

Fueling Human Rights Disasters

An examination of the U.S. Overseas Private Investment Corporation's Investment in Buchanan Renewables



Annex to the Complaint filed on January 22, 2014 to OPIC by farmers, charcoal producers and workers harmed by Buchanan Renewables' operations in Liberia

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Executive Summary

Between 2008 and 2011, the U.S. Overseas Private Investment Corporation (“OPIC”) approved three loans to biomass company Buchanan Renewables (“BR”) totaling US\$216.7 million. OPIC stated that its support for BR would have a strong development impact in Liberia by rejuvenating rubber farms and creating sustainable and renewable energy through converting old rubber trees into biofuel to be used in a BR-constructed power plant. Instead, the project was characterized by serious abuses and drove impacted communities further into poverty. The project ultimately failed, and BR abruptly withdrew from the project area in early 2013, devastating local communities. Moreover, BR’s model was designed in a way that prevented previously self-sustaining farmers and charcoal producers from providing for their own welfare once the project began. Hundreds of Liberians are now worse off than they were when BR arrived in 2007.

Indigenous, smallholder farmers who had subsisted on income from their mature but still producing rubber trees prior to BR’s interventions, have been left without critical income and struggling to maintain their farms and satisfy basic needs. Additionally, many adults and children have suffered as a result of contaminated water linked to BR’s activities on the farms. Family members attribute the death of at least one child to this project-related contamination, and communities still lack access to clean water.

At the same time, BR’s harvesting of old rubber trees at the Firestone plantation ran into direct conflict with charcoal producers, who used the same trees to produce charcoal, Liberia’s most important fuel source. Within a few years of BR’s arrival in Liberia, the cost of charcoal production had nearly tripled, and the charcoalers have struggled to make a living. Additionally, BR employees abused subsistence charcoal producers by demanding bribes – or sex from women – to access wood the company had promised to give them for free. As a result, OPIC’s allegedly climate-friendly investment drove charcoal producers to degrade nearby natural forests, causing negative climate impacts.

Finally, BR workers suffered from rampant labor rights violations. BR systematically failed to provide workers with adequate protective equipment and safety training, exposing them to life-threatening working conditions. Many workers suffered debilitating and permanent injuries from workplace accidents – including being trapped under fallen trees and having limbs broken – and did not receive adequate medical care or compensation. Some workers doing full-time jobs for BR were unpaid and called “volunteers” for up to two years. Several female agriculture workers reported that their male supervisors sexually abused them and retaliated if they refused their supervisors’ sexual advances.

The US\$216.7 in loans OPIC approved for BR’s projects represented nearly 70% of total project costs. OPIC therefore shares a substantial responsibility for the desperate situation in which farmers, charcoal producers and workers (the “Complainants”) now find themselves. OPIC’s failure to conduct appropriate due diligence regarding these issues, even in the face of



warning signs that BR's promises were not being fulfilled, led it to provide significant support to this destructive project over the course of several years. The harm caused by BR was foreseeable, given the project's location in a post-conflict region with a long history of gender violence and human rights abuses, as well as labor violations in the very sector at issue. Moreover, timber harvesting operations, like this one, raise foreseeable environmental and worker safety concerns that BR and OPIC should have readily anticipated and mitigated. OPIC's due diligence rules, which were not followed in this case, were designed to avoid precisely the type of harm that occurred as a result of this risky investment.

Complainants have made numerous efforts to directly address these issues with OPIC, BR, BR's former parent entities: Pamoja Capital and the McCall MacBain Foundation. In November 2013, OPIC, which had previously dismissed Complainants' concerns, expressed interest in privately exploring remedy for harm caused by the project.¹ However, after numerous attempts to engage over a period of two months, Complainants are lodging this public Complaint because private dialogue with OPIC did not result in a commitment from OPIC to engage in a process for discussing remedy.

