



## **NIGERIA**

# **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**

Environmental Rights Action/Friends of the Earth Nigeria

### **2. Name of the company and/or consortium being accused**

PZ WILMAR Ltd is a Joint Venture formed in 2010 between Wilmar International Limited (Wilmar) and PZ Cussons

### **3. Place of operation in which events related to the accusation/case occurred**

Cross River State, Nigeria

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

### **1. Country or countries where the company has its headquarters / main office**

Wilmar is a leading agribusiness group in Asia listed on the Singapore Stock Exchange. PZ Cussons is an international consumer goods group listed on the London stock exchange.

### **2. Ownership of the company's capital**

The Kuok family and Archer Daniels Midland (ADM), an American commodity trader and processor, are Substantial shareholders in Wilmar. Other shareholders include DBS, HSBC, Citibank and Morgan Stanley in Singapore.<sup>1</sup> The controlling shareholders (53%) of PZ Cussons are joint in a 'concert party' and comprise of the founding Zochonis family or certain wider family groups, certain Company trusts, the Executive Directors of the Company and current or former employees.<sup>2</sup>

<sup>1</sup> Wilmar International, Towards Sustainable Palm Oil, Annual Report 2018

<sup>2</sup> PZ Cussons, Our strategy for Growth, annual report and accounts 2019

### 3. Country or countries in which the parent company has its operations

Wilmar owns or controls 81 plantation estates totaling over 337,000 hectares of land owned or managed for oil palm cultivation in Indonesia, Malaysia, Ghana and Nigeria.<sup>3</sup> Wilmar owns or has interests in processing plants for tropical oils in Indonesia, Malaysia, China, Vietnam, the Philippines, Sri Lanka, the US, South Africa, Ghana, India, Bangladesh, Singapore, Russia, Ukraine, Ivory Coast, Nigeria, Uganda, Tanzania, Zambia, Zimbabwe, Germany, the Netherlands and Poland.<sup>4</sup>

In Africa, PZ Cussons operates in Personal Care, Home Care, Electricals and Food and Nutrition, and joint venture businesses PZ Wilmar and HPZ. The three main African markets are Nigeria, Ghana and Kenya, involving brands such as Premier, Canoe, Imperial Leather and Carex.<sup>5</sup> PZ Cussons manufactured goods containing palm oil in Australia, Ghana, Greece, Indonesia, Kenya, Nigeria, Poland, the UK, and US using almost 40,000 tonnes of palm oil in 2018.<sup>6</sup> In 2018/2019 the PZ Cussons Factory in Agbede sourced palm oil from Malaysia and Nigeria, including from the PZ Wilmar plantations and others such as SIAT/Presco and Okomu (and over 6% from unknown origins).<sup>7</sup>

## Chapter III – General Argumentation of the Case

### What are the key arguments of the case?

Host Communities to PZ Wilmar, along with human rights community and environmentalists, are concerned about the company's operations. Key issues include increased incidents of land grabbing, destruction of the environment and livelihoods, gender violence and discrimination against women, and economic and cultural displacement. The company has not properly responded to attempts by the community to make it address the violations of their fundamental human rights. The Cross River State Government that leased the land to the company appears to have a good relationship with the company to the detriment of the people.

### What is the background / life context of the affected people and their demands?

Cross River State communities in south-south Nigeria, host to the PZ Wilmar plantations, have continued to suffer devastating social, economic, gender and environmental impacts as a result of the company's operations in the forest and biodiversity rich region of the country. The rate at which communities are losing their land to PZ Wilmar is alarming. In November 2011, Wilmar bought two plantation estates through subsidiary Biase Plantations Ltd (Ibiae and Calaro) in Cross River State, consisting of 19,172 hectares for oil palm development, from the Cross River State Privatisation Council.<sup>8</sup>

In 2012 Wilmar established Eyop Industries Ltd. to buy the Obasanjo concessions (totaling 10,791 hectares<sup>9</sup> from former president Olusegun Obasanjo. These assets include Kwa Falls, Ibad and Oban estates. The 5,550 hectare Calaro estate was extended with around 2,400 hectares and subject to an approved HCS report.<sup>10</sup> It has already put in place a large refinery and established an outgrowers scheme. Outgrowers are compelled to offer their produce at the company's determined price via a contractor<sup>11</sup>. PZ Wilmar's operations cut across four Local Governments Areas of the State (Akamkpa, Biase, Odukpani and Akpabuyo) and in 20 communities with a substantial population.

