SIAT SA is among the top five industrial palm oil plantation companies in Africa, with around 32,415 hectares of palm oil plantations in Nigeria and Ghana<sup>16</sup> or 70,466 hectares of total land area managed and controlled associated with palm oil.<sup>17</sup>

## Chapter III – General Argumentation of the Case

The communities in the plantation areas have raised several issues, including lack of inclusion in the process of the “developmental agenda” of their community and the loss of their most fertile agricultural farmland and forests. In addition, the farming practices used on the industrialised farm affect the health of the community in the long-term and pollution of water and soils are of immediate concern. There are also concerns over the poor working and living conditions of members of the community.

Okumaning and its surrounding communities are relatively peaceful and stable communities, which used to benefit from fertile soils and fairly stable rainfall patterns. The area is the breadbasket for unprocessed and partially processed food to the Eastern Region and other parts of Ghana. Farming constitutes the main occupation and source of income for the majority of the population. Okumaning and its surrounding communities used to be a local community that organically produced cocoa, palm fruit, oranges, cassava, yams and plantain among many other foodstuffs. Indigenous farming practices are used on the farms while goats, chickens and other livestock are kept in the household to supplement their farming, dietary and financial needs. There are also some streams and rivers around, which are used by the community members. The forest, known as “Kwae”, is an aesthetically, culturally and spiritually significant place, which also provides the community with medicinal plants and condiments.

The demands of the affected communities are equal rights and benefits in the negotiation process of land acquisitions; delivery on promises of development and improvement of livelihood made by GOPDC and its associates/allies; and the protection and respect of their environment, forest, river bodies and peasant seeds.

Some of the strategies pursued by the community members include demonstrating at the palace of the traditional leaders to demand/follow up with the developmental project and improvement in livelihoods that was promised by the government agency. Some of the community members also went to the court to seek justice.

In Ghana the majority of land is held under diverse customary tenures, embedded in the family, community and chiefly institutions (article 267 Stool and skin lands and property). The affected communities have tried to access justice through the chief's court where customary rules are applied. If it fails to offer fairness and enforceability, dissatisfied community members can proceed to the quasi-legal state

---

<sup>9</sup> RMG Concept Ltd Orbis (25 February 2020)

<sup>10</sup> Mark Anton Kok Orbis (25 February 2020)

<sup>11</sup> <https://derijkstebelgen.be/nieuws/nieuw-overnamekosten-duwen-familie-vandebecck-rood>

<sup>12</sup> Kruispuntbank van Onderneming, België: 0451.839.262

<sup>13</sup> Fimave 2018 Annual Financial Report (06 02 2020)

<sup>14</sup> Eikon Company Summary SIAT GROUP BVBA

<sup>15</sup> SIAT Orbis (17 02 2020)

<sup>16</sup> GRAIN, September 2019, Communities in Africa fight back against the land grab for palm oil, <https://www.grain.org/en/article/6324-communities-in-africa-fight-back-against-the-land-grab-for-palm-oil>

<sup>17</sup> SIAT Group, 2020, RSP0 2019 ACOP, <https://rspo.org/members/27>

GOPDC is violating chapter 5 (20) of the constitution on the PROTECTION FROM DEPRIVATION OF PROPERTY:

*“Compulsory acquisition of property by the State shall only be made under a law which makes provision for—*

*(a) the prompt payment of fair and adequate compensation; and*

*(b) the right of access to the High Court by any person who has an interest in or right over the property whether direct or on appeal from any other authority for the determination of his interest or right and the amount of compensation to which he is entitled.*

*Where a compulsory acquisition or possession of land effected by the, State in accordance with clause (1) of this article involves displacement of any inhabitants, the State shall resettle the displaced inhabitants on suitable alternative land with due regard for their economic well-being and social and cultural values.”*

GOPDC does not respect and promote the right to own land, the right to use land and the right to occupy/to live on one's own land and use or benefit from the natural resources. The activities of GOPDC also violate the UN declaration on the Rights of Peasants.

