



SOMO

Burning Rubber

**Buchanan Renewables' Impact
on Sustainable Development in Liberia**



SOMO & Green Advocates

November 2011

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SOMO is an independent, non-profit research and network organisation working on social, ecological and economic issues related to sustainable development. Since 1973, the organisation investigates multinational corporations and the consequences of their activities for people and the environment around the world.

Green Advocates International is a nonprofit, public interest law, environmental and human rights organization, working to advance a wide range of issues through legal aid, consultation and support for the victims of environmental and human rights violations; the development of context-specific programs to empower poor rural, urban slum and squatter communities to participate in decision-making processes in the management of Liberia's natural resources and its economy and the public's right to know; the drafting and enactment of appropriate policies and legislations on good governance; the promotion of transparency and accountability in governmental activities; and assistance in the strengthening and enforcement of existing environmental and human rights standards.

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Colophon

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Buchanan Renewables Impact on Sustainable Development in Liberia

November 2011

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Contents

Executive Summary	5
1. Introduction	8
1.1 Background of the study	8
1.2 Aim of the research.....	10
1.3 Methodology	10
1.4 Scope of the report	12
1.5 Report outline	13
2. Company Information	14
2.1 History.....	14
2.2 Activities.....	14
2.3 Corporate presentation	15
2.4 Corporate structure	17
2.5 Owners and financiers	18
2.5.1 <i>John McCall MacBain</i>	18
2.5.2 <i>Vattenfall and Swedfund</i>	19
2.5.3 <i>Overseas Private Investment Corporation (OPIC)</i>	19
2.5.4 <i>Multilateral Investment Guarantee Agency (MIGA)</i>	20
2.6 Clients	20
3. Issue 1: Regulatory framework for Buchanan Renewables' Operations	21
3.1 Forest Development Authority and Ministry of Agriculture permits	21
3.2 Environmental permits	24
3.3 Concession agreements	27
4. Issue 2: The Impact on Smallholder Farmers	29
4.1 Background.....	29
4.2 Specific issues	31
4.3 BRE Affected Farmers Union.....	36
4.4 Follow-up after the PRA and BR's response.....	36
5. Issue 3: The Impact on Charcoal Production	38
5.1 How BR has impacted the charcoal industry	38
5.2 Recent price developments	40
5.3 Consequences of the instability of the charcoal market.....	42
6. Issue 4: Tax Avoidance	43
6.1 How BR's corporate structure could be used for tax avoidance.....	45
6.2 The effects of tax avoidance on sustainable development.....	48
6.3 Tax avoidance by Buchanan Renewables?	49
7. Conclusions and recommendations	50
7.1 Summary of findings	50
7.2 Contribution to the sustainable development of Liberia	51
7.3 Adherence to national regulations and international standards	53
7.4 Recommendations	55
Appendix 1: Farmers at the PRA and the status of their farms	57
Endnotes	59

Glossary

BR	Buchanan Renewables
BRE	Buchanan Renewable Energy – the predecessor of Buchanan Renewables. Many Liberians still refer to the company using this abbreviation.
ECOWAS	Economic Community of West African States
EMP	Environmental Management Plan
EPA	Environmental Protection Agency
ESIA	Environmental and Social Impact Assessment
FDA	Forestry Development Authority
GA	Green Advocates
LAC	Liberian Agriculture Company
MIGA	Multilateral Investment Guarantee Agency
MoA	Ministry of Agriculture
NACUL	National Charcoal Union of Liberia
NIC	National Investment Committee
OPIC	Overseas Private Investment Corporation
SOMO	Center for Research on Multinational Corporations
UNMIL	United Nations Mission In Liberia



Executive Summary

Buchanan Renewables (BR) established its operations in Liberia in 2006, a time when the country was just recovering from its devastating civil war, and when a new energy strategy based on the use of biomass as an important energy source had been developed in Europe. While the company actively promoted its business model of producing biomass from old unproductive rubber trees as a sustainable one, it also received criticism due to the fact that smallholder rubber farmers were not benefitting as much as they had expected. This research aims to assess how a number of stakeholders have been affected by the practices of BR, and to what extent these practices reflect the socially and environmentally sustainable public image of the company. The report evaluates four different issues related to BR's activities: 1) The regulatory framework for BR's operations in Liberia; 2) the impacts on smallholder rubber farmers; 3) the impacts on the Liberian charcoal market; and 4) tax avoidance through its corporate structure.

BR's activities include the production of biomass from old rubber trees, which it sources from both smallholder rubber farmers and from large plantations, and the construction of a biomass-fuelled power plant to supply the capital of Monrovia. The company agrees to clear the old trees from the smallholder farms, then replant new seedlings and provide maintenance for the first seven years. The power plant still has not been built, which means that all of the biomass that the company produces is currently being exported, mainly to Europe. The combination of renewable energy production and the rejuvenation of Liberia's rubber farms form the basis of BR's image as a socially and environmentally responsible company. Based on this image, BR has been able to secure loans and guarantees from development financing institutions, while Swedish utility Vattenfall has acquired a minority share of BR. The ultimate parent company of the group is a mailbox company in the Netherlands.

Regulatory framework

Three main issues regarding the regulatory framework for BR's operations were identified: 1) Lack of clarity regarding the classification of BR's operations, required permits from the Ministry of Agriculture (MoA) and the Forestry Development Authority (FDA) and the extent to which BR's operations are monitored; 2) Irregularities regarding the certificates issued by the Environmental Protection Agency (EPA); and 3) Delays on the concession agreement with the Government of Liberia regarding the construction of the power plant.

Smallholder farmers

A number of the smallholder rubber farmers who had signed contracts with BR now live in poverty. This is, in part, due to the fact that payments have been lower than expected or agreed upon, but also the destruction of the farms, preventing further

cultivation and a lack of maintenance of those farms after the young rubber trees were planted. The affected farmers have formed a union and have voiced their demands to the company. BR, in response, has organized two meetings with the smallholder farmers, which was the first time these farmers met with the company in two years. A number of the farmers' demands are currently being addressed by the company, while a number of other demands are yet to be properly addressed.

Charcoal market

BR's removal of old rubber trees from the Firestone plantation has increased the hardships among the local charcoal producers and charcoal traders. A portion of the old rubber trees that are traditionally used to produce charcoal are now being used by BR to produce biomass. The relationship between the charcoal producers and Firestone has deteriorated and gathering the needed rubber wood has become increasingly difficult. While BR has an agreement with the National Charcoal Union of Liberia (NACUL), the sole charcoal industry umbrella organization, to assist charcoal producers in overcoming these challenges, the company has not taken any concrete measures to live up to this agreement. The prices of charcoal have also risen significantly during the period since BR arrived in Liberia, due to a variety of factors. This not only has an effect on the livelihoods of charcoal producers and traders, but also on Monrovia's general population, which depends on charcoal for cooking and heating. This has led to a stressful situation among charcoal producers, traders and users, in turn increasing the risk of violent conflict.

Tax avoidance

BR's corporate structure is designed in a way that is highly suited for tax avoidance. While there is no hard evidence that BR has actively reduced its tax burden in Liberia to date, the characteristics of its holding companies in the Netherlands indicates that tax concerns are a major reason for its complex corporate structure. The company has a holding structure in The Netherlands without economic substance, the Dutch holding is a group financing company, the company uses an 'orphan structure' where a foundation owns all of the holding company's shares, and the foundation's ownership leads back to entities in Luxembourg, a country known for its tax secrecy and low corporate tax regime.

Conclusions

This report has identified a number of issues that contradict BR's public image of a company that contributes to Liberia's sustainable development. Firstly, while BR has begun to address a number of the complaints by smallholder farmers, a number of other demands have yet to be addressed. Although the experiences of these farmers may not reflect the experiences of all the farmers that BR is involved with, the authors conclude that it does illustrate a need for more effective monitoring than is currently undertaken by the relevant government agencies.



Secondly, for many Liberians the energy situation has worsened rather than improved over the last years. The biomass-fuelled power plant that is supposed to supply much needed electricity to Monrovia has experienced significant delays as a result of protracted negotiations between BR and the Liberian government. Meanwhile, Monrovia remains dependent on charcoal as the primary fuel they use for both cooking and heating, a fuel source that is becoming increasingly expensive. The authors conclude that BR has a clear responsibility to help mitigate these negative effects. Finally, although BR signed a supply agreement with Vattenfall, which will lead to increased production, it does not automatically mean that with increased profits BR will end up paying appropriately more in income taxes, as the risk exists that the company uses its corporate structure to channel funds out of Liberia and reduce its overall tax burden.

1. Introduction

1.1 Background of the study

Liberia

The country of Liberia can be described as a post-conflict zone. It is still recovering from the long and devastating Second Liberian Civil War, which officially ended in 2003 with the resignation and subsequent arrest of President Charles Taylor. The country consequently became more stable with the deployment of peacekeeping forces supplied by the Economic Community of West African States (ECOWAS) and the United Nations. The United Nations Mission In Liberia (UNMIL) consisted of more than 11,000 military personnel, and remains deployed in the country to this very day. In 2005, Ellen Sirleaf-Johnson was elected president in the country's second democratic elections since the first civil war began in 1989.

Besides the thousands of people who lost their lives and the countless atrocities, the civil war also destroyed most of the nation's infrastructure, particularly in and around Monrovia, including roads, government buildings, electricity and water supplies and most of the rest of the nation's infrastructure. While reconstruction has taken place such as the paving of some roads, much of the infrastructure is still lacking to this day. For example, only 350 million kW/h of electricity was produced in the entire country in 2007, leaving Liberia ranked 164th in the world regarding the production of electricity.¹ The collapse of the country's energy sector as a consequence of years of civil war has made the country over-dependent on charcoal as the main source of energy for daily activities such as cooking and heating. Liberia continues to strive to revamp its energy sector in an affordable, sustainable and environmentally friendly way.

The civil war also had a significant effect on rural areas, where many farmers fled the violence and abandoned their farms. Many crops, such as rubber and cocoa, were destroyed, and farmers have since struggled to re-establish production levels at their farms as a result of dramatic shortages of funds, seeds and supplies.

Europe

As Liberia slowly recovered from its civil war, European discussions centered around making the electric power sector greener, in an effort to reduce CO₂ emissions and mitigate the effects that the generation of electricity has on climate change. In 2007, European political leaders agreed to the "Europe 2020" agenda, which included the target for 2020 whereby 20% of Europe's electricity would be generated using renewable sources. Not only would this help reduce CO₂ emissions, but it would also create new initiatives for a green economy that could help it recover from the current economic crisis.²

It was clear early on that biomass would play a large role in the “greening” of Europe’s electricity supply. Many of the large, mostly privatized, utility companies invested in new biomass capacity, both as stand-alone power plants and as co-firing capacity for new coal plants. The fuel for these plants would be sourced both from wood residue, starch and waste products in Europe and imported from other regions, such as palm oil from Indonesia and woodchips from Liberia.

Buchanan Renewables

According to an article in *Time Magazine*, Buchanan Renewable Energies (the company later changed its name to “Buchanan Renewables”) was established after its founder Joel Strickland went to Liberia and witnessed the many rubber farms that had been abandoned during the civil war.³ Strickland was also aware of the growing interest in biomass as a renewable energy source in Europe (and in the US), and saw a business opportunity.

The same article also described the company’s strategy: construction and maintenance of roads and other infrastructure, construction of a 35-MW, biomass-fuelled power plant to provide electricity for Monrovia; the purchase of old non-producing rubber trees from smallholder farmers, while helping the farmers through clearing the land, re-planting young rubber trees, and providing them with cash crops. The company’s stated aim was to contribute to the sustainable development in Liberia as a whole, and to its smallholder farmers in particular.

Criticism

Several signs, however, indicated that the situation was not as positive as the company made it out to be in its corporate communications. In October 2010, a critical article published in the German *The African Times* pointed out that the farmers who had signed contracts with Buchanan Renewables were not satisfied.⁴ The money they had initially received for their old trees was long gone, and the company did not provide the cash crops, such as beans, it had promised.

Green Advocates (GA) began an investigation into the sustainability of Buchanan Renewables’ operations in 2010, initiating a desk study and arranging an initial meeting with the smallholder farmers who had signed contracts with Buchanan Renewables. Their initial findings included:

- ❑ Uncertainty regarding the legal status of the company’s operations in Liberia,
- ❑ Unresolved issues related to the clearing efforts on the farms, payments for old trees and the replanting of new trees,
- ❑ The negative effects that the company’s activities had on the charcoal market, including increased hardships for charcoal producers and traders.

1.2 Aim of the research

Given this context, this research report aims to assess how various stakeholders have been affected by BR' practices, and to what extent these practices reflect the socially and environmentally sustainable public image of the company.