<sup>3</sup> [https://rspo.org/view-acop-pdf/palm-oil-processors-and-traders/Wilmar\\_International\\_Limited-ACOP2018.pdf](https://rspo.org/view-acop-pdf/palm-oil-processors-and-traders/Wilmar_International_Limited-ACOP2018.pdf)

<sup>4</sup> <https://www.wilmar-international.com/our-businesses/tropical-oils>

<sup>5</sup> <https://www.pzcussons.com/about-us/our-markets/>

<sup>6</sup> <https://rspo.org/members/632>

<sup>7</sup> [https://www.wilmar-international.com/docs/default-source/default-document-library/sustainability/supplychain/traceability-report-q4-2018-q3-2019/destinations/nigeria\\_200123.pdf?sfvrsn=e6a0b9fc\\_2](https://www.wilmar-international.com/docs/default-source/default-document-library/sustainability/supplychain/traceability-report-q4-2018-q3-2019/destinations/nigeria_200123.pdf?sfvrsn=e6a0b9fc_2)

<sup>8</sup> [https://www.rspo.org/file/RSP0-NPP\\_Report\\_Ibiae-Assessment\\_Findings%20Final.pdf](https://www.rspo.org/file/RSP0-NPP_Report_Ibiae-Assessment_Findings%20Final.pdf) page 3 & <https://www.wilmar-international.com/docs/default-source/default-document-library/sustainability/resource/sustainability-brief-partnering-with-nigeria-to-develop-a-best-in-class-palm-oil-industry.pdf> page 2

<sup>9</sup> <https://www.sciencedirect.com/science/article/pii/S0264837713002238>

<sup>10</sup> HCS assesment summary report, 2017, [http://highcarbonstock.org/wp-content/uploads/2017/04/HCS-Assessment-Summary-Report\\_Wilmar-Calaro-ext\\_Final-060417.pdf](http://highcarbonstock.org/wp-content/uploads/2017/04/HCS-Assessment-Summary-Report_Wilmar-Calaro-ext_Final-060417.pdf)

<sup>11</sup> <https://www.nigerianbestforum.com/index.php?topic=247014.0:wap>

Affected communities report various concerns. They are forced to live in a polluted environment, exposed to air and water pollution due to the constant felling of trees, use of hazardous plantation chemicals, waste from oil palm milling sites and the large refinery, ploughing and grading of the soil and intensive application of agrochemicals. To prevent the community from gaining access to the plantations, the company created a barrier measuring about 50ft deep and 40ft wide. The barrier causes water to overflow during rainy season, putting the community in danger of flooding as well as exposing people and animals to the danger of falling into the barrier. There is no job security for company workers and they are often denied their benefit packages and other rights. There is high level of discrimination against female contract staff and pregnant women are denied opportunities to take maternity leave before and after delivery. A pregnant woman working with the company at the time, in a recorded conversation with ERA, revealed that that pregnant women are made to trek long distances and carry out difficult tasks that affect their health and pregnancy.

The company also transports its workers (mostly casuals) with an overloaded tractor to the various plantation estates to work, with up to 50 people on a small truck. On May 26, 2018 a tractor overturned, killing more than 10 people on board, including pregnant women. Some of the casualties as documented by ERA/FoEN were 1) Iquo Ekpe Ekpo, 2) Mary Joseph Edet, 3) Iquo Obi Owai, 4) Emem Oscar, 5) Agnes Sunday Johnson, 6) Emem Eshiet. There was a similar accident in 2019, after which one of the victims, Ms Ikwo Manson Okon, who was pregnant, developed complications and died a few months later, leaving two children behind. According to the father of the victim: "Wilmar quickly released the sum of N120,000 for her burial without a major compensation to the family to care for the little children of the deceased".