## Chapter IV – Impacts: Violations of People's Rights and Destruction of the Environment

### What are the main impacts of the company's operations in the place the accusation is being made?

The main impact of the company's operation in Okumaning as reported by community members and civil society are:<sup>18,19</sup>

- Violation of labour rights – unfavourable working conditions with low wages and instant termination of casual workers in the name of the quarterly renewal of contract, workers have an unpaid, compulsory one month of leave after three months of work. Workers injured during work time report they do not receive sufficient medical care.
- Environmental impacts and ecological degradation – industrialised oil palm plantation heavily laced with agrochemicals and fertiliser has contributed to the loss of biodiversity.
- Loss of food sovereignty – the right of the community members to healthy and culturally appropriate food produced through ecologically sound and sustainable methods, and their right to define their own food and agriculture systems are curtailed. Snails, mushrooms and other important food sources are increasingly rare to find.
- Access to land and living space – women and youth especially have little to no access to arable land for farming and are left with no choice but to join the GOPDC workforce with unfavourable working conditions. Some of the community members are forced to move to other communities far from their original homes.
- Public health – GOPDC undertakes spraying at night and the morning after the environment becomes very foggy/hazy. This sometimes leads to people experiencing blurred vision and shortness of breath. Community members also claim deterioration of health and pollution of water sources by chemicals and industrial waste.
- GOPDC refuses to provide vital information – efforts to have access to information from GOPDC have been unsuccessful.
- Land-grabs – communities report that they have not given their free prior and informed consent for the establishment of the plantations on their customary lands.
- Intimidation and use of violence – communities testify that there have been arbitrary arrests by police forces and violence against community members that stand up and speak out against rights violations, for example in Aboibo village.
- Privacy and free movement – access to certain areas is prevented by the company.
- Forced evictions – reports note the eviction of a village called Congo, near Kade, by settlers that came to work in the plantations in the 1970s.<sup>20</sup>

Corruption was at the heart of the acquisition of land between GOPDC and the government officials. It is no secret that deals between GOPDC and government officials were signed behind 'closed doors'. The processes involved and the key signatory to deals are almost always non-transparent.

<sup>18</sup> Entraide & Fraternité (August 2020) QUAND HÉVÉA RIME AVEC VIOLATIONS DE DROITS : LE CAS DE L' ENTREPRISE BELGE SIAT, [www.entraide.be](http://www.entraide.be)

<sup>19</sup> Community testimonies during a strategic meeting of affected communities and actors in the fight against illegal land grabbing in west Africa, November 2019, Abidjan.

<sup>20</sup> Land Justice4WestAfrica campaign (May 2016) [https://landjustice4wa.org/2016/05/19/gopdc\\_kade\\_ghana/](https://landjustice4wa.org/2016/05/19/gopdc_kade_ghana/)

GOPDC is an RSPO certified company as of 2015 and SIAT SA is an RSPO member as of 2004.<sup>21</sup> It uses this certification along with other strategies such as Corporate Social Responsibility Programs, communication on its webpage and in sustainability reports claiming adherence to UN Guiding Principles on Business and Human Rights or sustainable development goals, publicity campaigns and co-opting of social leaders to greenwash and legitimise its operations.

## Chapter V – Strategies of Resistance: Local and National Level

### 1. What strategies of resistance have social organisations and affected communities adopted in the company's place of operation?