OPIC has a strong interest in ensuring that its funds do not cause lasting damage in Liberia. Furthermore, OPIC has a duty under the United Nations Guiding Principles on Business and Human Rights to protect against business-related human rights abuses and provide access to remedy for victims.² Complainants urge OPIC commit to a formal process for addressing harm cause by BR's operations. Throughout this process, Complainants ask that they be consulted and involved in any dialogue about the project impacts and have outlined next steps that would facilitate provision of remedies for the abuses they continue to suffer.

Complainants also call on OPIC to launch an independent investigation of its role in the serious impacts of BR's activities in Liberia. The investigation should provide recommendations to further OPIC's institutional learning and prevent the perpetuation of such abuses through OPIC's financing of future projects. Given the demonstrated U.S. interest in increasing OPIC's financing of African energy projects through the Power Africa initiative and Electrify Africa Act, it is critical that OPIC take this opportunity to learn from its failures in this case and ensure that appropriate measures are taken to prevent similar future OPIC-financed projects from harming the vulnerable communities they are designed to help.

¹ Complainants are aware that OPIC no longer has a contractual relationship with BR, making this Complaint ineligible under the current rules governing the OPIC Office of Accountability.

² See Letter from Dan Baer, Deputy Assistant Secretary, Bureau of Democracy, Human Rights and Labor, Department of State to the United Nations Working Group on Business and Human Rights (Dec. 10, 2012), available at: <http://www.humanrights.gov/2012/12/10/u-s-government-on-business-and-human-rights-letter-to-the-un-working-group/>; see also U.S. Department of State, Bureau of Democracy, Human Rights and Labor, *U.S. Government Approach on Business and Human Rights* (Jun. 2013), available at: <http://www.humanrights.gov/wp-content/uploads/2013/06/USG-Approach-on-Business-and-Human-Rights-updatedJune2013.pdf>.

I. Introduction

OPIC provided significant support for BR's biomass woodchip and energy production projects without undertaking an appropriate level of due diligence, which should have revealed that BR's scheme was too good to be true. Between 2008 and 2011, OPIC approved three loans to various BR subsidiaries,³ all in support of BR's plan to harvest "unproductive" rubber trees and convert them into woodchips for sale to Europe and for use in Liberia's proposed new 35-megawatt biomass power plant, which BR was going to construct.⁴

The Complainants are three groups affected by BR's operations in Liberia. The first group consists of smallholder farmers from 24 farms in Grand Bassa County who did not receive the benefits promised by BR and, in many cases, have had their farms destroyed by BR. The smallholder farmer Complainants are represented in this Complaint by Marthaline Gongar and the leaders of the BRE Affected Farmers Union, Gabriel Browne, Jr. and James S. Glay.

The second group is made up of approximately 700 charcoal producers from Freeman Reserve who produce charcoal at or near the Firestone rubber plantation. The National Charcoal Union of Liberia ("NACUL"), including its President, George Weaymie, and its Vice-President, Richard T.A. Dorbor, are also part of this group. NACUL represents charcoal producers throughout Liberia, and for the purposes of this Complaint, is representing all charcoalers affected by BR Fuel. Charcoal producers from Freeman Reserve are also represented in this Complaint by Sarah Monopoloh, the NACUL Chairperson from Freeman Reserve and a charcoal producer.

The third group is made up of several hundred former BR workers from different BR Departments, including Agriculture, Security, Production, Fuel, Transportation and Road Maintenance. Representatives of these former workers for the purposes of this Complaint are Mama Kaykay, Charles Holt,⁵ the former Supervisor of BR Security, and Sam Yeadieh, one of the signatories to the Collective Bargaining Agreement between BR and the workers.