In 2019, members of the host communities formally demanded the return of their farmlands, which were acquired by the company without the consent of the affected communities; payment of compensation to them for loss of livelihoods and environmental rights; and the signing of a new Memorandum of Understanding (MoU)<sup>12</sup> with the company as they are not privy to the one that the company claims currently exists.

#### **What are the strategies being pursued by affected people and their network of support?**

The affected people have adopted various advocacy tools such as engaging in legal action against the company, petitioning of the company to the Cross River State House of Assembly, attempting (unsuccessfully) to engage in dialogue with the company. In addition, the media has consistently exposed human rights abuses and Civil Society Organizations (CSOs) are providing ongoing training for community stakeholders, those engaged in policy dialogues etc.

#### **What are the steps taken towards accessing justice by affected communities and their network of support?**

Some individuals have sought legal redress and won against the company, but the company is using its economic power over the affected people to try to subvert justice by engaging in prolonged litigations through appealing against the judgment (SUIT NO.KH/28/2014) between Deacon Arikpo Ivere and Biase Plantation Limited). The suit accused Wilmar of not complying with relevant environmental laws and claimed the Plaintiff's environment was badly affected through the excavation of the land, felling of trees/heavy logs and the deposition of debris, waste materials and other organic substances.

The affected people and their support networks have engaged with the media by organising a media tour and advocacy visit to the affected places. They also testified against the company in a public hearing organised by the Cross River State House of Assembly with the participation of Wilmar Pz<sup>13</sup>. According to Mrs Patience Etim, Wilmar terminated her contract after testifying against the company during the public hearing. Another group of staff that openly challenged Wilmar over ill treatment and workers' rights violations (no rights of association/affiliation with labour unions) were allegedly brutally beaten by a contingent of the Nigerian Army. Property of the financial secretary of the International Association of Plantation Labourers (Dominic Edmond David) was destroyed and thrown out of his residential quarters. He was arrested, charged and detained along with two others (Longinus Stephen Ajom and Etim Michael Itokigi) for his affiliation with a labour association and for questioning Wilmar's ill treatment of staff.

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<sup>12</sup> <https://www.thisdaylive.com/index.php/2019/10/14/environmentalists-communities-demand-new-mou-from-wilmarpz/>

<sup>13</sup> <https://guardian.ng/politics/cross-river-assembly-reads-riot-act-to-multinationals/>

Wilmar receives many petitions from individuals, families or groups on a regular basis. One example is the petition filed against the company by the Junior Labourers of Calaro Oil Palm Estate, Mbarakom, over the non-implementation of condition of service, the demand that the company pay all their entitlements including leave bonus from 2013 to date, the breach of their fundamental rights of freedom to join a workers association of their choice, and that the company should not compel them to join an association for senior workers formed and headed by the management of Wilmar.

Other instances include that of the family of the late Ntufam Dickson Asuquo (Royal family), which is represented by his widow Madam Asuquo of Ayuk Aba Akamkpa town, who accused Wilmar of destroying the family's farmland containing farm produce and economic trees including farm crops such as palm trees, cocoa and other fruit trees. It had co-existed within the axis of the Calaro Estate for many years before Wilmar took over and caused the damage to the properties.

**What are the national laws being violated by the company? And what are the international treaties/agreements of which the country is signatory?**

The Environmental Impacts Assessment Act, National & Local Forestry Laws, the National Park Decrees, Customary Land Rights Laws of the country as well as the Corporate Social Responsibility Law of the Cross River State Government are constantly being violated by the company.

Nigeria is signatory to the African Charter on Human and Peoples' Rights; Protocol to the African Charter on Rights of Women in Africa; African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa; the United Nations Universal Declaration of Human Rights, Charter of the United Nations; International Pact on Civil and Political Rights; International Labour Norms (ILO); ILO Convention 169 on Indigenous and Tribal People; UN Declaration on the Rights of Indigenous Peoples.