To assess these issues, the researchers investigated four key issues:

1. The basis of Buchanan Renewables' operations in Liberia.
2. The issues related to Buchanan Renewables' engagement with smallholder farmers.
3. The effects of BR's activities on the local charcoal market.
4. The possibility of tax avoidance via its elaborate Dutch corporate structure.

1.3 Methodology

The methodology of this research includes both desk study and field study techniques. Additionally, the methodology included a company review procedure, whereby BR could indicate any factual errors or misunderstandings in the initial findings, and provide the researchers with their response to the issues raised and provide additional materials.

Desk study

The following secondary sources were included in the desk study:

1. All of the documents available on BR's activities, including an analysis of the information about the Concession Agreement signed between the company and the Government of Liberia, the Environmental and Social Impact Assessment (ESIA), the Environmental Management Plan (EMP), the Memoranda of Understanding (MOU) that BR entered into with smallholder farmers and charcoal producers as well as evaluation documents by financiers and investors.
2. Relevant Liberian legislation, international guidelines and financier standards.
3. Meetings with oversight ministries and agencies in Liberia that dealt with their role and involvement in BR's activities, including authorization of its activities. The available reports from these ministries and agencies were also assessed.
4. All of Buchanan Renewables' available annual accounts and registry documents and those of its subsidiaries in Liberia, the Netherlands and elsewhere. All relevant documents concerning the company's owners, financiers and customers.
5. All relevant items retrieved from news databases as well as those from SOMO's own internal database of NGO and trade union reports.



Field study

In an effort to obtain more information on the effects of BR's operations on smallholder rubber farmers, SOMO and Green Advocates jointly organized a one-day Participatory Rural Appraisal (PRA) workshop. This PRA formed the basis of the field study for the research described in chapter 4. The workshop was held on 15 June 2011 in Big Joe's Town, near Buchanan, the capital of Grand Bassa County. The meeting was a follow-up to an earlier PRA workshop held on 14 July 2010 with the same farmers at the same venue. The summary of the findings of the first PRA were presented to a visiting delegation from Vattenfall and BR.

Distinct from traditional development workshops in Liberia, the PRA aimed to allow for an understanding by locals of BR's obligations and an uninterrupted flow of information from community members themselves concerning the situation on the ground. The PRA was held using questionnaires, presentations and discussions.

a. Facilitation

The PRA workshop was divided into two sessions: (1) a working group session with related presentations and (2) a community action plan session. One facilitator led each session. This strategy was adapted to the participants' needs, using a minimal presentation and allowing the participants to present a maximum amount of information. The facilitator promoted active community participation throughout the workshop and guided the process without trying to influence the community's responses.

b. Participants

The workshop participants consisted mainly of farmers affected by BR's activities. There were a total of 26 participants, representing nine farms (see annex 1) out of a total of 43 smallholder farms that BR indicated it is engaging with.⁵ One of the affected farmers, Gabriel Brown, helped organize the workshop by extending invitations to the affected farmers and then following up to ensure their participation.

Both the Commissioner and Superintendent of the Township of Harlandville also attended. The Commissioner handed over the "Gavel of Authority" at the beginning of the workshop, as a sign that he approved of holding the meeting at his headquarters.

c. Transect Walks

The transect walk represents the practical aspect of the PRA workshops as it offers an opportunity to verify the abuses and issues brought up by various community members. At the end of the workshop, the Project Team (comprised of staff members from Green Advocates and SOMO) conducted a guided tour of communities with

smallholder rubber farmers to assess the situation on the ground and confirm issues that arose during the workshop.



Several of the PRA workshop participants in Buchanan, Grand Bassa County.

Information regarding the effects of BR's activities on the livelihoods of charcoal producers and traders and the effects on the charcoal market as a whole have primarily been gathered through contacts and interviews with the National Charcoal Union of Liberia (NACUL) as well as interviews with and field visits to various charcoal producers. A formal consultation meeting was organized in Freeman Reserve, Division 20 on October 2, 2010. Over 40 participants, including community leaders and charcoal producers, were in attendance. The participants formed various breakout groups to calculate the costs of producing charcoal before and after BR's arrival.

1.4 Scope of the report

The aim of this report is to critically analyze several of the company's activities. The findings and conclusions of this report are specific to these activities, and do not necessarily characterize its other activities. The report's conclusions and recommendations relate only to the particular issues described in the following chapters.

For example, the information in chapter 4 on the smallholder farmers is based on a Participatory Rural Appraisal featuring nine farms that BR is involved with. The issues described in this chapter are the specific points raised by these farmers, while the conclusions and recommendations based on this information address these issues. They do not necessarily reflect the experiences of farmers who were not included in this research.



1.5 Report outline

The remainder of this report is outlined as followed. Chapter 2 provides an overview of Buchanan Renewables, including information about its structure, activities, owners, clients and financiers. Subsequent chapters cover issues related to the company's basis of operations in Liberia (chapter 3), the issue of smallholder farmers (chapter 4), the issue of the charcoal market (chapter 5), and the issue of tax avoidance (chapter 6). The authors conclude with chapter 7, which analyzes the information presented in the preceding chapters from the perspective of sustainable development taking into consideration Liberia's legal system, international standards and guidelines. Chapter 7 also makes a number of recommendations based on the report's findings.

2. Company Information

This chapter provides an overview of the company, including information about its history, activities, presentation, structure, owners, financiers, and clients.

2.1 History

Buchanan Renewable Energy (BRE) was established in 2006, after its founder Joel Strickland had travelled to Liberia in search of investment opportunities.⁶ According to an article in *Time Magazine*, “Strickland was struck by the number of moribund rubber plantations. Untended during the war or destroyed by marauding militias, hundreds of thousands of acres of trees were standing idle.”⁷ Strickland founded the company as part of the Canadian hedge fund Lawrence Asset Management, where he was a partner. Less than two years later, the hedge fund sold the company for a handsome profit of \$2.5 million.⁸

The company was bought by the investor John McCall MacBain in 2008, after which the company changed its name to Buchanan Renewables (BR). In the years thereafter, the company signed a number of contracts with smallholder rubber farmers as well as the large rubber plantations, produced woodchips for export to Europe, secured loans for the construction of biomass-fuelled power plants, and repaired roads and other infrastructure.

2.2 Activities

BR is currently involved in renewable energy generation, biomass production, and infrastructure development operations. The company’s main line of business is the production, export and sale of woodchips from old rubber trees. It has also announced its plans to build a biomass-fuelled power plant in Liberia. BR currently employs 600 Liberians and 40 non-Liberians.⁹ In 2009, it exported 45,000 metric tons of woodchips; in 2010 it had contracts to ship 90,000 metric tons.¹⁰

BR’s activities can be divided into three business areas:

1. **BR Fuel** division is responsible for woodchip production and export. The woodchips are produced by converting old non-producing rubber trees into small chips. According to its website, the company has the capacity to produce up to 400,000 tons of woodchips per year, which are used for electricity generation as well as for the manufacturing of particle board.¹¹ BR has signed a number of Memoranda of Understanding (MOU) with smallholder farmers in which it agrees to cut down old rubber trees,



compensate the farmers, replant new trees, and provide maintenance for these farms for a number of years. According to one news article, BR buys the tree trunks from local smallholder farmers for US\$2.00 a ton, replants new trees on the land on which the trees once grew, while farmers get the roots and smaller branches to burn for charcoal or sell as firewood.¹² BR also works with large rubber estates, including those owned by Firestone and the Liberian Agricultural Company. Most of the exports go via the port city of Buchanan, where the company has its processing and storage facilities.¹³

2. **BR Power** will construct a 35MW biomass power plant, fuelled by the woodchips produced by BR Fuel. According to BR's website, the power plant will be constructed near Kakata, and will eventually provide energy to Monrovia.¹⁴ In addition to the power plant, the company is also developing a small biomass unit of 0.5 MW that can be deployed in rural towns and villages and will supply electricity to the villagers on a microgrid.¹⁵ It should be noted that the construction of the power plant has not yet started, despite previous announcements that it would be operational by the end of 2010.¹⁶
3. **BR Technical Services** develops and maintains roads, bridges and ports on and near the production sites to support the company's operations. BR owns different types of machinery to execute these infrastructural tasks.

Moreover, the company reports that it has recently established the Farm Builders initiative, in collaboration with the Ministry of Agriculture and the Rubber Planters Association of Liberia (among others) to assist smallholder farmers in the rejuvenation process of their farms.¹⁷

2.3 Corporate presentation

BR promotes itself as an environmentally and socially sustainable company. In its corporate communications, the company is keen to point out the benefits of its operations for the development of Liberia as a whole, the environment and the position of smallholder farmers. In one of its corporate presentations, the company states that its activities involving the rejuvenation of the rubber farms and development of a biomass power plant leads to "National reconstruction and redevelopment."¹⁸

According to BR's publicity campaigns both inside and outside of Liberia, small-scale rubber producers are seen as the primary beneficiaries of its operations. The company website states:

Our plantation rejuvenation program is aimed at helping independent rubber farms harvest their non-producing rubber trees and replanting their

plantations. Our Technical Services group is focused on helping rebuild Liberia's transportation infrastructure, including by rehabilitating roads, bridges and ports. Part of the profits of our efforts is redirected into Liberia's social programs in the form of grants.¹⁹

BR's website also links to a number of news reports, which stress the benefits that the company brings to Liberian stakeholders, such as the smallholder rubber farmers:

Under the deals, BRE....removes old rubber trees and pays the farmers for them, smooths the land, replants it with new saplings grown at a BRE nursery and even plants cash crops like beans and peanuts between the rows. These crops give the farmer an income for the five to seven years until the rubber trees start producing latex. The rubber farmers have to do or pay nothing.²⁰

The company's promises can also be inferred from the many billboards that line the streets of Monrovia and Buchanan, promising to "Light up Liberia". In documents found on its website, BR also uses slogans such as "Liberia, the world's first sustainable biomass driven economy" and "Let there be light in Africa."²¹



One of many signs advertising the presence of Buchanan Renewables in Liberia

In email correspondence with the authors, BR did acknowledge that it "has not and will not always get it right," and that its business model does face a number of challenges but that the company is striving to improve its practices. It believes it is contributing to the sustainable development of Liberia in a number of ways, including by providing employment and training for 750 Liberians, rehabilitating roads, improving port facilities and contributing to Liberia's general revenue. BR has also indicated that it plans to publish a Corporate Social Responsibility report in early 2012.



2.4 Corporate structure

While the company's activities seem straightforward, BR's corporate structure is much more complex. The company makes use of a Dutch holding structure, and its ultimate parent is Buchanan Renewables B.V., which is registered in Amsterdam. Buchanan Renewables B.V. controls the company's three business divisions in Liberia and functions as the internal financing body. All three of the business divisions have their respective Dutch B.V. structures in the Netherlands. An illustration of BR's corporate structure can be found in chapter 6.

The company neither engages in any physical activities nor has any employees in the Netherlands because all of its Dutch-registered company divisions are so-called shell or mailbox companies (companies with no business activities or employees at a specific location). The only entity in the Dutch company structure that does list employees is Buchanan Management Services B.V., which has 3 employees.²²

Table 1: Balance sheet for Buchanan Renewables B.V. (in thousand USD)²³

Buchanan Renewables B.V.	2009	2008
Shareholder's capital	34,003	34,003
Earnings	- 6,450 - 11,724 (retained earnings 2008)	- 11,764 40 (retained earnings 2007)
Shareholder's equity	15,828	22,279
Total assets	66,656	53,084

Trust services, such as a postal address, administrative services, and tax return filing for Buchanan Renewables B.V. are provided by TMF Management B.V. The trust office serves as the company's formal board, as a consequence of Dutch law, which requires a company located in the Netherlands to make its decisions in the Netherlands. All of BR's corporate entities list TMF's offices as their formal address, except one; Miamar B.V. lists a different trust office address.

In 2008, the company's registered name in the Netherlands changed twice, from Hocla Projectontwikkeling I B.V. to Buchanan Renewable Energies B.V. and finally to its current name, Buchanan Renewables B.V. Meanwhile, its corporate seat moved from Bavel (Breda, the Netherlands) to Amsterdam.²⁴ It appears that the company used a so-called *plank B.V.*, meaning that it bought an existing empty B.V. from a third party.

Chapter 6 will describe the corporate structure and the indications that this structure was designed to minimize the company's tax burden.

