



IVORY COAST

TECHNICAL FORM FOR THE PRESENTATION OF A CASE

Chapter I – Details of the Case

1. Organisation(s) or group(s) responsible for presenting the case

Association des Ressortissants de Groumania (ARG) License N°354 of October 3, 2006 (the mutual insurance company of one of the villages affected). Association des Ressortissants de Groumania (ARG) License N°354 of October 3, 2006 (the mutual insurance company of one of the villages affected). With support from GRAIN, JVE and EBURNIETODAY.

2. Name of the company and/or consortium involved

Belgian company SIAT SA (Société d'Investissement en Agriculture Tropicale, SIAT) through its subsidiaries Compagnie Hévécicole du Cavally SA (CHC) and Compagnie de Hévécicole Prikro SA (CHP). Both are 100% owned by SIAT ¹. The SIAT Group website mentions that in August 2007 SIAT acquired 100% ownership of CHC from the Commonwealth Development Corporation Group PLC (CDC) in London, the UK Government's Development Finance Institution. The Government of Ivory Coast sold the estate to CDC in the early 1980s. ²

3. Location of the operation where the events related to the charge or case occurred

The villages of Koffesso-groumania, Timbo and Famienkro of the sub-prefecture of Famienkro, department of Prikro; region of IFFOU in Ivory Coast. CHC has 5,293 hectares of rubber plantation in a 7,700 hectare concession and CHP 2,051 hectares in a 5,000 hectare concession in Ivory Coast. ³ CHP plantations are greenfield concessions, formerly a sugar plantation, where SIAT intends to develop 4,500 hectares of industrial rubber plantations and 8,000 hectares of outgrower plantations. Currently the CHP plantations are immature and do not yet produce rubber. ⁴ CHC has an outgrower scheme of 13,500 hectares of rubber plantation that is mainly immature, and a crumb rubber processing factory. ⁵

Chapter II – Details on the company/ Consortium

1. Country where the company has its registered office / head office

CHP and CHC are subsidiaries of the Belgian company SIAT with headquarters in Guiglo and offices in Abidjan and San Pedro in Ivory Coast. ⁶

¹ SIAT Orbis (1702 2020)

² <http://www.siat-group.com/company-profile/chc-ivory-coast/>

³ SIAT Group (2020) Sustainability report 2019, <http://www.siat-group.com/downloads/sustainability-report-20191>

⁴ <http://www.siat-group.com/company-profile/chp-ivory-coast/>

⁵ <http://www.siat-group.com/company-profile/chc-ivory-coast/>

⁶ <http://www.chc-ci.com/>

2. Ownership of the company's capital

SIAT is 86.73% owned by Fimave NV⁷ 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.⁸ According to the Dutch chamber of commerce, Wienco Holding BV is divided into Namaka BV, Lysithea BV and Themisto BV.⁹ The Ghanaian-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.¹⁰ It operates as an agricultural commodity trading company with a focus on rice, maize and cotton. This firm has two shareholders, including the Mauritius-based RMG Concept Limited (76.53%)¹¹ and an individual called Mark Antoon Kok, who, according to Orbis, is a director shareholder in at least eight Ghana-based companies.¹² Fimave NV is the Belgian Vandebecck family's privately owned holding company.¹³ 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 2018.¹⁴ It holds four direct subsidiaries, including SIAT SA, SIAT Gabon, PRESCO PLC and Verbinvest.¹⁵

3. Country in which the parent company operates

SIAT has key operations in China and Cambodia in Asia, and in Ghana, Ivory Coast, Gabon and Nigeria in Africa.¹⁶ According to Orbis, SIAT 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%).¹⁷

Chapter III – General argumentation of the Case

On September 15, 2011, CHP announced that it will occupy a government granted concession of 11,000 ha, affecting the Famienkro, Koffessou-Groumania and Timbo communities. These communities have opposed it. In September 2013, through the signing of a framework agreement, the State allocated approximately 11,000 hectares of land to the CHP for industrial rubber farming. Some of the land was used by state-owned sugar company SODESUCRE until 1982, but since this company abandoned the land farmers had again started cultivating it.¹⁸