Several land disputes have been raised by the communities and resulted in multiple court cases. The RSPO auditors found almost 3,500 hectares were under dispute during 2016 audits in Kwae and Okumaning estates. Some go back to the forced acquisition of their land by the government in the 1970s to establish the plantations, but also refer to more recent conflicts resulting from forced evictions and plantation development by the company.<sup>22</sup> Ever since, communities have been fighting to get access to justice and redress. There have been pressure campaigns and political interventions from politicians from the local assembly to make local communities agree to GOPDC's operations. There has been one case of pursuit of justice through courts at the local court (circuit court) by local communities against GOPDC for land rights violations. The case was dismissed by the local courts. The court indicated that as the land was transferred to GOPDC by the government the local communities cannot sue GOPDC. Instead they are supposed to sue the government. Communities have been mobilising and addressing their issues on land, pollution, workers' rights, food sovereignty and others with GOPDC and have also collaborated with civil society to find solutions and hold the SIAT group and the Belgian government to account in public reports.<sup>23</sup>

### 2. Is there evidence of corporate influence and capture that has played a role against the interests of the affected people? How do you describe the company's relationship with the local / national government?

During a community forum in Okumaning on 14 October 2019, a Junior Manager at GOPDC has indicated that the company promised to give them good jobs if they help the company to lobby the communities to agree to the operations of GOPDC. However local community members were given casual working status. At one point the casual workers realised their working conditions were not stable so some decided to leave the company.

### 3. Has the corporation filed a case against the government – using the ISDS (Investor to state dispute system) or other dispute mechanisms, at ICSID & other Tribunals – what was the outcome?

No.

### 4. Has the corporation filed a case or taken other steps against a community organisation or community activists?

Communities reported during a strategy meeting in Abidjan in 2019 that they were victim to police interventions including arbitrary arrests and violence after they mobilised and voiced concerns on GOPDC practices. The role of GOPDC in the police actions is unclear.

### 5. What are the main obstacles for access to justice for affected communities?

The major obstacle to access to justice is lack of financial capacity to pursue the case. The communities feel that suing the government will require a lot of financial backing. Therefore after the first case on land disputes against GOPDC was dismissed the communities have not been able to mobilise the financial resources to initiate a case against the government.

<sup>21</sup> <https://rspo.org/members/27>

<sup>22</sup> RSPO public summary report GOPDC, TUV Rheinland, Report no.: ASA1\_15027 (2016)

<sup>23</sup> Community testimonies during a strategic meeting of affected communities and actors in the fight against illegal land grabbing in west Africa, November 2019, Abidjan. See also Grain (2019) and Entraide & Fraternité (2020).

## Chapter VI – Global Context: Policies, Actors, States and National / International Institutions and Frameworks relevant to the case

### 1. What official international instruments and/or international declarations are being ignored or violated by the accused company?

The GOPDC operations violate the UN Declaration on the Rights of Peasants, African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, African Charter on Human and Peoples' Rights. As well as the principle of Free Prior Informed Consent (FPIC) which constitutes an internationally recognised right in the United Nations Declaration on the Rights of Indigenous Peoples, the FAO Voluntary Guidelines on the Responsible Governance of Tenure.

### 2. Which national and international institutions are facilitating the entry and operations of this company / consortium?

At the national level the Ministry of Agriculture and the Environmental Protection Agency. In the case of GOPDC, these two national entities have been the direct facilitators of their national entry and operations.

### 3. Was the company's entry to the country facilitated by the policies of international financial institutions?

SIAT SA acquired its plantations through a failed World Bank program that aimed to establish oil palm and rubber plantations across several countries in West and Central Africa in the 1970s and 1980s. In fact SIAT's founder and co-owner Pierre Vandebecq was a member of the consultancy team that worked on the World Bank program. The World Bank provided loans for the governments and in the 1990s the state plantations had large debts and were forced into privatisation. Vandebecq formed SIAT in 1991 and acquired several of the old World Bank funded plantation projects.<sup>24</sup>