2.5 Owners and financiers

BR's ownership structure has undergone a number of changes over the past number of years. As mentioned above, the company was established by the Canadian hedge fund Lawrence Asset Management and sold to John McCall MacBain in 2008. The complexity of the corporate structure also extends to its ownership structure, as the Dutch holding companies are owned by Luxembourg-based subsidiaries of Pamoja Capital in the investment arm of the McCall MacBain Foundation in Switzerland. In 2010, Swedish utility Vattenfall and the Swedish development bank Swedfund acquired a minority stake in BR Fuel, the company's subsidiary involved in woodchip production.

A number of the company's investments are financed through the Overseas Private Investment Corporation (OPIC), the United States government's development financing agency. Moreover, Vattenfall's investments are insured through the Multilateral Investment Guarantee Agency (MIGA), another development-oriented financial institution.

2.5.1 John McCall MacBain

John McCall MacBain is a Canadian investor who served as the president of one of the largest classified advertisement agencies in Canada. With the money he received when he sold the company, McCall MacBain established the McCall MacBain Foundation. This foundation invests in a wide range of environmental, health and educational projects in Liberia, Canada and Europe.²⁵ Besides biomass production, the foundation has also issued grants to the educational projects "Right to play" and "Alfalit Adult Literacy Program" and the public healthcare project "Medecins du Monde" in Liberia.²⁶

Through Pamoja Capital, the foundation's investment arm, McCall MacBain is involved in companies offering international e-learning services, a sustainable tea brand and private equity firms in Africa among others.²⁷ John McCall MacBain also controls his ownership share of BR through Pamoja Capital.

Pamoja Capital's ownership structure is complex. Looking at the formal ownership structure of Buchanan Renewables B.V., the first entity we notice is the Stichting Co-Invest Pamoja Liberia. This entity is based in Amsterdam with the same trust office address as Buchanan Renewables B.V.²⁸ The Stichting Co-Invest Pamoja Liberia board consists of three employees of Pamoja Capital.²⁹

In turn, Miamar B.V. owns 94% of the Stichting Co-Invest Pamoja Liberia. Miamar B.V. is yet another shell company whose board members include a trust office and a Dutch lawyer. Further up the ownership chain, Miamar B.V. is owned by the Luxembourg-based Pamoja Capital S.á.r.l., which is, in turn, owned by Pamoja Business S.á.r.l.³⁰



Interestingly, the Luxembourg ownership structure has undergone a number of changes recently. Pamoja Capital B.V. used to be owned by a company named Persaid Company Limited, based in the British Virgin Islands. In April 2011, ownership of Pamoja Capital was transferred from the British Virgin islands-based Persaid Company to the Luxembourg-based Pamoja Business S.á.r.l., another shell company, which was purchased by John McCall MacBain in March 2011.

As further explained in Chapter 6, this complex ownership structure through Luxemburg is another indication of possible tax avoidance by BR and its owners.

2.5.2 Vattenfall and Swedfund

In June of 2010, Vattenfall acquired a 30% share in Buchanan Renewables Fuel (the company's woodchip production division) for €30 million, in an effort to secure a steady supply of biomass for the company in the future. Vattenfall secured the transaction with the help of Swedfund, the Swedish government's development finance institution, which provided €10 million to help broker the deal. Both Vattenfall and Swedfund are owned by the Swedish government.³¹ Vattenfall currently owns more than 40 power plants that are totally or in part fuelled by biomass.³² Vattenfall is expanding its biomass capacities into Germany and the Netherlands, and its acquisition of BR Fuel shares seems to complement this strategy.

The current capacity of Vattenfall's biomass-fueled power plants in Europe is 366 MW, which is 1% of the company's total capacity. In 2009, the company generated a total of 1.4 TWh of electricity from biomass, which was also 1% of the total electricity it generated.³³ Vattenfall uses 3 million tons of biomass annually, which is comprised of the following sources: 60% household and industrial waste, 30% forest industry by-products, and 10% agricultural residues. The company's goal is to burn 4 million tons of biomass by 2014.³⁴

2.5.3 Overseas Private Investment Corporation (OPIC)

In 2009, BR received funding totaling US\$15 million from the Overseas Private Investment Corporation (OPIC) for its woodchip production and US\$112 million for its biomass power plant near Monrovia.³⁵ According to OPIC documentation, the total costs for the woodchip production activities and the power plant is US\$20 million and US\$149 million, respectively. 75% of these costs (the maximum percentage allowed by this organization) is covered by the loan.³⁶ Jim Steele, BR's CEO and Christopher Jorgensen, Managing Director of Pamoja Capital were the US sponsors for both loans. The US\$149 million OPIC loan has a 24-year term plus a 2.5-year grace period. Table 2 shows the total costs for the two projects and the 75% OPIC loans

Table 2: Total project costs vs. OPIC loan for BR in 2009 (US\$ million)

Project	Project costs	OPIC loan	%
BR Fuel – Woodchip production	20	15	75%
BR Power – Power plant	149	112	75%

Source: OPIC³⁷

In March 2011, OPIC approved another loan for BR Fuel for its wood harvesting and biomass production operations, this time totaling US\$90 million. The loan was approved by the OPIC Board of Directors but has yet to be paid out.³⁸

2.5.4 Multilateral Investment Guarantee Agency (MIGA)

In December 2010, Vattenfall received a US\$142 million guarantee from the World Bank's Multilateral Investment Guarantee Agency (MIGA) to cover its investments in Buchanan Renewables Fuel. The guarantee serves as Vattenfall's risk insurance to cover risks such as expropriation, war and civil disturbances for a period of 15 years.³⁹

MIGA's annual interest rate for the guarantee is somewhere between 0.45% and 1.75% of the insured amount.⁴⁰ Vattenfall, in effect, pays between US\$0.65 million and US\$2.5 million annually for this insurance. Figured over the total period of 15 years it comes out to a total of between US\$9.6 million and US\$37.3 million.

The impact that BR's activities have on OPIC and MIGA's social and environmental standards will be discussed in chapter 7.

2.6 Clients

BR's website lists its main clients as electric utilities that burn woodchips in biomass plants or for co-firing in their coal-fired plants. BR was already selling woodchips to Vattenfall for its biomass plants before Vattenfall acquired its current share of BR Fuel. In April 2010, the *Financial Times* reported that Vattenfall and BR had signed a supply agreement for BR to deliver 1 million tons of woodchips, for US\$50 million.⁴¹ BR's other client with a long-term supply contract is BioWood Norway, a company that produces wood pellets for dedicated biomass and biomass co-firing power plants.⁴² BioWood Norway is owned by the Norwegian utility Hafslund.⁴³ BR also supplies woodchips to other clients in Italy, Sweden, Poland and Germany.⁴⁴

Moreover, the company has also signed contracts with the government of Liberia to supply woodchips to its own proposed 34-MW power plant, which is will eventually supply energy to Monrovia (see chapter 3).

BR's other clients include European and Southeast Asian particle board and medium-density fiberboard (MDF) producers. BR is currently also negotiating with various wood pellet manufacturers and pulp and paper customers.⁴⁵



3. Issue 1: Regulatory framework for Buchanan Renewables' Operations

Green Advocates' initial investigations unearthed a number of irregularities regarding the regulatory framework for BR's operations in Liberia. These were further explored via a series of meetings with government officials and a number of formal requests for copies of documents. BR also explained their position in a response to the draft version of this report.⁴⁶

Three major issues regarding the regulatory framework for BR's operations were identified;

1. A lack of clarity regarding the classification of BR's operations, the required permits from the Ministry of Agriculture (MoA) and the Forestry Development Authority (FDA) and the extent to which BR's operations are monitored
2. Irregularities with the certificates issued by the Environmental Protection Agency (EPA), and
3. Delays regarding the concession agreement with the Government of Liberia that covers the construction of the biomass-fueled power plant.

3.1 Forest Development Authority and Ministry of Agriculture permits

For a number of BR's activities, relevant permits and licenses might be required from the Government of Liberia. SOMO and Green Advocates met with government officials from several agencies, and sent letters requesting information to assess the permits granted to BR and to what extent the operations of the company were being monitored.

Classification of BR's activities

An important factor for determining which permits and licenses are required is the classification of BR's activities, which has created initial confusion because BR's activities could be classified as belonging to the forestry sector or the agricultural sector. According to BR, this confusion has been subsequently clarified by a letter sent by the Ministry of Agriculture, which indicated that rubber plantations are considered agricultural crops and, thus, BR's activities should be classified as agricultural.⁴⁷ This letter further states that the lands on which the rubber trees stand are classified as agricultural land and that the Ministry of Agriculture considers the old rubber trees to be 'agricultural residue'.

Thus, BR has argued that it does not need to apply for any Forestry Development Authority (FDA) licenses or permits to process rubber trees from smallholder farms and large plantations.

Some uncertainty remains, however, because the Liberian Extractive Industry Transparency Initiative (LEITI) does categorize BR as a forestry company in its 2nd Reconciliation Report.⁴⁸ Moreover, the woodchips that BR exports are taxed as wood products by the Forest Development Authority and are verified through a Chain of Custody system that is only required for timber products. Furthermore, rubber wood is a product that requires certification under the FLEGT agreement between Liberia and the EU.⁴⁹ This seems to indicate that, at the point of exportation, woodchips are no longer classified as agricultural residue, but as timber products instead.

Forest Development Authority

The Forestry Reformed Law of 2006 governs the sustainable management of Liberia's forest resources.⁵⁰ Section 2.1 (c) of the law states: "the Prospection, use, transport, processing, Trade, and export of all Forest Resources and Forest Products are subject to this Law." Section 5.1 (a) states that "No Person shall undertake Commercial Use of Forest Resources without permission from the Authority". The forestry Reformed Law recognizes four types of licenses or permits to undertake Commercial Use of Forest Resources: (1) Timber sale Contract (TSCs), (2) Forest Management Contract (FMCs), (3) Forest use Permits (FUPs), and (4) Private Use Permits (PUPs). Section 5.6 states that "no Person shall undertake Commercial Use of Forest Resources on private land without satisfying that a) the Commercial Use is covered under a Forest Use Permit, b) the permission of the Land Owner c) the Person must have a valid Private Use Permit from the Authority and d) the Person must have a valid Annual Harvesting Certificate from the Authority."

These regulations also apply to foreign companies active in Liberia. Under section 6.2 (a), the Liberian Investment Incentives Code states "Any licenses or other permits for conducting specific business activities that are required of domestic business organizations shall be similarly required of foreign investors."⁵¹

During a meeting with FDA officials,⁵² and in letters sent to the department, SOMO and Green Advocates requested copies of any request and/or application by BR for forest use permit(s), private use permit(s), harvesting certificate(s), as well as any authorization granted by the FDA to BR to conduct commercial forest operations including, but not limited to, participation in pre-qualification arrangements to harvest rubber tree timber.

The FDA indicated that it had never issued any permits or licenses to BR. However, the company made payments on its woodchip exports through the Liberia chain of custody system. BR also pointed this out in a response to a draft version of this report.⁵³ The FDA was hopeful that the Ministry of Agriculture, which has jurisdiction



over rubber plantations, had indeed issued the appropriate papers to BR to allow it operate in Liberia. The FDA was informed of BR's shipments of woodchips by BR, but had not accepted the argument that "rubber wood is a forest product" and therefore did not judge BR's operations as falling under their direct supervision.

Ministry of Agriculture

The Ministry of Agriculture is responsible for the development of the agriculture sector and its core areas of responsibility include smallholder and commercial agriculture, plantation crops, fisheries and livestock.⁵⁴ Under Liberia's Poverty Reduction Strategy (PRS), the MoA is committed to supporting "the replanting of smallholder tree crop farms by providing training on best practices (use of improved seed and stock varieties, etc.), improving technical services, and mandating out-grower schemes in agricultural concession agreements."⁵⁵

The researchers requested information from the MoA regarding all permits, licenses, Memorandums of Understanding (MOU), contracts, concessions or authorizations granted to BR, which would allow it to work with smallholder rubber farmers in providing extension services to cut down, compensate, replant, and provide maintenance for their farms over a set period of years.⁵⁶

The MoA's Deputy Minister James Logan indicated that the Ministry had never issued any licenses or permits to BR. BR, in response, noted that it did not need any MoA permits to operate.⁵⁷ This report's authors have attempted to verify BR's position, claiming that it does not need to file any permits with the MoA, but have yet to receive a response.

Neither the FDA nor the MoA seems to have issued any licenses or permits to BR. Meanwhile, BR's position is that none are required. The assessment of the legal accuracy of the company's position is beyond the scope of this report, however, the findings do create some uncertainty regarding the extent to which the impact of BR's operations are monitored by the designated government agencies. This is especially true regarding the impact of their operations on the environment and on the wellbeing of the smallholder farmers, which is a relatively poor and vulnerable group. The conclusion is that the need for effective government monitoring is imperative.