³ The three loans approved by OPIC were for the following BR subsidiaries: Buchanan Renewables Fuel Liberia, Inc., Buchanan Renewables (Monrovia) Power, Inc. and Buchanan Renewables Fuel, Inc. See OPIC, *Buchanan Renewables (Monrovia) Power, Inc., Section I: Non-Confidential Project Information*, available at: http://www.opic.gov/sites/default/files/docs/buchanan_renewables_monrovia_power_inc_nc.pdf (hereinafter, "BR Power Project Summary"); OPIC, *Buchanan Renewables Fuel Liberia, Inc., Information Summary for the Public*, available at: http://www.opic.gov/sites/default/files/docs/buchanan_renewables_liberia_smef_0.pdf (hereinafter, "BR Fuel I Project Summary"); OPIC, *Buchanan Renewables Fuel, Inc. Information Summary for the Public*, available at: <http://www.opic.gov/sites/default/files/files/Buchanan-Renewables-Fuel-Inc-Information-Summary-for-the-Public.pdf> (hereinafter, "BR Fuel II Project Summary"). Toronto-based hedge fund Lawrence Asset Management founded Buchanan Renewable Energies ("BRE") in 2007. BRE was acquired by John McCall MacBain's private investment firm, Pamoja Capital, in April 2008, at which time its name was changed to Buchanan Renewables ("BR"). See Buchanan Renewables, *About Us*, available at: <http://web.archive.org/web/20120626062612/http://www.buchananrenewables.com/about.php>. For the sake of simplicity, the company is referred to as Buchanan Renewables or "BR" throughout this Complaint. Some Complainants still refer to the company as BRE.

⁴ OPIC never disbursed the power plant loan.

⁵ Charles Holt is also one of the affected smallholder farmers.



All three groups of Complainants assert that they were lied to, cheated and abused by BR and continue to suffer harm from BR's activities. Many Complainants have suffered serious human rights abuses related to BR's operations in Liberia. These abuses relate to the following OPIC policy violations:

- The project failed to provide significant, positive development benefits and instead destroyed the livelihoods of smallholder farmers in Grand Bassa County and charcoal producers from Freeman Reserve;
- OPIC did not conduct appropriate due diligence that would have revealed the infeasibility of BR's model, its inability to provide positive development benefits, and the egregious impacts to farmers, charcoalers and workers that began prior to OPIC's involvement;
- BR and OPIC failed to identify the majority of smallholder farmers as indigenous, which would have triggered additional protections and due diligence requirements;
- BR and OPIC did not undertake appropriate due diligence regarding the risk of gender-impacts, including sexual harassment and coercion, despite rampant gender-based discrimination in Liberia and the country's recent history of extreme gender violence;
- BR did nothing to address the pattern of sexual harassment and abuse that was rampant in its workforce, impacting both female charcoalers and female agriculture workers;
- BR failed to meet even basic occupational health and safety standards, as a result of which, waterborne illnesses and serious workplace accidents were commonplace; and
- BR failed to conduct consultations in a culturally appropriate manner with directly affected groups, both before the commencement of project activities and throughout the life of the project.

In 2008, OPIC approved two loans to BR, one to BR subsidiary Buchanan Renewables (Monrovia) Power, Inc. ("BR Power") for construction of the power plant and one to BR subsidiary Buchanan Renewables Fuel Liberia, Inc. ("BR Fuel") for production of woodchips and the rejuvenation of rubber plantations.⁶ OPIC screened both projects as Category B.⁷

⁶ Due to the scarcity of publicly available information regarding these two loans, it is difficult to know which of the loans was approved first.

⁷ BR Power Project Summary, *supra* note 3; BR Fuel I Project Summary, *supra* note 3.

The BR Fuel project received a Human Rights Clearance from the U.S. Department of State on July 8, 2008.⁸ BR Fuel reported signing a Financing Agreement with OPIC in December 2008,⁹ indicating that OPIC must have approved the \$15 million loan to BR Fuel, equal to 75% of the total project cost,¹⁰ sometime in 2008. OPIC approved the \$111.7 million loan to BR Power, also equal to 75% of the total project cost,¹¹ on September 18, 2008.¹² According to OPIC, both projects would have a strong developmental impact in Liberia through implementation of an innovative and sustainable solution to Liberia's energy needs, rejuvenation of rubber plantations, infrastructure improvements and provision of training and permanent jobs to local Liberians.¹³