These lands cover the cultivation areas of at least seven villages: FAMIENKRO, KOFFESSO-GROUMANIA, SEREBOU, BOGNANKRO, KAMELESSO, TIMBO and ASSOUANIA. The populations of Famienkro, Koffesso and Timbo protested, which has led to tension. According to the law in Ivory Coast, Free Prior and Informed Consent from the local population is always required to grant arable land to companies. In this case that rule and other laws pertaining to transfer of ownership of lands to the state were violated. Also requirements under the Environmental Code have been violated by CHP: environmental and social impact studies were not executed prior to developments.

⁷ SIAT Orbis (17 02 2020)

⁸ G. Vandersmissen, E. Mansholt and A. Van Damme, The Siat Group, Sustainability Report 2019, <http://www.siat-group.com/downloads/sustainability-report-20191>

⁹ <https://www.kvk.nl/zoeken/handelsregister/?handelsnaam=wien-co&kvknummer=&straat=&postcode=&huisnummer=&plaats=&hoofdvestiging=1&rechtspersoon=1&nevenvestiging=1&zoekervallen=1&zoekuitgeschreven=1&start=0> (accessed 3 November 2020)

¹⁰ Wienco Ghana Ltd Orbis (25 February 2020)

¹¹ RMG Concept Ltd Orbis (25 February 2020)

¹² Mark Anton Kok Orbis (25 February 2020)

¹³ <https://derijkstebelgen.be/nieuws/nieuw-overnamekosten-duwen-familie-vandebecck-rood>

¹⁴ Kruispuntbank van Onderneming, België: 0451.839.262

¹⁵ Fimave 2018 Annual Financial Report (06 02 2020)

¹⁶ Elkon Company Summary SIAT GROUP BVBA

¹⁷ SIAT Orbis (17 02 2020)

¹⁸ GRAIN (2017) Land Conflict in Côte d'Ivoire, local communiteits defend their rights against SIAT and the state.

In December 2013, the communities represented by the King of the ANDOHS (Famienkro) filed a lawsuit against the deal before the court of M'Bahiakro requesting the removal of the disputed plot of land. SIAT testified that it has the right to develop the land based on a 2013 agreement with the government. Communities then opposed a land registration application for 11,000 hectares in the regional district Baoulé from April 2014. In 2014 the government argued it owns the disputed area, which farmers were compensated for over destroyed crops when Sodesucre was established, and that vacant and unoccupied lands belong to the state.

However, compensation of crops is not the same as terminating ownership rights and the lands were certainly not vacant. The case is a government approved land-grab in violation of national laws and the FAO voluntary guidelines on the responsible governance of land tenure (VGGT) that the Government of Ivory Coast committed to in 2014. When the judge initially found there was no evidence of the termination of rights or of any contract where communities had given up their ownership rights to these lands, a second hearing took place behind closed doors without the community and the ruling in November 2016 came to a totally different conclusion. The burden of proof of land rights was put on the communities and their case thrown out. Communities and civil society contest this ruling as well as the lack of due process.¹⁹

From 20-22 July 2015 the villagers of the three impacted villages held peaceful demonstrations against the occupation of their land and the destruction of their sacred plantations and forests on the plots granted to CHP. It was the largest demonstration ever since the beginning of the conflict. During the intervention of the Gendarmerie two people were shot dead in Famienkro and two more subsequently died.

Seventy-one people, including the King of ANDOHS (Famienkro) and his spokesman, the chief of the village of Koffesso, along with several Muslim clerics were arrested and detained in M'Bahiakro prison. One detainee died in prison on 3 January 2016. The inhabitants fled the violence. Reported missing since the events of July 2015, one man who was following the civil case in court with Sinan OUATTARA, was found dead by his sons on 27 January 2017 in a forest in Famienkro. Numerous people were wounded and several properties and houses were destroyed. Thirty-eight people were released on 1 December 2015 after almost five months in detention. One person, who reported not to be present at the demonstration, was convicted in July 2015 for arson among others.