Monitoring

The researchers were also interested in any field monitoring reports that had been gathered by the FDA and the MoA in addition to the granting of permits and licenses. The researchers asked the FDA about BR's guarantee that it only cuts down rubber trees, but also about the impact of its operations on water quality and wildlife, and the extent of the FDA's monitoring activities.

The FDA indicated that its field agents had verified that BR was only harvesting rubber wood and assured the researchers that field agents have been very active in

the areas where BR has been actively removing trees. Rubber wood, according to the FDA, is covered under the Chain of Custody and is monitored by Société Générale de Surveillance (SGS). According to BR, all of its woodchip exports are verified through SGS.

The researchers also expressed interest in field monitoring and other data from the MoA on the number of smallholder farmers who have benefitted from BR's operations, the locations and sizes of these farms, the compensation schemes for farmers, the clearing and replanting agreements arrived at by BR and local farmers, as well as any other inspection or monitoring reports on the status of the selected farms. The MoA did not provide any information on any of these points, and it remains unclear whether the MoA undertakes any monitoring activities with regards to the impacts of BR's activities involving smallholder farmers.

In conclusion, sufficient monitoring seems to be in place to ensure the legality and to enforce the proper taxation of the woodchips prior to their export through the Chain of Custody system. Given the recent history when the illegal export of timber and other products was a very serious problem in Liberia, these are important and valuable developments. However, little to no monitoring seems to be taking place on the effects of BR's operations on smallholder farmers and other stakeholders. Given the issues described in greater detail in the following chapters, there seems to exist a need for effective monitoring.

3.2 Environmental permits

BR does require a certificate from the Environmental Protection Agency (EPA) in order to operate in Liberia, and it has been granted one. However, a number of irregularities were identified in the granting of this certificate.

Environmental Protection Agency

The Environmental Protection and Management Law provides the tools for the protection of the environment, a framework for environmental standards for effective enforcement, sector-specific regulations, and the integration of international environmental legislation that covers sustainable development into a national environmental protection and development framework.⁵⁸ The Environmental Protection Agency Act establishes an autonomous entity that is empowered to ensure that environmental policies and laws are properly implemented, as well as providing for a Policy Council to propose and update environmental policies as needed, and creates an institutional arrangement that supports the Agency in carrying out its functions.⁵⁹

Under the Environmental Protection and Management Law, Part III, Section 6, (1) and (2) require an environment impact assessment license or permit prior to the



commencement of all projects and activities in the Agriculture, Forestry, Energy, and other sectors.

The researchers met with the EPA in June 2011 to express a desire to know whether (1) the agency had indeed issued an Environmental Impact Assessment (EIA) certificate to BR, (2) what the EPA's general conditions were for the issuance of an EIA certificate, (3) whether BR has been complying with these conditions through regular reporting, and (4) whether the EPA monitored these conditions.⁶⁰ BR has explained its positions regarding these issues in a response to the draft version of this report.⁶¹

Issue of the certificate

According to BR, the company holds a valid environmental permit to operate throughout Liberia. It states that it has received a conditional nation-wide environmental permit in December 2008 and was consequently granted a full environmental permit for four of the counties it operates in (Grand Bassa, River Cess, Bong and Nimba). It has also provided the researchers with the environmental permit it received on August 1, 2011, permitting the company to operate in all counties it had specified in its harvesting management plans.

During the meeting in June 2011, the EPA confirmed that it had indeed issued an Environmental Certificate to BR Fuel on 19 August 2009, which allows it to operate in four Liberian counties. However, an irregularity was found as BR had already begun active woodchip operations by signing MOUs with the National Charcoal Union of Liberia and smallholder rubber farmers (see chapters 4 and 5) before it had been granted its environmental certificate. BR, in response, pointed out that its predecessor BRE had commenced the process for an environmental permit in October 2007.⁶² This shows that the company had already begun its operations prior to the actual issuance of its certificate.

During the meeting with the EPA, the researchers also noted that there had been a report of a violation of the Environmental Certificate that involved BR actively harvesting woodchips outside of the designated areas covered by the initial permit, including, for example, the Firestone plantation in the Freeman Reserve in Margibi County and in Bomi County.⁶³ According to BR, its operations at the Firestone plantation fall under Firestone's concession agreement with the Government of Liberia. Attempts to confirm whether BR therefore does not need an environmental certificate to operate at the Firestone plantation remained unsuccessful. BR denies engaging in any active harvesting operations in Bomi County, and reports of BR's harvesting activities in Bomi County could not be verified within the scope of this research.

General conditions

The Environmental Certificate indicates that the EPA issued it on the basis of BR Fuel's Environmental Management Plan (EMP) and its Harvesting Management Plan (HMP).⁶⁴ Furthermore, the EPA also noted that it had received a Generic Environmental Social Impact Assessment (ESIA)⁶⁵ about a week prior to the June 2011 meeting, which was about to be distributed to stakeholders.

One noted irregularity in this process is the fact that the certificate was granted on the basis of management plans (EMP and HMP), rather than a proper environmental and social impact assessment (ESIA). While the Environmental Certificate was issued in August 2009, the ESIA was not provided to the EPA until almost two years later. According to BR, it was at the request of the EPA that the company provided an EMP in February 2008. Again, it was impossible to verify these claims with the EPA prior to completion of this research report.

Secondly, the ESIA framework, which was also submitted to MIGA and is dated October 2009 (but which the EPA had indicated it had only received mid-2011), offers an analysis of the general environmental impact of operations in Liberia as a whole, and do not provide specific details for the operation sites themselves. It could therefore be argued that the ESIA framework document submitted by BR instead of the site-specific Environmental Impact Assessment (EIA) falls short of meeting the core requirements for EIA-related businesses working under the environmental laws of Liberia.

Reporting and monitoring

According to the Environmental Certificate issued by the EPA, BR is obliged to submit quarterly monitoring reports that include the following:⁶⁶

- ❑ Air quality including Total Suspended Particulates (TPSs),
- ❑ Noise emission levels in terms of decibels,
- ❑ Water quality in terms of temperature, turbidity, Dissolved Oxygen (DO) and Conductivity,
- ❑ Number of trees harvested and replanted, condition and number of trees on nursery, pests and diseases; and
- ❑ Waste management records.

BR has indicated that it has submitted all of the quarterly and annual environmental reports, as well as all of its quarterly harvesting management plans to the EPA and has indicated that these should be open to public review at the EPA.⁶⁷ However, in June 2011, a senior EPA official indicated that BR had not submitted any of the necessary information as outlined in its environmental and harvesting management plans.⁶⁸ Follow-up letters to EPA representatives have gone unanswered, and neither the EPA nor BR has responded to requests to provide these reports to the authors of this report.



It should also be noted that the Environmental Certificate expired in August 2011, prior to the publication of this report but after the data gathering phase had been completed. BR has received an Environmental Certificate on August 1, 2011 for all the counties outlined in its harvesting management plans. This certificate also mentions BR's requirement to provide the EPA with a list of all of the farms where it currently operates.

3.3 Concession agreements

The company's subsidiary BR Power (Monrovia), responsible for constructing the power plant that will provide Monrovia with electricity, has signed a "Concession Agreement and Power Purchase Agreement" with the Government of Liberia, in which BR agreed to construct and operate⁶⁹:

1. Two (2) power plants, 17.5 MW each (total 34 MW), fired from wood of old rubber trees built with in the vicinity of Kakata Republic of Liberia
2. Generate about 30 MW (net) of power and 223 million kWh/yr of electrical energy to be delivered from these plants in Kakata to the LEC Substation for distribution to several parts of Monrovia and other areas in Kakata and other parts of Montserrado County.
3. The first power from these plants will be available by the end of 2010.
4. The duration of the Agreements is 25 years.
5. The estimated capital cost of the project is US\$149 million.

The researchers visited the power plant construction site in June 2011 and observed that the site due to inactivity had been overgrown with secondary forest vegetation. It was obvious that no construction had taken place to date. After the team notified BR that it was researching the impact of its operation, BR reportedly moved some equipment into Kakata and began clearing the area to establish a camp at the site.

A diplomatic cable from the United States Embassy in Monrovia, recently released via Wikileaks, gives an indication of the underlying motives of the delay.⁷⁰ This cable provides insight into the US's perspective on the price dispute between BR and the Government of Liberia. The government had been warned by a joint IFC and Norwegian government report, which indicated that the tariff structure that BR had proposed threatened the financial stability of the Liberian Electric Company (LEC). Moreover, BR seemed unwilling to renegotiate the 23 cent per kilowatt hour tariffs.

BR on the other hand indicates that the Government of Liberia began to renegotiate the prices agreed in the Concession Agreement to a level that would be unachievable for the company given the high cost of operation in Liberia, and that negotiations consequently stalled.⁷¹ In August 2010, new prices were agreed to after BR managed

to find way to cut costs and subsidize the plant via its export revenues, but other issues are still under negotiation. Because of the delays, BR had to re-issue the tender for the construction of the power plant.

The end result of these negotiations is that the deadline stipulated in the initial Concession Agreement has not been met and that the actual provision of electricity to Monrovia through this biomass-fuelled power plant is still a long way off. Liberia's increasingly stressful energy situation in as a result of rising charcoal prices (see chapter 5), has only further highlighted the urgency of this plant to become operational.



4. Issue 2: The Impact on Smallholder Farmers

An important element of BR's business operations, and a key to its image as a sustainable company, are the contracts it signed with smallholder rubber farmers to process old, non-producing rubber trees into woodchips and to replant the farms with new trees. The rubber farms that lay idle or were destroyed during the war are rejuvenated for the production of rubber and, according to the article in Time Magazine: "the rubber farmers have to do or pay nothing".⁷² According to the company, the rehabilitation of Liberia's rubber farms is intended to "develop a viable, environmentally and socially responsible business model that can be replicated in other areas, countries and regions."⁷³

The information in this chapter is primarily based on the one-day Participatory Rural Appraisal (PRA) meeting organized in June 2011 (see chapter 1). It provides an overview of the information gathered through conversations and discussions with the farmers themselves, and reflects their observations.⁷⁴ Nine of a total of 43 farms under contract with BR were represented⁷⁵ and thus these views do not necessarily reflect the experiences of all of the farmers who entered into an agreement with BR. However, the authors are convinced that the issues addressed by the farmers and included in this report are stressing enough to require immediate and effective follow up.

Additional information for this chapter was gathered through transect walks at the farms, the written contracts and payment slips provided by the farmers at the PRA, and the company review procedure.

4.1 Background

When the researchers visited with the first rubber farmers to sign contracts with BR, they explained why BR's proposals initially seemed so attractive to them.

During the civil war, many smallholder farmers were forced to flee the violence, abandon their farms, and seek refuge far from their own communities. Their farms were illegally occupied by former-soldiers or refugees who had fled their own communities. Often, the new residents mismanaged the farms through the illicit tapping of rubber, and the burning of trees for firewood or charcoal, and other unprofessional activities, which led to the farms' depreciation. All these practices severely affected bark renewal capacity and quality. Additionally, rough and unprofessional tapping techniques were used that left the trees in a sorry state.

Particularly due to these unprofessional tapping techniques, many trees were not resistant to the strong winds during thunder storms and fell down.

However, it should also be noted that, while the farmers mentioned these hardships, they also emphasized that their farms were in relatively good condition, were productive, and that they had a steady livelihood. Some farmers had even had to hired workers to help tap their rubber trees.

It was in this context after the civil war that BR arrived and offered them attractive prices for felled trees, promising to replace these trees with seedlings at little to no cost and help maintain their farms for the first seven years before the new trees began producing rubber. Farmers stopped hiring new people in order to hand the farms over to BR. The farmers told the researchers that BR verbally promised to give them a choice of either \$10 per tree or \$5 per tree plus a newly planted seedling. This promise was common knowledge among the smallholder farmers who attended the PRA Farmers like Marthaline Gongar, Sam Bonwin, among others, said that Mr. Nelson Hill of BR informed them about this during negotiations for their farms. The farmers considered this promise the main reason why they were willing to sell their rubber trees to BR.

Common among the responses of the farmers at the PRA was a sense of euphoria that greeted BR's arrival, but a current state of great disappointment and pessimism due to the unresolved issues of removal of resources, partial payments for trees removed, outstanding arrears, and broken promises regarding the replanting and maintenance of the farms. These same farmers now face an overall loss of livelihood, while they barely get by producing cassava, palm oil and charcoal. While they had profitable farms before the arrival of BR, these farmers indicate that they now live in poverty. For many, it is no longer possible to pay the fees for their children to go to school.