At the time GOPDC was being privatised in 1995 its shareholders were SSNIT (Social Security and National Investment Trust of Ghana) and SIAT Ghana Ltd (subsidiary of SIAT SA), and with its majority share in the company of 80%, SIAT was mandated to control both the administrative and the technical management of GOPDC. It took advantage of its position to squeeze the government of Ghana out of the shareholding structure and at the same time dilute the equitable interest of SSNIT in the project. At the time of an IFC project in 2007–2010, the bank describes the GOPDC ownership as follows: "The shareholders of GOPDC are Government of Ghana – 20% and SIAT Ghana Limited (SIAT Ghana) – 80%. SIAT Ghana is a joint venture of SIAT (51%), the Social Security and National Insurance Trust (SSNIT; 30%) and the African Tiger Mutual Fund Limited (ATMF; 19%). SSNIT is a statutory pension fund established by GoG to manage the pension funds of public sector employees in Ghana while ATMF is an investment company registered in Ghana."<sup>25</sup> By 2009 however GOPDC was a 100% privately owned company.<sup>26</sup> Other reports state this takeover happened by 2011 under controversial circumstances in which employees and smallholders were duped.<sup>27</sup> In 2011 Ghanaweb described how ex-ministers were involved in the "dirty deal", which was followed by police investigations.<sup>28</sup>

### 4. Which mechanisms or instruments did these financial institutions use to facilitate the entry of the corporation?

In 1996, GOPDC successfully introduced the African Tiger Mutual Fund (ATMF), with a sole Belgian shareholder by the name of Henk J. Cornelius Van Gastel, as a financier into its shareholding structure without authorisation. This case was investigated by the Bureau for National Investigations (BNI) but it is not clear if ATMF is still a financier of GOPDC.

<sup>24</sup> GRAIN, September 2019, Communities in Africa fight back against the land grab for palm oil, <https://www.grain.org/en/article/6324-communities-in-africa-fight-back-against-the-land-grab-for-palm-oil>

<sup>25</sup> <https://disclosures.ifc.org/#/projectDetail/SPI/25988> (4 November 2020)

<sup>26</sup> RSPO public summary report GOPDC, TUV Rheinland, Report no.: ASA1\_15027 (2016)

<sup>27</sup> Land Justice4WestAfrica campaign (May 2016) [https://landjustice4wa.org/2016/05/19/gopdc\\_kade\\_ghana/](https://landjustice4wa.org/2016/05/19/gopdc_kade_ghana/)

<sup>28</sup> <https://www.ghanaweb.com/GhanaHomePage/NewsArchive/Ex-Finance-Minister-In-31-Million-Dirty-Deal-211689>

Investments to help transition the land to industrial palm oil plantations occurred through World Bank-funded projects “Ghana Oil Palm Development Projects (Cr. 531-GH)”, beginning in the early 1990s and running until 2007.<sup>29</sup> A World Bank report states that the Bank’s objectives were specifically to develop and grow the Ghanaian palm oil sector “including policy areas, strategy for development, production of improved planting material and improved cultivation technology, import substitutions, and continued development of investments made in the Oil Palm Development Project... more specifically the project would assist in the development of new outgrower plantings of oil palm and the expansion of oil palm milling capacity.”<sup>30</sup>

**5. If it is a transnational corporation, what has the position of the government of the corporation’s country of origin been? Has it facilitated the entry of the corporation into the country in which it is being denounced?**

We are not aware of support or any actions to hold SIAT group accountable for its human rights and environmental practices by the government of Belgium.

**6. What role are the company’s majority shareholders / owners playing? What is the relationship between the accused company and the government of the country in question?**

There appears to be strong government backing for GOPDC both at the national and local levels. Local communities have complained that the District Assembly, Police and Military forces, Ministry of Agriculture, Ministry of Lands and Natural Resources and Forest Services Division all appear to have been supporting GOPDC in their operations. Thus, the communities cannot turn to any of these institutions for remedy.