The abuses detailed in the Complaint relate primarily to the BR Fuel project, for which there are a handful of due diligence documents. One such document is the Harvesting Management Plan, which was published in February 2009, as part of the documentation required by OPIC.¹⁴ The Plan is relatively descriptive, making it clear that BR Fuel's project entailed contracting with farmers to uproot "nonproductive" rubber trees to process into woodchips for export, while also cultivating and replanting new rubber trees on lands from which old trees were harvested and using waste from the uprooted trees to produce biomass fuel to be used in Liberia.¹⁵ The Harvesting Management Plan included information regarding BR Fuel's existing and future operations, environmental mitigation and monitoring efforts, and occupational health and safety. It also provided information on the 23 small farms from which BR Fuel had already harvested rubber trees.¹⁶ Of the 23 farms, BR reported having already replanted rubber seedlings and cash crops on 11 farms, while 12 still needed to be cleared and/or replanted,¹⁷ and the Plan included an estimated schedule for this work.¹⁸

Conspicuously absent, however, from the Harvesting Management Plan or any other publicly available documents regarding BR Fuel's early operations, was any identification, analysis of, or plan to address the project's livelihood risks to farmers or charcoal producers. Similarly, none of these documents included a gender analysis of project impacts nor did they

⁸ BR Fuel I Project Summary, *supra* note 3.

⁹ Buchanan Renewables, PowerPoint presentation: *Helping Liberia Become the World's First Biomass Driven Economy: Group Overview*, Slide 7 (Sept. 2010) (on file with Accountability Counsel and Green Advocates International).

¹⁰ See BR Fuel I Project Summary, *supra* note 3.

¹¹ See BR Power Project Summary, *supra* note 3.

¹² OPIC Board of Directors, *Approval of Financing of \$111.7M to Buchanan Renewables (Monrovia) Power, Inc.*, Resolution BRD(08)32 (Sept. 18, 2008), available at: http://www.opic.gov/sites/default/files/docs/resolutions/buchanan_renewables_monrovia_power_inc.pdf. OPIC never disbursed any of these funds.

¹³ See BR Power Project Summary, *supra* note 3; BR Fuel I Project Summary, *supra* note 3.

¹⁴ See BR Fuel I Project Summary, *supra* note 3; see also Buchanan Renewables Fuel, Harvesting Management Plan (Feb. 27, 2009), available at: http://www.miga.org/documents/buchanan_fuel_harvesting_mgmt_plan.pdf (hereinafter, "Harvesting Management Plan").

¹⁵ Harvesting Management Plan, *supra* note 14, at 6.

¹⁶ *Id.* at 70.

¹⁷ *Id.*

¹⁸ *Id.* at 71.

address the project's impacts on indigenous peoples. In fact, the documents entirely failed to mention that most of the small farmers, and many of the charcoalers and workers, were indigenous people.

The failure to identify, assess and address these risks was disastrous, especially considering that, as explained in more detail below, many of the farmers were still tapping and receiving income from their rubber trees at the time they were deemed “unproductive” and cut down. Similarly, the charcoal producers were using the same raw material to create charcoal – old rubber trees – that BR Fuel intended to use to produce woodchips. Thus, the project was designed in a way that prevented previously self-sustaining farmers and charcoalers from providing for their own welfare once the project began.

Nevertheless, on March 10, 2011, OPIC approved a second loan of \$90 million to BR Fuel.¹⁹ It did so without a plan to deal with serious risks, with seemingly no concrete evidence of sustainable and positive livelihood impacts for small farmers and despite the increasing dissatisfaction of farmers and charcoal producers, discussed in more detail below. This second loan supported the expansion of BR Fuel's woodchip



Subsistence charcoal producers near Freeman Reserve.

production and farm “rejuvenation” project.²⁰ The loan, which represented approximately 63% of the total project cost, also predicted a strong developmental impact in Liberia, for the same

¹⁹ The BR Fuel II Project Summary lists the borrower as Buchanan Renewables Fuel, Inc., whereas the borrower for the first BR Fuel loan was Buchanan Renewables Fuel Liberia, Inc. It is unclear whether one of OPIC's summaries was incorrect, whether the subsidiary changed its name or whether BR had two subsidiaries implementing the same woodchip production/farm rejuvenation project. For the sake of simplicity, this Complaint refers to the recipient(s) of both loans as “BR Fuel.”