The farmers at the workshop generally attributed their on-going hardships to the loss of their rubber farms. In discussions at the PRA about their current situation, the farmers quickly pointed out that their farms were now "dirty" due to the lack of maintenance. Some of the farms had been partially re-planted and maintained, while others remained abandoned after felling. Overall, they rated their relationship with BR as "bad."

"BRE fooled us. Our farms are very dirty since we turned them over to BRE. However, we are not surprised because the lack of maintenance of the Holt farm –which was the first farm turned over to BRE – is always an example that BRE is incapable of maintaining any farm."

Sam Bonwin, Bonwin Farm

4.2 Specific issues

The following section provides a list of all of the issues these farmers faced, and had emphasized during the PRA. It explains how the farmers found themselves living in poverty but also offers some insights into BR's actions towards them.

1. Trees were felled before a written contract had been signed. Trees at a number of rubber farms had been removed without the prior informed consent of the owners. Farmers reported that they had to rush to the scene of on-going felling operations while negotiations were still pending. For example, Marthaline Gongar was forced to rush to the scene while awaiting word from BR. She had expected the company to proceed with the actual felling of trees only after agreeing on the number of trees to be felled and the fee to be paid. However, in Gongar's case, the MOU was still being negotiated when BR began clear-cutting her rubber trees. With no clear agreement, Gongar was uncertain about how many trees she had on her farm and thus had no way of calculating exactly how much BR owed her. She remembers her late father, the original owner of the farm, telling her they had 2,662 rubber trees on the farm. BR responded by generally denying that it had ever clear-cut trees before a written contract had been signed.⁷⁶

"When I turned my farm over to BRE, I never knew that I was going to suffer."

Martha Holt, Holt Farm

2. In its contracts with the farmers, BR had agreed to pay US\$1.50 per ton of processed woodchips, rather than US\$10 per tree or US\$5 + replanting, as had initially been promised verbally. James Glay and several others in attendance at the PRA workshop, expressed disappointment over the figure of US\$1.50 per ton of processed woodchips, as this translated into a much lower fee of US\$0.41 to US\$0.99 per tree. For many of the PRA participants, the contract (and awareness about the pricing structure) came after the felling of trees on their farms had already begun. The farmers pointed out that they would never have agreed to sell their trees had they known what price they would receive for their trees.
3. Many of the trees were actually still producing rubber when BR bought and uprooted them. This means that BR was not only using non-producing, or "expired," trees, as described in the evaluations by MIGA and OPIC, or in the company's public communication.⁷⁷ Instead, BR took down trees that were still producing rubber and that functioned as a source of income for rural farmers and their families. The farmers who attended the PRA explained that over 80% of the rubber trees removed by BR were still producing rubber, and they refuse the description of all their farms by BR as containing only "unproductive trees."

In an email response by BR, the company is more nuanced than in its public communications, stating that it is a matter of economic viability whether old trees still produce enough rubber or not, and that it is the eventual decision by the farmer whether he or she wants to sell his or her trees.⁷⁸



On 15 June 2011, SOMO and Green Advocates visited the Bonwin farm where the tapping of latex continues in areas that BR has declared as “unproductive” areas. Photo 1 shows latex cups affixed to the trees. Sam Bonwin showed the demarcation line between areas of standing, “productive trees” and areas where BR had already removed some rubber trees.

4. Several farmers mentioned that their rubber trees had been uprooted but were never processed into woodchips. These trees still lie in the fields, but have disappeared under the undergrowth of weeds. Some farmers experienced this across their entire farm, leaving them no farmable land for other crops. In post-PRA email correspondence, BR indicated that this was the case for two farms, one of which was in the process of being replanted and the other was scheduled for replanting during the next rainy season.⁷⁹ However, it is clear that BR only began to actively address these issues after the PRA meeting. In fact most of the farmers had had no contact with BR for some two years prior to the PRA meeting. A number of farmers have not been fully paid for these trees that were uprooted but not processed into woodchips. A number of other farmers indicated they were not given any compensation whatsoever.



Abandoned rubber trees left to rot in a smallholder rubber farmer's fields in Grand Bassa County.

5. In several instances, BR has planted new young rubber trees, but has not maintained the farm. As a result, these trees have been completely overgrown with underbrush, which retards the growth of the seedlings and may eventually kill them. In some other areas where BR is providing maintenance, these types of activities are restricted to the fields in front of the farms. Several farms visited by the researchers carried some level of maintenance in this manner, for example the Barchue farm. In an email response, BR pointed out that it is working on the issue as the speed of maintenance activities has been set as a priority for 2011 and onwards.⁸⁰



The rubber tree seedlings were barely visible in amongst the thicket of weeds as a result of a lack of maintenance by BR.

The farmers at the PRA noted that in a number of instances BR had planted some new trees, but not as many as had been agreed upon by the farmers. BR has indicated that it had replanted in the most effective manner to produce as much rubber as possible, which in a few cases resulted in a less than 1:1 replanting ratio.⁸¹ The PRA farmers clearly let it be known that they were not satisfied with BR's replanting practices.

6. BR recently dumped old, decaying woodchips on the farms, claiming that it is "fertilizer." These woodchips apparently came from BR's storage facilities in the port of Buchanan, where the researchers identified one pile of blackened woodchips, of which half already seemed to have been moved. According to BR, the woodchips are used as "mulch" to reduce the growth of weeds around the base of young trees.⁸² However, the woodchips are placed in large piles scattered around the fields, and were never distributed around the seedlings. The farmers don't believe these rotted woodchips are fertilizer. According to the farmers, the rotten woodchips have also attracted stinging ants that are obstructing easy access to farms, which was not a problem before.



BR's woodchip stockpiles in the Port of Buchanan. Smoke can be seen rising from the tops of the piles, indicating that the woodchips are decomposing.

7. The farmers who attended the PRA also expressed their dissatisfaction with how the woodchips were weighed, which is a significant issue since a majority of the smallholder farmers does not fully comprehend the complex procedures and the scales use to measure the total number of metric tons produced by a single tree or an entire farm. There appears to be a general and systematic lack of assistance for the often illiterate or poorly educated farmers to help them understand how payment for the trees removed by BR is actually calculated. That is why they are often not present when the woodchips are being weighed and thus they're uncertain about the accuracy of how the reimbursements are calculated. BR, in response, has pointed out that all of the farmers were invited to observe the first truckloads of trees being weighed, and indicated that the farmers were satisfied with this process and thus did not see the necessity in monitoring subsequent weighings.⁸³ However, several farmers, including Gabriel Brown, the late Elder Zeon Paygar, Thomas Gongar, and others indicated their dissatisfaction with such misguidance.

"It's difficult to verify that BRE is giving us the right information about the amount of tons produced at our farms because the woodchips are weighed only by BRE without the farmers' presence."

The Gongar Family

8. During the PRA meeting, the farmers expressed their suspicion that the type of trees being used by BR for replanting were of a considerable lower quality than the original trees. The farmers are all familiar with the rubber clones common in Liberia, such as the high-yield rubber trees found on the Firestone and Liberian Agricultural Company (LAC) plantations. But they were not familiar with the kind of seedlings introduced by BR, however, and are therefore worried over the lack of awareness on these new rubber seedlings. BR, meanwhile, claims



that its clones are the same as those used at the large rubber plantations like LAC and Firestone.

9. Moreover, the farmers told the researchers that BR is trying to negotiate a deal that will guarantee them 25% of the eventual profits gained from rubber produced by the new seedlings. This stipulation was included in the initial contracts that some of the farmers signed with BR, while for others it was not. BR, in response, explained that it had indeed not included the seedlings in the initial contracts but is willing to renegotiate the contracts to include the seedlings (at a cost to the farmers) through its Farm Builders Initiative.⁸⁴ The farmers, meanwhile, have always been under the impression that the seedlings were supposed to be included in the initial contracts, as BR had verbally promised them.

“The real story is that BRE stopped maintaining the farms of smallholder rubber farmers when the group rejected the proposal to pay 25% of the proceeds, after each sale, until the maintenance costs of our farms are paid.”

Sam Bonwin, Bonwin Farm

10. For the smallholder farmers, BR only removes tree trunks and branches, leaving behind the roots and leaves, while for Firestone and LAC, BR removes the entire tree. The farmers noted that, based on the technical and logistical capacities at LAC and Firestone, it is expected that BR would give this level of support and attention to the smallholder farmers. At an earlier meeting in July 2010, the farmers reported that many of the rubber trees are left behind to rot because the on-site heavy-duty processing equipment (known as the “Peterson”) does not have the capacity to handle trees larger than a certain diameter. The farmers are being paid by weight, so they are losing a significant amount of the potential profit because many of the trees cannot be fully processed because they are too large.

“Look, BRE has removed all parts of the rubber trees uprooted at LAC, but she’s decided to only carry some parts of rubber trees uprooted at the farms of smallholder rubber farmers.”

James Glay, Kangar Farm

“The young rubber trees planted at LAC, by BRE, are growing better than young rubber trees planted by them at farms of poor smallholder rubber farmers. There should be no difference between rubbers planted for the poor and the rich.”

District Superintendent, Harlandvillie Township, Grand Bassa County

11. Local communities, including the smallholder farmers have also complained about the lack of employment opportunities offered by BR. They claim the

company is hiring people from outside the local area such as Monrovia and from other countries such as Gambia and Guinea. This means the farmers are further robbed of the potential benefits of having BR located in their region. The affected farmers expected that BR would at the least have reached out to help empower them by providing job opportunities. BR claims, in response, that its policy is to hire local people whenever possible. In fact, they claim that 65% of its current workforce consists of locals. However, concerns about the lack of employment opportunities clearly still exist within segments of the local community.⁸⁵

4.3 BRE Affected Farmers Union

In response to their growing dissatisfaction with BR's activities, the farmers decided during the PRA meeting to establish the "BRE Affected Farmers Union," which elected Gabriel Brown as chairman and James Glay as co-chairman, Junior Freeman as secretary, Teebeh Gongar as chaplain, and Joseph Baryogar as its treasurer. As a union, they established the following demands towards BR, presented here in their own words:

1. BRE should pay the balance payment for all farmers.
2. BRE should replant and implement proper maintenance, including application of fertilizer, etc.
3. Those that have not received any money from BRE for their farms, BRE should make full payment.
4. BRE should remove all rotten chips from all farms.
5. BRE should pay for rooted trees that have not turned into chips.

4.4 Follow-up after the PRA and BR's response

It is important to note that several developments have taken place since the PRA meeting described above, and the publication of this report. This section gives a brief overview of some of these major developments. The authors expect that they will be able to provide more detailed information in future follow-up reports.

The issues described in the section above, as well as the demands from the Farmers' Union, were presented to BR in the weeks following the PRA meeting. BR issued a lengthy and detailed response, the key points of which are included in this report.⁸⁶ BR also organized a couple of meetings with the farmers to discuss their demands.



In response to the authors of this report, BR indicated that its farmer engagement strategy had developed over time. It has now set up a smallholder engagement initiative called Farm Builders, which aims to assist farmers in a variety of ways during the seven years of plantation rejuvenation.⁸⁷ Additionally, BR remarked that it thought many of the issues were due to miscommunication and misunderstandings that can easily be addressed. It further stressed that it has met its contractual obligations in the vast majority of cases, and that it currently has only two outstanding complaints.

At the PRA, the farmers indicated that BR had not been in contact with them for more than two years. Interestingly, following the research efforts for this report, BR has returned to the farmers recently. According to the farmers, representatives from Farm Builders met with them in late June 2011 and offered to clean up their farms under the condition that they sign a new contract with Farm Builders. This would include a charge for the farmers for the maintenance of their farms. The farmers reportedly rejected this proposal to cancel the original contracts without redress to the challenges and breaches it had indicated at the PRA. Gabriel Brown, the leader of the newly formed BRE-Affected Farmers Union, informed the researchers about the break down in the discussions for a new contract but noted that he was surprised to see Farm Builders hastily clean up his abandoned and “dirty” farm.

In September 2011, BR organized a second meeting, which was attended by a number of the farmers who also attended the PRA and by representatives from Green Advocates. The farmers raised many of the same issues during this meeting and BR responded to a number of them. For example, in response to the rotten woodchips at the farms, BR has indicated that it will remove the heaps from the farm, and reapply them as fertilizer at the base of the trees at a later date. BR will also look for pesticides that are in line with EPA regulations to remove the stinging ants.

Also, in response to the farmers’ demands for proper maintenance of the farm, BR has indicated that it will look into the causes for ‘retarded growth’ of young rubber trees at some of the farms. The company has also actively engaged in discussions with the farmers about the use of fertilizer (rotten woodchips or imported fertilizer) and other forms of maintenance of the farms.