**7. Is the company receiving public or private funding? From whom?**

Since neither SIAT group nor GOPDC are stock listed and private banks do not publish information on their clients, it is difficult to find information about financiers. Three historical public funders were identified. The African Development Bank funded the expansion of GOPDC palm oil plantations with over USD 6 million in 2003.<sup>31</sup> The World Bank had issued several historical loans.<sup>32</sup> And the International Finance Corporation of the World Bank Group financed a 2007-2010 project with a USD13 million loan.<sup>33</sup>

Some sources mention a link between SIAT and Belgian KBC bank.<sup>34</sup> BMI-SBI is a Belgian mixed public limited company. 66% of BMI-SBI is owned by the Belgian State via the Federale Participatie- en Investeringsmaatschappij (FPIM) and the National Bank of Belgium and 34% is privately owned, including by main shareholders BNPP-Fortis and ING Belgium banks.<sup>35</sup> BMI-SBI is a financial partner of SIAT and financed SIAT in Gabon in 2004 together with the German Development Bank (DEG) and the takeover of CHC in 2007 in Ivory Coast.<sup>36 37</sup>

**8. Has a lobby or interest group become involved with the intention of favouring the company in the conflict?**

There is no evidence of an advocacy group favouring GOPDC. However, GOPDC is an RSPO certified company. It uses this certification along with other strategies such as Corporate Social Responsibility Programs at the local level to promote its operations. These Corporate Social Responsibility Programs have been supported by various national ministries and institutions including District Assembly, Police and Military forces, Ministry of Agriculture, Ministry of Lands and Natural Resources, National Fire Services Division, and Forest Services Division.

<sup>29</sup> <http://documents.worldbank.org/curated/en/984711468256763342/pdf/04838E5C2266BA3785256F020080D030.pdf> (25 February 2020)

<sup>30</sup> <http://documents1.worldbank.org/curated/en/778321468749768646/text/multi-page.txt>

<sup>31</sup> <https://projectsportal.afdb.org/dataportal/VProject/show/P-GH-AAG-002?lang=en>

<sup>32</sup> <https://projects.worldbank.org/en/projects-operations/projects-list?searchTerm=ghana%20and%20palm%20oil> (25 February 2020)

<sup>33</sup> <https://disclosures.ifc.org/#/enterpriseSearchResultsHome/siat>

<sup>34</sup> [http://www.siatnigeria.com/siatnigeria/assets/File/Group\\_Internal\\_Social\\_Charter.pdf](http://www.siatnigeria.com/siatnigeria/assets/File/Group_Internal_Social_Charter.pdf) (SIAT bank account with KBC) & [https://www.ide.go.jp/English/Data/Africa\\_file/Company/gabon06.html](https://www.ide.go.jp/English/Data/Africa_file/Company/gabon06.html) (4 November 2020)

<sup>35</sup> [http://bmi-sbi.be/nl/a\\_propos/organisation.html](http://bmi-sbi.be/nl/a_propos/organisation.html)

<sup>36</sup> [https://www.youtube.com/watch?v=zQ\\_eSRchgXU](https://www.youtube.com/watch?v=zQ_eSRchgXU) & <http://www.bmi-sbi.be/>

<sup>37</sup> <http://bmi-sbi.be/nl/references.html>

### 9. Are you aware of any policies, requirements or procedures of the lending institution/s that are being violated?

The BNI investigations revealed that the activities of ATMF were not registered with the Ghana Investment Promotion Centre (GIPC) as required by law, nor did it file any annual returns and yet it continued to pursue its business activities. BNI investigations also revealed serious lapses in monitoring of SSNIT's investments and irregularities in SIATs payments to fulfill contractual requirements.<sup>38</sup>

This form is based on the "Technical Form for the Presentation of a Case Against a Transnational Corporation", from the Permanent Peoples Tribunal, used on the occasion of the Southern Africa's Permanent Peoples Tribunal on Transnational Corporations (Manzini - Johannesburg, 2016-18)

Publication date: 20.11.2020

---

<sup>38</sup> BNI probes GOPDC: <https://www.myjoyonline.com/news/bni-probes-gopdc/> (November 18, 2020)