## **Chapter IV – Impacts: Violations of Peoples 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?**

The company is known for violating community land rights, workers labour rights and human rights; environmental impacts such as flooding, air and water pollution, land degradation, poor management of hazardous waste and threats to endemic plants and animal species. As well as loss of land and food sovereignty and increased public health concerns. Communities complain about divide and rule tactics, intimidation, militarisation and violence against the members of the host communities. As well as refusal by the company to negotiate, refusing to provide information and to pay compensation. Additionally there is a high level of disregard for pregnant women and leadership of the host communities. This was evident following the termination of Patience Edet Etim's contract by PZ Wilmar for testifying against the company for its refusal to grant pregnant women leave of absence after birth.

The firing of workers perceived to have any form of evidence against the company is common. On January 8 2020 over 300 workers were fired for allegedly being linked to those that petitioned at the State House of Assembly.

The Editor in Chief of The New Nigerian Newspapers Limited Vitalis Ugoh told ERA that he was threatened with a suit by PZ Wilmar for reporting the death of some pregnant women that worked in PZ Wilmar's plantation. Though the case was not instituted by the company, this may be a strategy by the company to silence the voices of the oppressed and human rights defenders.

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

All the above listed impacts are caused by the direct action of PZ Wilmar and indirectly through state security forces which have been safeguarding PZ Wilmar's interests.

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

Members of the host communities, especially women, children, farmers and forest dependent peoples. Others include human rights defenders, journalists and reporters who denounce the company's wrongdoings.

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

Wilmar International plans for certification of the Calaro mill by 2022.<sup>14</sup> PZ Wilmar claimed to be RSPO certified as it displays signs showing RSPO principles in its office but has violated relevant sections of those principles.<sup>15</sup> It claims to having carried out corporate social responsibility activities by sinking boreholes to replace polluted streams and renovating some structures in a few of the schools in some host communities. Roads upgraded to enable the company to transport its products are also claimed as part of their corporate social responsibility. Wilmar International has a No Deforestation No Peat No Exploitation (NDPE) policy as of 2013 for the group, which applies to all subsidiaries regardless of the stake and to suppliers, with a cut-off date for compliance of 31 December 2015.<sup>16</sup> PZ Cussons has a 'palm oil promise' as of 2014. It aims to only source from independently verified, NDPE-compliant producers traceable back to individual mills by end of 2020, a goal that has been delayed in past years because of traceability issues in Nigeria.<sup>17</sup>

# **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?**

Training processes with local communities, documentation and dissemination through the media, coordinating Community Organising (building alliances with neighbouring communities, building alliances among groupings in the community such as women, youth, the elderly), Community Forest Watch, Skills sharing/community exchanges between impacted communities to build united solidarity to expose companies' activities. Communities are building resistance through: Protest, petitioning, naming and shaming, Mapping of land concessions to track forest losses using dedicated gadgets and social media platforms and Litigation (pursuit of justice through courts and other mediation platforms).

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<sup>14</sup> <https://www.wilmar-international.com/sustainability/certification/rspo-certification>

<sup>15</sup> <https://www.rspo.org/publications/download/d5fc4dc08bba626>

<sup>16</sup> [https://www.wilmar-international.com/docs/default-source/default-document-library/sustainability/policies/wilmarn-dpe-policy--2019.pdf?sfvrsn=7870af13\\_2](https://www.wilmar-international.com/docs/default-source/default-document-library/sustainability/policies/wilmarn-dpe-policy--2019.pdf?sfvrsn=7870af13_2)

<sup>17</sup> <https://www.pzcussons.com/good-4-business/the-palm-oil-promise/>

## **2. Has a case been presented before a local, national or international court?**

Yes. Refer to the case between Deacon Arikpo Ivere and Biase Plantation Limited above. Difficulties include the high cost of litigation – legal fees, evidence gathering costs, travel costs from the community to the court, as well as standing against a multinational perceived to have the backing of the State Government.