While it is encouraging to see BR actively engaging the farmers and addressing a number of their demands, there remain a number of other demands (outlined in the section above) that remain unresolved, such as the issue of BR’s outstanding payments and compensation for trees that have not been processed into woodchips.

5. Issue 3: The Impact on Charcoal Production

The collapse of the energy sector in Liberia after years of civil war has resulted in the country's over-dependence on charcoal as the chief source of energy used for daily activities such as cooking and heating. The Government of Liberia is still striving to revamp the energy sector in ways that it is affordable, sustainable, and environmentally friendly.

As a result, both BR and local charcoal producers are relying on the same product – rubber wood produced by small-scale and large-scale rubber farmers. Out of this situation, problems have arisen due to the absence of a healthy balance of interest that permits small-scale charcoal producers to produce charcoal in commercial quantities for Liberian consumers, while simultaneously ensuring that BR is able to produce woodchips in commercial quantities for export.

This chapter evaluates how BR's activities have affected the overall charcoal market, including impacts for the general public using the charcoal, the charcoal producers and the charcoal traders. The researchers were in close contact with the National Charcoal Union of Liberia, which is helping to mobilize charcoal producers across Liberia. At Freeman Reserve, consultations were held with charcoal producers striving to access abandoned wood left by BR and Firestone. Additional consultations were held with charcoal vendors around Monrovia as well as charcoal producers in Silver Compound.

5.1 How BR has impacted the charcoal industry

The charcoal industry has undergone a number of changes and developments during the years that BR has been present in the country. While these developments cannot be solely ascribed to BR's presence, this section does list a number of ways in which the company's activities have influenced prices and livelihoods.

The Firestone estate is a one million hectare rubber concession, and the old non-producing trees have traditionally been an important fuel for charcoal. At the estate, charcoal producers gather old trees, branches and roots to produce the charcoal at the spot.

Before the arrival of BR, the relationship between Firestone and the local charcoal producers was reportedly very good. Firestone encouraged charcoal producers to freely convert rubber trees into charcoal in several of the divisions of

its estate. Firestone even reportedly considered a free supply of tarpaulin to enhance burning of the charcoal. However, this relationship came under stress after BR had agreed with Firestone to clear the old rubber trees, as Firestone forbade the charcoal producers to burn wood on its premises.

According to the charcoal producers, this ban on collecting and burning wood also extended to the marshlands adjacent to Firestone's plantation, even though Firestone has not planted rubber trees here. Those that continue to produce charcoal are either faced with punitive measures, such as beatings, imprisonment or confiscation of the collected wood, or are forced to pay additional fees or hand over part of the produced charcoal to Firestone's security personnel.

In response, BR indicates that it has no influence over the relationship between Firestone and charcoalers.⁸⁸ Therefore, it states that any discussion about the use of rubber wood for charcoal would be strictly between Firestone and the charcoalers.

In some of the areas where the charcoal producers are located, there are acute shortages of rubber trees to produce charcoal, as these have been cleared by BR for its woodchip production. This forces the charcoal producers to gather the wood from further away, and they have to carry sticks and branches on their heads for walking distances of one hour or more.



Cleared land at the Firestone estate

1. In its ESIA, BR indicates that it leaves branches and roots at the site to be used by charcoal producers. However, during the visit of one charcoal producer, the researchers witnessed how some of these branches and roots had been covered with dirt. As the charcoal producer has no equipment whatsoever, it is impossible for him to retrieve the wood. According to the charcoal producer, this was done by a BR truck driver, who had demanded a share of the proceedings from the charcoal producer. When the charcoal producer tried to stop the driver from burying the sticks, he was threatened with his life. This incident seems to have occurred between an individual BR employee and a charcoal producer, and there

is no evidence that BR's management was aware of these actions. However, it does exemplify ways in which such charcoal producers are facing increased hardships.



Branches and roots covered in dirt

2. On 11 December 2007, BR signed a Memorandum of Understanding (MOU) with the National Charcoal Union of Liberia (NACUL), the body representing various players in the charcoal industry.⁸⁹ Under the agreement, BRE promised to assist the Union “in the areas of Skill Training, Technology Development, Transportation, Raw Material Development, Micro-Finance Program, etc.” for its members.

In the three and a half years since the signing of the MOU, there has been no genuine effort to initiate the implementation of this agreement with charcoal producers. However, the researchers have recently witnessed BR's management making attempts to again reach out to the Charcoal Union, in order to renegotiate the agreement. According to BR, a study has been commissioned on BR's potential impacts on the charcoal industry, and the company will take the recommendations of that report as the basis of further engagement with NACUL. However, to date, no concrete efforts have been undertaken.

5.2 Recent price developments

Things have changed very dramatically for the struggling charcoal industry in Liberia over the last years. BR's arrival in 2006 has coincided with an escalation in the cost of charcoal production and consumption in Liberia. It was beyond the scope of this research to determine with certainty the extent to which BR's operations have had an effect on the increase of charcoal prices, but increased prices are an important factor to mention here as they constitute growing hardships for producers, traders and consumers of charcoal.



The production cost of charcoal per gallon of fuel has nearly tripled in recent years.⁹⁰ The table below gives an overview of the price developments of various elements that determine the cost of a bag of charcoal, as determined during the consultation with charcoal producers and following meetings with various stakeholders. Some of the prices given reflect the current prices in September 2011. A gallon value of charcoal was LD\$2,925.00 (US\$41.79) in the years before BR's arrival while current value is LD\$8,480.00 (US\$121.14).

Table 3: Analysis of price developments of charcoal related costs

Analysis of the Cost of Charcoal Production in recent years			
No	Activity	Amount before 2007	Amount in April 2011
1.	Price of standing tree or rubber	LD\$25.00	LD\$60.00
2.	Parking of wood for burning	LD\$500.00	LD\$1,500.00
3.	Hauling of pieces of wood for burning ⁹¹	None (free)	LD\$2,000.00
4.	Raking of charcoal for bagging	LD\$500.00	LD\$1,250.00
	<i>Chainsaw hire to cut trees</i>		
5.	Fees for chainsaw per gallon of fuel or gasoline	LD\$500.00	LD\$750.00
6.	Lubricant (clean oil) for chainsaw	LD\$50.00	US\$200.00
7.	Lubricant (black oil) for chainsaw	LD\$50.00	LD\$175.00
8.	Transportation (to markets) per bag	LD\$25.00	LD\$70.00
	<i>Feeding for workforce</i>		
9.	Bag of clean rice	LD\$1,200.00	LD\$2,150.00
10.	1 gallon palm oil (for cooking)	LD\$75.00	LD\$325.00
	Total production cost (per gallon value):	LD\$2,925.00 (US\$41.79)	LD\$8,480.00 (US\$ 121.14)
	One bag of charcoal (at the production site)	LD\$80.00 (US\$1.14)	LD\$150.00 (US\$2.14)
	One bag of charcoal sold in Monrovia	LD\$120.00 (US\$1.71)	LD\$375.00 (US\$ 5.36; September 2011)

The selling price of charcoal per single bag (i.e. a 100 pound bag), at the point of production (sold by the charcoal producers to the traders that sell on the charcoal at the market in Monrovia), has doubled since BR's arrival. Before BR's arrival, the

selling price of a single bag of charcoal, at the point of production, was LD\$80.00 (US\$1.10). The current price is LD\$150.00 (US\$2.14).

The retail price for a bag of charcoal at inner city markets such as in Monrovia was LD\$120.00 (US\$1.71) while the current price is tripled and currently stands at LD\$375.00 (US\$5.21).

5.3 Consequences of the instability of the charcoal market

The increase in challenges for charcoal producers and the increase of prices could potentially have negative effects that go beyond the livelihoods of charcoal producers and traders, and touch on the stability of Liberia's society as a whole. The following potential consequences were identified by the charcoal producers themselves during the consultations with the researchers:

- ❑ Without the opportunity to secure income through charcoal production, there would be increase in crime as charcoal producers, many of whom are ex-combatants, would find other illicit avenues to secure their livelihoods. Two-thirds of the workforce in the production chain (hauling, parking and cutting sticks) is ex-combatants.
- ❑ The increase in charcoal prices could block access to this vital fuel for poor households in cities such as Monrovia.
- ❑ The effects of the hardship of the charcoal producers extend to their families as well, for example through children dropping out of school, families being evicted from their homes, and family tensions and domestic violence due to increased stress levels.
- ❑ The conflicts with enterprises such as Firestone and BR could create a "return to war" mentality. This message is very strong in a society where the tendency for violence is still very high. Charcoal producers told the researchers during data collection that *"we're not kidding about this and will not be diplomatic with our survival and the future of our children. Explain this to the Government and BRE and Firestone."*

BR makes use of the same old rubber trees that producers need for their charcoal. While the exact impact of BR's activities on the price of charcoal remains uncertain, the authors believe that the increased competition and demand for this natural resource is likely having an effect. Given the expected expansion of BR's activities after the involvement of Vattenfall, the MoU the company has signed with NACUL, and the overall corporate image of contributing to sustainable development in Liberia, it can be expected from the company that it actively helps mitigate these devastating price increases. One concrete action in this regard would be to act upon the agreement that the company has with NACUL.



6. Issue 4: Tax Avoidance

As described in Chapter 2, BR's corporate structure is highly complex, with entities in countries where it has no physical presence. In designing its corporate structure, the company has chosen a construction that could have significant tax benefits. A number of elements of its structure are known to be used by companies who are aiming to reduce their tax burden.

It should be noted that none of the activities described in this chapter reflect illegal actions. It should also be noted that, while this chapter argues that the corporate structure is designed in a way that is optimal for tax avoidance, there is no evidence that the company has actively reduced its tax burden in Liberia. There are two factors that play a role in this: a lack of transparency and apparent losses incurred. On the one hand, BR does not provide any financial information that can be used to assess intra-company financial flows, despite requests to that effect by the authors of this report. On the other hand, the little financial information that is available about the company (for example a draft version of financial accounts of one subsidiary published online) seems to indicate that the company is currently operating at a loss.⁹² It should be noted that this could not be determined with certainty, as no consolidated data was available for the entire group of companies.

The figure on the next page depicts the company's structure.

6.1 How BR's corporate structure could be used for tax avoidance

The company indicates that it has chosen its corporate structure to attract financiers and investors and to obtain more preferable rates from suppliers of goods and services.⁹³ According to BR, many financiers and investors are wary about investing in high-risk countries such as Liberia, and the foreign holding structure enhances the legitimacy of the Liberian subsidiaries. It also states that the structure helps the company maintain flexibility with regard to investments outside of Liberia.

BR denies that the Dutch entities have any effect on its tax payments in Liberia, and specifically mentions the participation exemption and a possible future double taxation treaty with Liberia as reasons why the Netherlands was chosen as the location of its (on paper) headquarters.

However, the above points only give partial explanations for why this particular corporate structure was chosen. This section will describe four features of BR's corporate structure that suggest that this structure is perfectly designed to make use of the tax regime in the Netherlands. From this analysis one can conclude that it is highly likely that the possibility of reducing the corporate tax burden in Liberia did indeed play a role in the design of the corporate structure, even if it might not have yet been used for this purpose.

1. Holding structure in the Netherlands without economic substance

The first indication of possible tax avoidance strategies is the fact that Buchanan Renewables has established its (on paper) headquarters in the Netherlands. In its corporate communications, the company lists an address in Amsterdam as its corporate address.⁹⁴ This address, however, is that of TMF Group, a trust office that specializes in the management of so-called shell companies. There are no representatives of Buchanan Renewables that work out of this office.

Secondly, the filings at the Dutch Chamber of Commerce show that neither the paper headquarters (Buchanan Renewables B.V.), nor any of the other B.V.s that the company has established in the Netherlands has any employees (except for Buchanan Renewables Management Services B.V., which has three employees).⁹⁵ None of the companies is particularly profitable either, but they do contain relatively large assets.

Thirdly, the company does not have any business activities, or *economic substance*, in the Netherlands, as all its operations take place in Liberia. The use of such shell companies is a common feature for companies looking to reduce their tax burden by establishing themselves in the Netherlands.⁹⁶

In response, the company has indicated that it chose to settle its base in the Netherlands (and not in any other country) because its owners were familiar with the country's laws and corporate requirements, it would be able to make use of the participation exemption law to avoid double taxation on dividends, and because it expects a double taxation treaty (DTT) to be signed between the Netherlands and Liberia in the near future.⁹⁷ There currently is no DTT between Liberia and the Netherlands in place.