Analysis of the situation:

Decree 71-74 of February 16, 1971 relating to state and land procedures emphasises that the allocation of rural land is subject to the registration of the land in the name of the State «to purge it of all rights of third parties and to guarantee the origin of the property». This is not the case in Famienkro: not only was there no land purge, but the State requested the registration of the land three years after the beginning of the conflict.

To date, the government has not made proof of the purge of customary rights, the only administrative act that can enable it to claim ownership of this parcel, nor has proof of the concession been given. Decree-Law No. 5-580 of 20 May 1955 added that «no individual or community may be forced to cede these rights [customary rights to land] except for the public interest and with fair compensation». In the case of Famienkro, not only was it not in the public interest, but there was no compensation.

The populations hold customary rights over these lands (Decree-Laws of 15 November 1935 and 20 May 1955 and Land Law No. 98-750 of 23 December 1998). It is not up to them to prove that they are the owners, but rather it is up to the State to prove that there has been a transfer for its benefit and that it is now the final owner of the land.

Chapter IV – Impacts: Violations of people’s rights and destruction of the environment

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

1. The key impact is the conflict over land, between the communities, the government and the company. The lack of consent and violations of national laws pertaining to the granting of agriculture concessions and their development gave rise to community resistance and its violent repression. During the intervention of the Gendarmerie two people were shot dead in Famienkro and two more subsequently died.

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2. Harm to the population: The establishment of the CHP in Famienkro was not subject to a prior environmental and social impact study as required by Article 39 of the Environmental Code and Decree 96-894 of 8 November 1996 on environmental and social impact studies (ESIA).²⁰ According to the company, it completed an Environmental Impact Study in 2017 and plans to have its social impact study ready for 2021²¹, years after developments have begun and in violation of the Environmental Code of the Cote d'Ivoire. Hence the attacks on physical, moral and material integrity as well as on human and customary dignity.

3. Insufficient arable land and destruction of sacred forests

4. Present and future populations are threatened by food insecurity and they already experience it.

2. In the impacts mentioned above, what has the company's involvement been?

The enterprise operates in violation of national legislation. Its involvement in the violent repression of community resistance to rights violations is not clear.

3. Who has been mainly or differently affected by the company's activities?

The populations of the three villages as a whole have been affected (about 10,000 people).

Women and youth were especially affected by the impacts:

- a) A woman named Amara Mawa, from the village of Timbo, was beaten, sequestered, humiliated and detained by the gendarmerie of Prikro and was only released after her sons paid money;
- b) Fourteen women from three villages were detained in M'bahiakro prison for several months, some were beaten before imprisonment;
- c) Dozens of women from the three villages, and their children, fled the gendarmerie crackdown and remained refugees away from their homes for several months. Some of them spent 18 months in villages where they had no farms or income.

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About 10 young people were also locked up in M'Bahiakro.

4. What strategies has the company used to legitimise its actions or quell resistance?

CHP's first strategy was to corrupt the administrative authorities, prefectures, local elected officials and a few other locals. On 15 September 2011 at the sub-prefecture of Famienkro its representative announced that they spent CFA112 million to get their papers signed. The second is to say that the framework agreement signed in September 2013 by the government (represented by its Minister of Agriculture) allows it to exploit these lands. The third strategy is the corporate responsibility claims on SIAT websites and sustainability reports that are used to create a positive image, but are neither binding nor are they complied with in practice. For example, the number of jobs created is advertised but there is nothing about the food sovereignty and rights issues of local people that have lost their lands, livelihoods and access to forest areas. The company's environmental policy from 2018²² is voluntary and not complied with in the Ivory Coast, ESIA's are lacking, land disputes are abundant and even ISO 14001 certification is not in order.²³ The SIAT group also lacks a proper social and human rights policy.