²⁰ OPIC, Press Release, *OPIC Board Approves \$90 Million to Expand Biomass Project in Liberia* (Mar. 10, 2011) (hereinafter, “BR Fuel II Press Release”), available at: <http://www.opic.gov/press-releases/2011/opic-board-approves-90-million-expand-biomass-project-liberia>. Just a few months prior to OPIC's approval of the second BR Fuel loan, the World Bank Group's Multilateral Investment Guarantee Agency (“MIGA”) issued guarantees totaling \$142.2 million to a Swedish, state-owned energy company called Vattenfall AB (“Vattenfall”), to cover Vattenfall's investment in BR Fuel's expansion project. See MIGA, *Buchanan Renewables Fuel Inc. Project Brief*, available at: <http://www.miga.org/projects/index.cfm?pid=855>. Vattenfall had acquired a 30% share in BR Fuel in June 2010 with the help of Swedfund, the Swedish government's development finance institution. SOMO and Green Advocates International, *Burning Rubber: Buchanan Renewables' Impact on Sustainable Development in Liberia*, 19 (Nov. 2011), available at: http://somo.nl/publications-en/Publication_3715 (hereinafter, “Burning Rubber”).

reasons as the first two loans, although it was screened as Category A because of its broad geographic scope.²¹ The project received a Human Rights Clearance by the U.S. Department of State on January 18, 2011.²²

As a Category A project, the second OPIC loan for the BR Fuel project had to prepare a full Environmental and Social Impact Assessment (“ESIA”), which was submitted to OPIC in October 2010.²³ The ESIA documented essentially the same project that was detailed in the Harvesting Management Plan, but on a larger scale and with slightly more attention paid to impacts and mitigation measures. Similarly to the Harvesting Management Plan, however, the ESIA simply assumed that all economic impacts would be positive, without identifying any risk of negative livelihood impacts for farmers or charcoal producers. In fact, the ESIA claimed that there were no anticipated negative economic impacts.²⁴

The failure of the ESIA to identify any livelihood risks to smallholder farmers was particularly troubling given what appeared to be a shift in terms of BR Fuel’s commitments to those farmers. For example, whereas the Harvesting Management Plan committed BR Fuel to planting cash crops and providing farm maintenance for seven years,²⁵ the ESIA suggested that BR Fuel had changed course and was now expecting smallholder farmers to pay for some of these services.²⁶ The ESIA did not, however, include any assessment of farmers’ ability – let alone agreement – to pay for such services.

... the ESIA simply assumed that all economic impacts would be positive, without identifying any risk of negative livelihood impacts for farmers or charcoal producers.

Finally, the ESIA provided only a cursory overview of occupational health and safety issues and failed to address current working conditions, workplace accidents or issues regarding workers’ compensation. As described in more detail below, OPIC failed to require an

²¹ BR Fuel II Project Summary, *supra* note 3; see also OPIC, PowerPoint presentation: *Agency Overview – NGO Meeting*, Slide 7 (Jun. 7, 2012) (Referring to the expansion project as a “sustainable biomass project” that formed part of OPIC’s “renewable resource” portfolio in 2011) (on file with Accountability Counsel) (hereinafter, OPIC Agency Overview).

²² BR Fuel II Project Summary *supra* note 3.

²³ BR Fuel II Project Summary, *supra* note 3.