The participation exemption exempts dividends and capital gains from foreign subsidiaries to be taxed in the Netherlands. According to an earlier SOMO report on the issue, "the participation exemption has been and still is one of the core elements of tax planning in the Netherlands".⁹⁸

One of the features of most double taxation treaties is a shifting of tax revenues from source countries (countries where economic activities take place) to residence countries (countries where the headquarters of a company are based).⁹⁹ The DTTs also substantially reduce taxes withheld on dividends, interest and royalty payments between treaty countries.¹⁰⁰ The combination of the participation exemption and a DTT mean that investment income enjoys very low tax rates in the Netherlands.

2. Dutch holding has a group financing role

Another indication that tax avoidance is a driver for BR's design of its corporate structure is that the Dutch holding Buchanan Renewables B.V. appears to play a role in the internal financing of the group of companies by providing intra-company loans. International tax consultants have pointed out the benefits of using Dutch group financing entities. According to one tax consulting website, "The main reason for using the Netherlands as the location for a group finance company is the favourable Dutch tax regime for flow through financing activities ... and the excellent legal and financial infrastructure."¹⁰¹

The draft financial accounts of BRE Liberia, a Liberian subsidiary of Buchanan Renewable B.V. have been published online.¹⁰² According to these draft accounts, this B.V. is responsible for the management of the group and the ship salvaging and port rehabilitation activities. The accounts make mention of an intra-company loan of US\$10.5 million provided by the Dutch holding company to the Liberian subsidiary, albeit at a low financing rate of 2.12%. In response, BR has confirmed the group financing role of Buchanan Renewables B.V., but pointed to the low interest rate of 2.12% as evidence that the company was not trying to reduce the income of the Liberian subsidiary.

SOMO's report on the Netherlands as a tax haven states the following on group financing companies in general: "A Dutch group financing company can be used to avoid taxes in other countries by making excessive loans to subsidiaries abroad. As a



result, the subsidiaries become thinly capitalised, which means that they have a very high or even negative ratio of debt to equity. The high interest payments on these debts lead to lower taxable profits reported by the subsidiaries, or even turn them into losses”.¹⁰³

It should be noted here that while the draft accounts of the Liberian subsidiary do indicate a degree of thin capitalization, and while the group financing role of the Dutch B.V. has been confirmed by the company, the financing costs related to the intra-company loans do not seem to be a major determinant of the losses of the subsidiary. Also, it should again be noted that these figures are derived from a draft version of BRE Liberia’s annual accounts, and might contain errors.

3. Ownership through a foundation

According to the filings at the Dutch Chamber of Commerce, the sole shareholder of Buchanan Renewables B.V., the Dutch holding and group financing company, is the foundation “Stichting Co-Invest Pamoja Liberia”.¹⁰⁴ The board members of this foundation can all be linked to Pamoja Capital, the investment arm of the McCall MacBain Foundation.¹⁰⁵ The use of a foundation as the sole shareholder of the company could indicate that BR makes use of a so-called “orphan structure”.

The main goal of an orphan structure is to ensure that the assets and liabilities of the subject company are treated as off-balance with respect to the sponsor of the structure. Other reasons for creating an orphan structure are to avoid or minimise regulation which might otherwise apply to a structure, and to ensure that the company is “bankruptcy remote” from companies in the same group as the sponsor.¹⁰⁶

International consulting firms point to the *orphan structure* as a common practice for securitisation vehicles in the Netherlands.¹⁰⁷ One brochure from PriceWaterhouseCoopers states the following about foundations holding the shares of B.V.s (which they refer to here as SPVs, or *special purpose vehicles*): “Foundations should not be subject to Dutch corporate income tax provided they are merely holding the shares of the SPV. The SPV is subject to Dutch corporate income tax. However, with respect to securitisation transactions, the taxable income can be determined either on a cost plus basis, where the interest element is excluded from that basis or on a fixed profit per annum basis...As a result, the taxable income of the SPV can be minimal.”¹⁰⁸

4. Luxemburg ownership structure

Finally, the Netherlands is known for its tax benefits through its “conduit structures”, which make it possible for internationally operating companies to channel their financial flows through the Netherlands in order to reduce tax charges elsewhere. Usually, such arrangements involve shell companies, which are used to reallocate revenues to “pure” tax havens, where zero or only very little taxes must be paid.¹⁰⁹ A

sign that Dutch entities are used for tax reasons is when the ultimate owner of the group is based in a tax haven.

In the case of BR, the ultimate owners of the Dutch entities are based in Luxembourg. The Stichting Co-Invest Pamoja Liberia is controlled for 94% by Miamar B.V., which in turn is fully owned by Pamoja Capital Holdings (LUX1) S.á.r.l., based in Luxembourg.¹¹⁰

Luxembourg has long featured on the OECD List of Tax Havens, and is known for its tax secrecy¹¹¹ and low corporate tax regime.¹¹² In a study that was part of the “Mapping the Faultlines” project by the Tax Justice Network, Luxembourg was ranked as the second most opaque country with regard to corporate legal and financial arrangements. The paper states that “Luxembourg is widely used by multinational companies from the jurisdictions that we surveyed, suggesting that it is considered significantly attractive by those corporations which are usually associated with low or no tax jurisdictions exhibiting political stability”.¹¹³

Interestingly, the Luxembourg ownership structure has undergone some changes recently. Previously, Pamoja Capital S.á.r.l. was owned by a company named Persaid Company Limited, based in the British Virgin Islands. In April 2011, ownership of Pamoja Capital was transferred from the British Virgin islands-based Persaid Company to the Luxembourg-based Pamoja Business S.á.r.l., another shell company which had been bought by John McCall MacBain in March 2011.¹¹⁴

6.2 The effects of tax avoidance on sustainable development

Numerous reports by academics and civil society have pointed out the negative effects of capital flight, such as in the form of corporate tax avoidance, for developing countries in general. A SOMO report from 2007 describes the negative effects of the tax regime in the Netherlands as follows: “The direct result is a lower total tax burden for the multinational corporation, no or very low tax revenues on the income shifted to the pure tax haven, and some tax revenue on the operational margin in the Netherlands, at the expense of the developing country.”¹¹⁵

Tax avoidance by multinational companies results in reduced tax revenues for governments in both developed and developing countries, revenues that could have been used to combat poverty and stimulate development. This affects national and international development efforts, including the achievement of the Millennium Development Goals (MDGs) of halving extreme poverty and hunger, universal primary education, and halting the spread of infectious diseases worldwide by 2015.¹¹⁶ It also affects both the capacity of developing country governments to supply essential services to their populations and the capacity of developed country



governments to provide finance for development in the form of debt relief and Official Development Assistance (ODA).

According to a report by the UK-based NGO Christian Aid, the loss of corporate tax income for developing countries is estimated at US\$160 billion per year. The report makes the following calculation on some of the impacts of this loss: “If, for example, the same proportion of tax revenues were spent on healthcare in these countries as has been since 2000, then the lives of 350,000 children under the age of five would be saved every year – including 250,000 babies”.¹¹⁷

Clearly, the issue of corporate tax avoidance is broader than the tax planning activities of a single company such as BR. There are many other companies that operate in a similar fashion, and that might generate much greater tax benefits. A large share of the responsibility of the issues with the current global tax system lies with the governments in both the developed and the developing world that have contributed to a system of tax competition at the benefit of multinational corporations.

6.3 Tax avoidance by Buchanan Renewables?

There is no hard evidence that BR has used its corporate structure to reduce the taxes it pays to the government of Liberia. The second reconciliation report of the Liberian Extractive Industries Transparency Initiative (LEITI) provides an overview of all the taxes paid by BR in 2010.¹¹⁸ In total, the company paid US\$1.32 million in taxes and other fees, mostly in the form of personal income tax and export and custom fees.¹¹⁹ According to the company, the relatively low share of corporate income taxes (compared to other types of taxes paid) can be explained by the fact that the company is still in its investment phase and not yet turning a profit.

However, it can be argued that the company has all the right tools in place to conduct tax avoiding activities once a number of conditions have been met. First of all, the company would have to operate at a profit in order to make full use of the tax benefits of its corporate structure. With the expansion of operations after Vattenfall has become involved, it seems that the company is expecting this to happen in the near future. Secondly, a DTT would have to be signed between Liberia and the Netherlands. The company has indicated that it also anticipates that one will be signed in the future.¹²⁰

While a number of elements of BR's corporate structure might be explained by other factors, the combination of the four elements described above are indications that tax has been a major driver for the company's choice for its current corporate structure. Given that Liberia is a country in great need of revenues for reconstruction after the civil war for years to come, designing a corporate structure for tax avoidance purposes is not in line with the sustainable public image of BR.

7. Conclusions and recommendations

7.1 Summary of findings

This report has assessed how a number of stakeholders have been affected by the practices of BR, and to what extent these practices reflect the socially and environmentally sustainable public image of the company. The report dealt with four specific issues; 1) the basis of BR's activities in Liberia; 2) the issues related to BR's dealings with smallholder farmers; 3) the effects of BR's activities on the local charcoal market; and 4) tax avoidance through its corporate structure.

The following points summarize the report's major findings;

- ❑ While proper monitoring seems to be in place to ensure the legality and the proper taxation of the woodchips prior to export through the Chain of Custody system, little to no monitoring by government institutions such as the FDA or the MoA seems to be taking place with regards to the effects of BR's operations on smallholder farmers and other stakeholders.
- ❑ A number of irregularities were found with BR's process of acquiring an Environmental Certificate from the EPA. Irregularities were found with the time period of BR's activities, the types of documents on the basis of which the certificate was issued and adherence to the reporting requirements. Regarding the latter, the company indicated that all the required reports are deposited and available to the public at the EPA. However, the EPA indicated that it did not have any of these reports in its possession.
- ❑ Negotiations between the Government of Liberia and BR with regards to pricing structures have caused delays in the construction of the 36MW biomass-fuelled power plant that BR Fuel intends to construct.
- ❑ A number of the smallholder rubber farmers that had signed contracts with BR to sell their rubber trees now live in poverty. This is due in part to lower payments than expected or agreed upon, the destruction of the farms for further cultivation and a lack of maintenance of the farms after replanting young rubber trees. These farmers have also complained about the dumping of rotten woodchips on their farms, which they report have attracted stinging ants to their farms.
- ❑ The affected farmers have organised themselves in a union and have formulated their demands towards the company. BR was informed about these demands and in response has organised two meetings with the smallholder farmers, which was the first time these farmers met with the company in two years. A number of the demands of the farmers, notably with regards to the rotten woodchips and the maintenance of farms, are currently being addressed



- by the company. A number of other demands, mostly related to outstanding payments, have not yet been addressed effectively.
- ❑ BR's removal of old rubber trees at the Firestone plantation has contributed to increased hardship for local charcoal producers and traders. Their relationship with Firestone has deteriorated and gathering the needed rubber wood has become more difficult. While BR has an agreement with the National Charcoal Union of Liberia to assist the charcoal producers in overcoming these challenges, the company has not taken any concrete measures to act upon this agreement.
 - ❑ BR's presence in Liberia has coincided with a drastic price increase of charcoal. This not only has an effect on the livelihoods of charcoal producers and traders, but also on the general population of Monrovia, which is dependent on charcoal for cooking and heating. The stressing situation for producers, traders and users of charcoal is increasing the risk for violent conflict.
 - ❑ BR's corporate structure is designed in a way that is highly suited for tax avoidance. While there is no hard evidence that BR has actively reduced its tax burden in Liberia, the features of the holding companies in The Netherlands are indications that tax has been a major driver for its complex corporate structure.

7.2 Contribution to the sustainable development of Liberia

This report has identified a number of issues that are not in line with BR's public image of a company that is contributing to the sustainable development of Liberia.

A number of smallholder farmers have been very vocal in their criticism toward the company. These farmers state that they are worse off now than they were before engaging with BR, and that their families are now living in poverty. During the PRA, the farmers outlined a series of unfulfilled promises, farms made inaccessible as felled trees were never removed, newly planted rubber trees not growing as farms did not receive proper maintenance, and a range of issues regarding outstanding payments. After not having heard from the company in two years, rotten woodchips were recently dumped in piles on their farms, adding another item to their list of complaints.

After the company was notified about the set of demands from the "BRE affected farmers union" as well as this upcoming report, BR has increased its engagement with the farmers and has taken steps to resolve some of their issues. While these are positive developments, a number of other demands have still not been addressed effectively to date.

While the experiences of the farmers that were present at the PRA might not reflect the experiences of all the farmers that BR engages with, in the opinion of the authors

it does illustrate that there is a need for proper monitoring with regards to the effects of BR's activities on smallholder farmers. This report has found that neither the FDA nor the MoA undertakes such monitoring efforts.