²⁰ Loi n° 96-766 du 3 octobre 1996 portant Code de l'Environnement, <http://www.droit-afrique.com/upload/>

²¹ doc/cote-divoire/RCI-Code-1996-environnement.pdf

²² SIAT Group (2020) Sustainability report 2019, <http://www.siat-group.com/downloads/sustainability-report-20191>

²³ <http://www.siat-group.com/corporate-responsibility/policies-and-commitments/>

Chapter V – Resistance Strategies: Local and National Level

1. What resistance strategies have social organisations and affected communities adopted at the company's operation site?

Various resistance strategies:

- a) Explanations of the inconsistencies in the implementation of this rubber project, which concealed the illegality;
- b) Explanation to local people about the content of the 1998 land law stating that they are the owners of these lands contrary to the claims of some people;
- c) There were sit-ins in 2011 and 2015;
- d) Online newspapers covered the issues despite political censorship: even the local public television RTI BOUAKE showed the corpse of the first young person who was shot dead by the gendarmerie and their auxiliaries (young people armed by the gendarmerie);
- e) Many national and international institutions (National Assembly, Ministries of Justice and Interior, High Authority for Good Governance, National Chamber of Human Rights, National Chamber of Kings and Traditional Chiefs, Amnesty International, local and international NGOs, Presidency of the Republic, Special Representative of the UN Secretary General in Côte d'Ivoire, etc.) were contacted by mail;
- f) Meetings to gain support of several influential people: presidents of the national chamber of Kings and traditional chiefs, the maternal uncle of the President of the Republic of CI, the father of the Minister of the Interior, etc;
- g) Publication of the case in international reports that exposes the human rights violations, the land disputes and other community concerns and challenges the SIAT group and its financiers as well as the Belgian government to provide access to justice and redress and hold the company to account;
- h) Strategy meeting between affected communities in 2019 to exchange on the harms of the plantations and identify solutions.

2. Has a case been brought before a local, national or international court?

In December 2013 the communities represented by the King of the ANDOHS (Famienkro) filed a lawsuit against the Compagnie Hévéhicole du Cavally before the court of M'Bahiakro requesting the removal of the disputed plot of land. The court ruled in favour of the State of Côte d'Ivoire. In his report dated January 22, 2015, the judge explained that the particular difficulty of the dispute "remains the determination of the fate of land formerly occupied by the State with regard to the 1998 reform on rural land". But the judge wrote in his ruling on 10 November 2016 that the Famienkro communities do not produce "either a lease contract with the State whose term would coincide with the cessation of activities of the sugar company to justify the immediate return of the said plot of land to [their] property". At the pre-trial hearing on 20 November 2014, the Director of Lands acknowledged before the villagers "that there was no contract or land purge prior to SODESUCRE". It is still possible to refer the matter to the Supreme Court of CI to reinstate the populations' rights.

3. 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?

Yes, there are photos, written documents, videos of testimonies and a documentary film.

4. Has the company filed a complaint against the government - using ISDS (Investor-State Dispute Resolution System) or other dispute resolution mechanisms, with ICSID and other tribunals?

We have no evidence of a complaint by the company against the government that defends it, even in court.

5. Has the company filed a complaint or taken other action against a community organisation or community activists?

Yes, the local director of the company wrote a letter to expel the villagers from the houses that belonged to Sodesucre in Famienkro and the communities testified that the workers of the company took one of the two human-powered hydraulic pumps from the people of Koffesso, depriving them therefore of part of the drinking water.

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

The main obstacles are financiers and politicians who influence the decisions of the judges in their favour.

Chapter VI – Global context: Policies, players, states and institutions and national/international frameworks relevant to the case

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

These violated instruments are:

African Charter on Human and Peoples' Rights

Protocol to the African Charter on the Rights of Women in Africa

United Nations Universal Declaration of Human Rights

United Nations Charter

International Convention on Civil and Political Rights

ILO Convention 169 on indigenous and tribal peoples

United Nations Declaration on the Rights of Indigenous Peoples

Article 39 of the Environmental Code and Decree 96-894 of November 8, 1996 relating to environmental and social impact studies in Ivory Coast (ESIA)

The Ivorian Land Law N°98-750 of December 23, 1998

Decree-Law of November 15, 1935 and May 20, 1955 (colonial)

FAO Voluntary Guidelines on the Responsible Governance of Tenure on Land

2. What are the national and international institutions that facilitate the entry and operation of this company / consortium?