²⁴ Buchanan Renewables Fuel, *Environmental & Social Impact Assessment: Woodchip Biomass Production*, 133 (Oct. 2010), available at: https://www2.opic.gov/environasp/eia/buchanan/BRF_ESIA_Final_21Nov2010.pdf (hereinafter, “ESIA”). The ESIA made this statement despite acknowledging that the impacts of its activities on charcoal production had come up during consultations and agreeing that there was a “need to gather more information on the potential long-term impact of its operation on charcoal production.” *Id.* at 131.

²⁵ See Harvesting Management Plan, *supra* note 14, at 12 (Noting that the farms will be returned to land owners approximately eight years after harvesting); see also *id.* at 9 (Describing farmers’ expectations that BR would manage the farm for seven years until it reached its productive stage).

²⁶ See, e.g., ESIA, *supra* note 24, at 90 (Discussing how farmers can use BR’s payments for harvested trees to “invest” in maintenance of replanted sections of the farm and suggesting that farmers could get assistance with intercropping schemes from partner NGOs).

appropriate level of due diligence regarding BR's²⁷ operations in Liberia and did not take adequate action to stop or remedy the harm experienced by Complainants as a result of BR's activities.

While some of the harm experienced by the different groups of Complainants is similar, there are many specific facts unique to each group, so each is discussed in detail below. Section II describes the experiences of smallholder farmers in Grand Bassa County; Section III describes the experiences of NACUL and charcoal producers from Freeman Reserve; and Section IV describes the experiences of many former BR workers. Section V describes the numerous policies, laws and regulations violated by BR's activities in Liberia and by OPIC in the course of supporting BR's projects. Finally, Section VI describes attempts by Complainants to resolve the issues raised in the Complaint, and Section VII explains the Complainants' proposed next steps.

II. Smallholder Farmers in Grand Bassa County

Most of the smallholder farmers in Grand Bassa County who signed contracts with BR are indigenous people belonging to the Bassa tribe. As discussed in more detail below, they have their own language and traditional customs. Most of the farms have been in families for generations, traditionally supporting large, extended families, as well as farm workers and their dependents. Some of the farms have seventy or more people living and relying on them for support. Many of the so-called unproductive rubber trees on these farms were planted one or two generations ago by family members as insurance policies or an inheritance to pass along to future generations. In some cases, farmers would reserve part of the farm for food crops, while rubber was planted on another part of the farm to provide cash income into the future.

During Liberia's civil war, many of the smallholder farmers were forced to abandon their farms, which were then illegally occupied by former soldiers or refugees who



Tapping mature rubber trees on the Bonwin farm.

²⁷ Because the Complainants often do not distinguish between the parent company BR (or BRE) and its numerous subsidiaries, including BR Fuel and BR Power, the remainder of this Report refers to them all collectively as BR.

often mismanaged the farms.²⁸ When farmers returned to their farms after the war, many of their rubber trees had been damaged.²⁹ Nevertheless, farmers reported that they were still able to tap over 80% of their rubber trees and earned a steady livelihood from latex sales.³⁰

BR's employees misled smallholder farmers about the price BR would pay them for their trees and manipulated them into signing contracts that contained different terms than what they had agreed to orally.³¹ BR never held any formal consultations with the farmers,³² but instead approached farmers individually at their farms, offering high prices for old rubber trees and promising replanting and maintenance of seedlings.³³ Many farmers agreed to sell even those trees that were still producing latex because BR offered them a very good price: US\$5 per tree if they wanted their farms replanted and maintained by BR and US\$10 if they did not want replanting.³⁴ The deal was particularly attractive because BR told many farmers that BR would provide all necessary maintenance of the young trees for the seven years that it would take them to mature into income-producing rubber trees.³⁵

BR began breaking its promises almost immediately, however, by having the farmers sign contracts that specified a price of only US\$1.50 per metric ton of woodchips produced,³⁶ which

²⁸ Burning Rubber, *supra* note 20, at 29.

²⁹ *Id.* at 29-30.