Information about the farms that BR engages with as well as its environmental and harvesting management reports, which should be available to the public through the EPA, could not be accessed. This makes it much more difficult for civil society and other independent stakeholder groups to undertake monitoring activities either. This leaves no other information than that provided by the company itself, and this report has shown that that information does not always reflect the experiences of the smallholder farmers themselves.

Another pillar of BR's public image of a sustainable company is its contribution to the energy security of Liberia, making use of a domestic renewable fuel source. However, for many Liberians the energy situation has worsened rather than improved over the last years.

On the one hand, the biomass-fuelled power plant that will bring much needed electricity to the capital of Monrovia, is experiencing significant delays due to negotiations between BR and the Government of Liberia. While it is beyond the scope of this report to delve into which of the two parties is mostly responsible for the delays, it is clear that the power plant will not be operational within the near future. The large billboards announcing the power plant, which BR has put up throughout Monrovia, have created the expectation with the population of Monrovia that it will receive electricity soon.

On the other hand, that same Monrovia population remains primarily dependent on charcoal as fuel for cooking and heating. This charcoal is produced to a large extent from the same rubber wood that BR uses to produce its biomass, which is currently all exported to Europe. While many different factors might have contributed to the recent price hike of charcoal, BR clearly has a role to play in addressing this paradox. It exports a commodity which can no longer be used to produce charcoal, and its delays in the construction of the power plant extend the over-dependence on that same fuel source. Living up to its sustainable image, it could take concrete steps of mitigation by living up to the agreements it has made with the NACUL, the only umbrella organisation of charcoal producers nation-wide.

Finally, BR plans to expand its production after it signed a supply agreement with Vattenfall. A large up-scaling of biomass production from old rubber trees means that more stakeholders, be it smallholder farmers, charcoal producers or others, will be engaging with BR. It also means that the company might become more profitable. However, this does not automatically mean that the company will also pay more income tax, as the risk exists that the company uses its corporate structure to channel



funds out of Liberia and reduce its overall tax burden. Through its entities in The Netherlands, it is already set up perfectly such tax avoidance.

Given Liberia's current situation as a post-conflict country, the presence of multinational companies can be a decisive factor in the stability of the country. Thus, it is of vital importance that a company properly manages expectations, lives up to its promises, and portrays a public image that corresponds to the reality on the ground. The issues related to BR's activities described in this report therefore require urgent addressing if the company truly wants to contribute to the sustainable development of Liberia.

7.3 Adherence to national regulations and international standards

In addition to the contribution to sustainable development in general, this section looks at the issues related to BR's activities in the light of a number of specific national and international regulations.

1. The constitution of the Republic of Liberia

The Constitution of Liberia is the basic organic law of the country. In Article 20, the Constitution mandates "No person shall be deprived of life, liberty, security of the person, property".¹²¹ The fact that BR's operations have made smallholder farms inaccessible for their owners by cutting down their rubber trees, abandoning these trees to rot and failing to remove these trees and replant new ones seems to suggest that the Constitution of Liberia is not being fully respected.

Article 25 of the Constitution states, "Obligation of contract shall be guaranteed by the Republic". BR has signed a Memorandum of Understanding (MOU) with the National Charcoal Union of Liberia (NACUL), of which compliance also remains unfulfilled (see Chapter 5).

2. The Liberian Environmental Protection and Management Law

The Liberian Environmental Protection and Management Law provides the tools for protecting the environment, a framework for environmental standards for effective enforcement, sector-specific regulations, and an integration of international concepts such as sustainable development into a national environmental protection and development framework. Part III, Section 6 (1) and (2) of the Law require an environmental impact assessment license or permit prior to the commencement of all projects and activities.

This research found a number of irregularities with the issuing of the EIA certificate. First of all, the certificate was issued on the basis of a general ESIA framework (provided to the EPA after the certificate had already been issued) in addition to an

EMP, but it can be argued that site-specific ESIA are needed. Secondly, BR initiated harvesting operations well before the certificate was issued.

3. OECD Guidelines for Multinational Enterprises

According to its preface, “The *OECD Guidelines for Multinational Enterprises* are recommendations addressed by governments to multinational enterprises. The *Guidelines* aim to ensure that the operations of these enterprises are in harmony with government policies, to strengthen the basis of mutual confidence between enterprises and the societies in which they operate, to help improve the foreign investment climate and to enhance the contribution to sustainable development made by multinational enterprises.”¹²² The OECD Guidelines apply to enterprises headquartered in OECD and adhering countries. Given that the Netherlands, Switzerland and Luxembourg are all OECD member states, the OECD Guidelines fully apply to BR.

The issues related to BR’s activities described in this report raise questions about the company’s adherence to several chapters of the OECD Guidelines, including those on Human Rights (Chapter IV), Environment (Chapter VI), Consumer Interests (Chapter VIII) and Science and Technology (Chapter IX). Further analysis is needed to establish whether the BR’s behaviour in Liberia constitutes a breach of the Guidelines.

4. Financier standards

Another set of standards that applies to BR’s activities are those of its financiers, including OPIC and MIGA.

Because of the political risk insurance provided to Vattenfall, MIGA’s Performance Standards apply to the activities of BR Fuel.¹²³ According to the Environmental and Social Review Summary (ESRS) issued by MIGA, BR Fuel’s activities directly relate to the following standards: PS1: Social and Environmental Assessment and Management System, PS2: Labor and Working Conditions, PS3: Pollution Prevention and Abatement, PS4: Community Health, Safety and Security, and PS6: Biodiversity Conservation and Sustainable Natural Resource Management.

There are a number of findings in this report that do not seem to be in line with the comments made in the ESRS. For example, the ESRS states that “On smallholder farms where capacity is limited, BR Fuel will provide resources (e.g., stumps, fertilizer, etc.) and technical support to assist with replanting.” This research has shown that for a number of farms, the assistance with replanting has been inadequate. The ESRS also states that, “BR Fuel has committed to publicly disclose annual monitoring reports and future corporate social responsibility reports on its corporate website”.¹²⁴ As shown in Chapter 3, monitoring reports were not publicly available at the EPA.

All projects financed by OPIC, including those implemented by BR, are bound by the requirements outlined in OPIC's handbook.¹²⁵ This handbook has a passage that states that any investment should be "responsive to the development needs of the host country".¹²⁶ One of the factors that is specifically mentioned is the "increased availability of goods and services of better quality or at lower cost". As described in Chapter 5, BR's lack of concrete measures to mitigate the rising prices of charcoal appear not to be in line with this requirement. Another developmental factor listed is the "host country tax revenues". Chapter 6 argues that BR's corporate structure is designed in a way to minimize corporate income tax and may not be in line with this requirement.

7.4 Recommendations

On the basis of the outcomes of this research, SOMO and Green Advocates make the following recommendations.

1. To BR and its owners:

- ❑ Provide transparency regarding all the contracts, licences and permits the company has signed with or received from the Government of Liberia.
- ❑ Address the demands of the BRE Affected Farmers Union to the satisfaction of its members.
- ❑ Meet the company's obligations towards the National Charcoal Union of Liberia (NACUL).
- ❑ Halt the use of shell companies in tax havens such as the Netherlands and Luxemburg.

2. To the Liberian government

- ❑ Provide transparency regarding all contracts, licences and permits signed with or granted to Buchanan Renewables.
- ❑ Ensure that the human rights of those affected by BR's activities are adequately protected.
- ❑ Critically consider the effects on corporate tax revenues if it plans to sign a double taxation treaty with the Netherlands

3. To the Dutch government

- ❑ Use the information in this report to re-evaluate tax policies with a view to eliminating the potential disadvantages to developing countries like Liberia of current tax policies.
- ❑ Use the information in this report to re-evaluate energy policies, and the role of imported biomass from developing countries, with a view to eliminating the

potential disadvantages to developing countries like Liberia of current energy policies.

4. **To OPIC, MIGA and Vattenfall**

- ▣ Assess the information in this report on the basis of Performance Standards (MIGA), Handbook (OPIC), Supplier Code of Conduct (Vattenfall) and CSR policy (Vattenfall) and re-evaluate its investment decisions.



Appendix 1: Farmers at the PRA and the status of their farms

Name of Farmer/Farm	Comments provided by farmers
1. Gabriel Brown	The farm was in good tapping condition but we agreed to sell the trees to BRE when she promised US\$5.00 (five US dollars) per standing and then replanting of all up-rooted trees. This would be followed by free maintenance of the farm up to seven (7) years. There're 4000 (four-thousand) rubber trees on the farm. However, after up-rooting all trees BRE reported that only 2,059 (two-thousand-fifty-nine) trees were on the farm. The balance due for payment is for 1,941 trees.
2.Marthaline Gongar	The farm was productive but everything went dormant with BRE's arrival. The family lived well with nothing worry. Now, the family is facing financial crisis. All trees on the farm—a total of 1,800 trees—were uprooted and completely abandoned. None was replanted. A total of US\$600.00 (six-hundred US dollars) was paid by BRE. Family members have no knowledge of outstanding arrears. BRE has not informed the family of balance due for payment.
3.Joseph Montgomery	There're workers on the farm when BRE arrived to take over. Five-hundred (500) trees were on the farm but BRE made advanced payment of US\$100.00 (one-hundred US dollars). Balance due for payment is US\$500.00 (five-hundred US dollars). All trees were replanted. However, two-hundred (200) trees have died. The farm is bushy.
4.Sam G. Bonwin/Bonwin Farm	The farm was in good tapping condition before BRE's arrival. Workers are currently tapping latex in the reserved areas of the farm or the in the areas we kept for ourselves. The farm is dirty now due to the lack of maintenance right after replanting occurred. A total of 8,500 (Eight-thousand –five –hundred) trees were up-rooted and replanted except that many trees have died. All uprooted trees were processed into woodchips and fully paid for. Total amount in cash received is\$5,000.00 (five-thousand US dollars).
5. Saturday Z. Hill (Deceased)	The farm was in good tapping condition and the family was happy. A total of 1,250 trees were up-rooted and processed into woodchips. All the trees were replanted. Advance payment was US\$300.00 (three-hundred US Dollars). Total net balance due payment is US\$1,000.00 (one-thousand US Dollars).
6. Garlpue's Farm	As a Special Representative for the family, Ben F. Joe reported that 9,000 trees were uprooted and fully paid for except that few were replanted. Payment made by BRE was good as per the Agreement except that he was unable to verify the tons of woodchips reportedly produced at his farm.

7. Jerue Barchue's Farm	The farm was well managed (including regular cleaning) and provided jobs for the family. Before BRE's arrival, the family realized US\$3,000.00 (three-thousand US dollars) monthly from the sale of latex. The amount paid by BRE for uprooting the entire farm is insufficient for the family which is struggling to survive. The entire farm containing 9,754 (nine-thousand-seven-hundred-fifty-four) was uprooted. Nine-thousand-two-hundred-eighty (9,280) trees were processed into woodchips. Four-hundred-seventy-four (474) trees were completely abandoned on the farm. According to BRE's report, six-thousand (6,000) trees were replanted but, in actuality, only four-thousand (4,000) trees grew well. The total amount of money received from BRE is US\$3,968.28 (three-thousand-nine-hundred-sixty-eight dollars and twenty-eight cents). However, at the rate of US\$5.00 the un-processed or abandoned trees—the 474 trees—will amount to the total net balance due of US\$2,370.00 (two-thousand-three-hundred-seventy US Dollars).
8. James Glay/Kangar Farm	The farm was in good tapping condition before BRE's arrival. We had a total of 3,000 (three-thousand) trees BRE recorded only 2,500 (two-thousand-five-hundred) trees. The total amount of money we received is US\$975.00 (nine-hundred-seventy-five US dollars). None of the uprooted trees has been up-rooted.
9. Pay-gar Zeon (Deceased)/Charles Holt	Oldman Zeon Pay-Gar died without receiving any payment for the trees uprooted at his farm which is shared with the Holt Family. Over three-thousand (3000) trees were uprooted from his and completely abandoned in the field. None was processed into woodchips. None was replanted. Despite follow-ups by him, he received nothing for his damaged farm. Total net balance due for payment should be charged at US\$5.00 as promised by BRE. This means $US\$5.00 \times 3000 \text{ trees} = US\$15,00.00$



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Burning Rubber

Buchanan Renewables' Impact on Sustainable Development in Liberia

Several Liberian farmers and charcoal producers experience harmful effects of the operations of Buchanan Renewables, a company that produces biomass of which Swedish electricity giant Vattenfall is part owner. This report describes how the company, which presents itself as a highly sustainable venture, has a negative impact on the livelihoods of a number of smallholder farmers, has not taken adequate measures to improve the energy situation in Liberia, and has a corporate structure which can be optimally used to avoid paying taxes in Liberia.