They are:

The Ministry of Agriculture with its agriculture investment program (Programme National d'Investissement Agricole (PNIA)

Prime Minister's office of Ivory Coast

Prefectoral corps

At international level, Siat acquired 100% ownership of CHC from the Commonwealth Development Corporation Group PLC (CDC) in London, which is the UK Government's Development Finance Institution. The takeover of CHC in 2007 was supported by Belgian BMI-SBI.^{24 25} BMI-SBI is a Belgian mixed public limited company. A stake of 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 in private ownership, including main shareholders BNPP-Fortis and ING Belgium banks.²⁶

3. What mechanisms or instruments have these financial institutions used to facilitate the entry of the company?

Consultations and economic pressure, loans and other financial assistance.

4. If it is a transnational corporation, what was the position of the government of the corporation's home country? Has it facilitated the entry of society into the country where it is denounced?

Belgium, SIAT's country of origin, has facilitated its establishment in Ivory Coast. We are not aware of any actions taken by the Belgian government to hold SIAT group accountable for its human rights and environmental practices.

²⁴ https://www.youtube.com/watch?v=zQ_eSRchgXU & <http://www.bmi-sbi.be/>

²⁵ <http://bmi-sbi.be/nl/references.html>

²⁶ http://bmi-sbi.be/nl/a_propos/organisation.html

5. In the place where the company is reported, have the national and local authorities favoured the company by making changes to the legislation? Are these changes related to the impunity with which the company acts? What was the position of the national government in this conflict?

The government of the Ivory Coast is at the centre of the conflict because:

The Ministry of Agriculture signed the principle agreement submitted to CHC in 2011;

The Minister of Agriculture signed the framework agreement with CHP in September 2013 in the presence of the Prime Minister in Famienkro;

The prefectural corps sent the gendarmerie and their auxiliaries to quell local populations, resulting in many deaths and injuries;

The sub-prefect of Famienkro took the camera from RTI BOUAKE's reporters before the gendarmerie shot at the local people, killing two.

6. What role do the shareholders / majority owners of the company play? What is the relationship between the accused company and the government of the country in question?

The government is in collusion with the company and its owners.

7. Does the company receive public or private funds? 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 SIAT GOPDC palm oil plantations in Ghana with over USD6 million in 2003.²⁷ The World Bank had issued several historical loans to the group.²⁸ And the International Finance Corporation of the World Bank Group financed a 2007-2010 project with a USD13 million loan.²⁹ Some sources mention a link between SIAT and Belgian KBC bank.³⁰ BMI-SBI is a financial partner from 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.^{31 32}

8. Was there a lobby or interest group involved with the intention of favouring the company in the dispute?

We do not know of any lobby that backs up the company apart from politicians.

9. Do you know of any policies, requirements or procedures of the institution or lending institutions that are not followed?

Yes, the environmental policy and the free informed consent of the populations have not been respected. Although almost all European and international financiers have these rules as working principles and Environmental and Social policies and are bound by OECD guidelines.

This form is based on the "Technical Form for the Presentation of a Complaint against a Transnational Corporation", of the Permanent Peoples' Tribunal, used in the Permanent Peoples' Tribunal on Transnational Corporations in Southern Africa (Manzini - Johannesburg, 2016-18).

NB: This is an unofficial translation of the original French document.

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²⁷ <https://projectsportal.afdb.org/dataportal/VProject/show/P-GH-AAG-002?lang=en>

²⁸ <https://projects.worldbank.org/en/projects-operations/projects-list?searchTerm=ghana%20and%20palm%20oil> (25 February 2020)

²⁹ <https://disclosures.ifc.org/#/enterpriseSearchResultsHome/siat>

³⁰ 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 (4 November 2020)

³¹ https://www.youtube.com/watch?v=zQ_eSRchgXU & <http://www.bmi-sbi.be/>

³² <http://bmi-sbi.be/nl/references.html>