³⁰ Interviews with Sam Bonwin, Gabriel Browne, Jr., James S. Glay, Marthaline Gongar, Saturday Z. Hill and a representative of Jerue Barchue's Farm during a Participatory Rural Appraisal conducted by Green Advocates International and SOMO (Jun. 15, 2011) (hereinafter, "Jun. 2011 interviews"); Interviews with farmers during a Participatory Rural Appraisal conducted by Green Advocates International (Jul. 14, 2010) (hereinafter, "Jul. 2010 interviews"); *see also* Burning Rubber, *supra* note 20, at 30-31, 57-58.

³¹ Group interviews with affected farmers, charcoalers and workers by Green Advocates International (Mar. 2, 2013) (hereinafter, "Mar. 2, 2013 interviews"). Farmers were also dissatisfied with how the woodchips were weighed, did not always understand the procedures and were therefore uncertain whether BR accurately calculated their payments. Burning Rubber, *supra* note 20, at 34.

³² Jul. 2010 interviews, *supra* note 30. While the ESIA claims that consultations were held in September 2010, these meetings occurred after many of the small farmers already had contracts with BR. *See* ESIA, *supra* note 24, at 236-44, 278-80. Moreover, the meetings did not qualify as consultations with affected communities because they did not include smallholder farmers from Grand Bassa County.

³³ Interviews with Sam Bonwin, Charles G. Bryant and Charles Holt by Accountability Counsel (Apr. 2, 2013).

³⁴ Mar. 2, 2013 interviews, *supra* note 31; Interviews with Sam Bonwin, Gabriel Browne, Jr., James S. Glay, Marthaline Gongar, Charles Holt, Pay-gar Zeon and a representative of Jerue Barchue's farm, Jun. 2011 interviews, *supra* note 30; Jul. 2010 interviews, *supra* note 30; *see also* Burning Rubber, *supra* note 20, at 30-31, 57-58.

³⁵ Mar. 2, 2013 interviews, *supra* note 31.

³⁶ *Id.*



amounted to only US\$0.41 to US\$0.99 per tree,³⁷ which was, in at least some cases, less than what farmers could have made by converting their trees into charcoal.³⁸ Farmers were not given

Farmers had no way of knowing whether US\$1.50 per metric ton of woodchips was a fair price, nor did they understand how little they would be getting for their trees at that rate.

notice regarding the change from a price per tree – about which they could make an informed decision – to a price per metric ton of woodchips, a metric that was completely foreign to them.³⁹ Farmers had no way of knowing whether US\$1.50 per metric ton of woodchips was a fair price, nor did they understand how little they would be getting for their trees at that rate.⁴⁰ Moreover, they were not given an opportunity to negotiate the price with BR.

BR had contracts to harvest old rubber trees on at least 34 small farms in Grand Bassa County.⁴¹ Farmers, many of whom were illiterate or only semi-literate, had no access to counsel at the time of signing the contracts and were not given enough time to try to read and understand the contracts prior to agreeing to sell their trees to BR.⁴² Some farmers received the contracts at the same time as they received advanced payment for the woodchips.⁴³ Therefore, they were never able to negotiate the terms of their contracts with BR and did not fully understand the specific clauses in the contracts. Moreover, although the farmers had been told that BR was

³⁷ Burning Rubber, *supra* note 20, at 31. In addition to receiving much less per tree than they were promised, some farmers were not compensated for all of their uprooted trees because BR left some of the trees behind without processing them into woodchips. Interviews with Marthaline Gongar, Charles Holt, Pay-gar Zeon and a representative of Jerue Barchue's Farm, Jun. 2011 interviews, *supra* note 30; Jul. 2010 interviews, *supra* note 30; *see also* Burning Rubber, *supra* note 20, at 32, 57-58. Some of these trees were later converted into wooden planks by BR, without compensating the farmers, while in other cases, BR destroyed or abandoned the trees it did not process into woodchips. Jul. 2010 interviews, *supra* note 30. In at least one case, BR, without the permission of the farmer, doused uprooted rubber trees in gasoline and burned them, deploying security personnel to prevent community members from interfering. Interview with James S. Glay, Jul. 2010 interviews, *supra* note 30. In another case, BR abandoned all of the uprooted trees on the farm without compensating the farmer. Interviews with Charles Holt and Pay-gar Zeon, Jun. 2011 interviews, *supra* note 30; Jul. 2010 interviews, *supra* note 30; *see also* Burning Rubber, *supra* note 20, at 58. BR later told SOMO that this farmer was compensated for these felled trees, based on an estimate calculated using the standard conversion rate for ton/tree.