The Plaintiff – Deacon Arikpo provided documentation that shows he won at the High Court but the company, Biase Plantation Ltd, has appealed the lower court's judgment to the Court of Appeal. The case is on appeal currently.

## **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?**

Government policies, especially the Land Use Act of 1978, is more in the interests of Wilmar as it empowered the company and government to undertake landgrabbing without the consent of the members of the host communities. The company's relationship with the ministry, departments and agencies of local /state and national government promotes private interests over public good as cases brought to these government agencies by members of host communities against PZ Wilmar are either abandoned or ignored.

## **4. 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

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

Yes, there is a case instituted against journalist Mr Vitalis Ugo over an online publication where he drew public attention to the deaths of several pregnant women through the activities of Wilmar. At the time this report was filed the case had not been heard, which shows the petition was just a threat by PZ Wilmar to silence or oppress the information regarding the publication. The company is prominently known for intimidating the leadership of community organisations and blocking all evidence any group or individual may have against them.

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

Lack of the people's access to human rights lawyers who support cases on a pro-bono basis, lack of finance to match the financial strength of PZ Wilmar, high level of corruption in Government agencies, and threats to traditional rulers who are afraid of losing their certificates.

# **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?**

African Charter on Human and Peoples' Rights; Protocol to the African Charter on Rights of Women in Africa; the United Nations Universal Declaration of Human Rights, UN Declaration on the Rights of Indigenous Peoples; National constitutions and legislation, OECD guidelines, UN Business and Human Rights.

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

The Privatization Council of Cross River State from whom Wilmar bought estates in 2011.

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

The entry in 2011 was mainly guided by a new gulf of privatisation efforts of the largely defunct state run plantation areas from Nigerian authorities because of the need for internally generated revenue, such as taxes and land rent revenues.<sup>18</sup>

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

Not applicable.

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

No information available.

**6. In the place the company is being denounced, have the national and local governments favoured the company by making changes to legislation? Are these changes related to the impunity with which the company acts? What has the position of the national government in the conflict been?**

ERA and the affected communities are not sure of the position of the government in this regard

**7. 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?**

See above: the scope of their sustainability policies includes PZ Wilmar's operations. The wish for expansion of production in Nigeria is triggered by increased demand for palm oil globally. Wilmar's departure from the HCSA was widely perceived as a failure to implement its no deforestation policies.<sup>19</sup>

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

Top creditors for Wilmar from 2014–2019 include banks and other financial institutions from Singapore (Overseas Chinese Banking Corporation) the Netherlands (ABN Amro, Rabobank and ING), the US (JP Morgan Chase), Japan (Mitsubishi UFC Financial, Mizuho Financial, SMBC Group), Australia (Westpac, Commonwealth Bank of Australia), UK (HSBC) and France (BNP Paribas and Crédit Agricole) among others.<sup>20</sup>

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

Consultancies such as Earthworm that provide technical support to execute NDPE policies. PZ Cussons is a member and is supported by Earthworm.

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

Yes, many of the creditors and investors listed above have sustainability policies that claim to avoid financing of deforestation and rights violations. Furthermore the financial sector has several international standards or 'guidelines', such as those of the IFC and OECD and voluntary standards set up by the sector itself, that involve human rights and environmental standards. However, these standards are not enforceable.

<sup>18</sup> <https://reader.elsevier.com/reader/sd/pii/S0264837713002238?token=885F90A13F80C46B1F97C52D2E25E68A14B8217D412F277F8BD34B20DEA3A9FA427A5FC75DD5E8CD60790AD4CF3E01DB>

<sup>19</sup> <https://www.greenpeace.org/southeastasia/press/3746/wilmar-internationals-exit-from-the-high-carbon-stock-approach-marks-its-failure-to-end-deforestation/>

<sup>20</sup> Forests & Finance database, updated in March 2019 by Profundo, data without segment adjusters and derived from Bloomberg, Thomson Reuters, Trade Finance Analytics and corporate information such as annual reports.

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).

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