Additionally, several farmers believe that BR under-reported the total number of trees uprooted from their farms and therefore undercompensated them. Interviews with Gabriel Browne, Jr. and James S. Glay, Jun. 2011 interviews, *supra* note 30; *see also* Burning Rubber, *supra* note 20, at 57-58. BR's response to SOMO regarding this issue was that the number of trees did not matter, as the farmers were compensated based on actual tonnage of woodchips produced. Of course, this does not address the fact that farmers were told they would be compensated on a per tree basis.

³⁸ Jul. 2010 interviews, *supra* note 30.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Buchanan Renewables, *Replanting and Farm Upkeep Chart* given to James S. Glay, Vice-President of the BRE Affected Farmers Union on November 15, 2011 (on file with Green Advocates International and Accountability Counsel) (hereinafter, "Replanting and Farm Upkeep Chart"). Some of the farms were owned by the same individual, but treated as separate farms in BR's Chart. Thus, the total number of farmers with contracts was at least 28. The replanting areas of the farms ranged in size from approximately 1 to 26 hectares, with an average size of about 7.4 hectares.

⁴² Mar 2, 2013 interviews, *supra* note 31; *see also* Burning Rubber, *supra* note 20, at 31, 34.

⁴³ Mar. 2, 2013 interviews, *supra* note 31.

going to maintain their farms for seven years, until the new rubber trees were productive, many of the contracts did not mention farm maintenance.⁴⁴ Several of the farmers were not aware at the time of signing the contracts with BR that the terms of the contracts differed from the orally agreed terms.⁴⁵

Additionally, although it is not in the contracts and is not explicit in any of the due diligence documents regarding BR's project, BR's conduct gave at least some of the farmers the impression that they had ceded their land to BR during the rejuvenation or maintenance period and could not access or did not have full rights to their land.⁴⁶ In addition to leading some farmers to believe that they could not access their land, BR clear-cut farmers' land, removing even young rubber trees and other types of trees that were not processed into woodchips.⁴⁷ The

⁴⁴ BR signed at least three versions of contracts with farmers, none of which conformed to farmers' expectations and some of which included relatively complex terms:

(1) At least one farmer signed a contract effective for 5 years, specifying that BR would prepare the land so that it was fit for planting, but the farmer would replant. The contract said nothing about maintenance. *See* Gabriel Browne Planation Rejuvenation (sic) Agreement (Feb. 5, 2008), attached as Exhibit 1.

(2) At least one farmer signed a contract effective for 32 years, specifying that BR would prepare, cultivate and plant new rubber trees, as well as provide maintenance until the trees are productive and mature for the extraction of latex. At that time, the farmer would sell the latex at the best available price and give BR 25% of the net profits. The farmer would then turn the trees back over to BR at the end of their productive life. The contracts also included a clause stating that the farmer agreed that the trees to be cut were "considered redundant and unproductive." *See* Barchue Farm (Jerue Barchue) Planation Rejuvenation Agreement (Feb. 5, 2008), attached as Exhibit 2.

(3) Several farmers signed contracts effective for 32 years, specifying that BR would prepare, cultivate and plant new rubber trees, which BR would own and would remove when they were no longer productive, defined as anytime after 22 years from planting, at BR's discretion. These contracts also included a clause stating that the farmers agreed that the trees to be cut were "considered redundant and unproductive." The contracts said nothing, however, about maintenance. *See* Bonwin Farm (Sam Bonwin) Redundant Rubber Tree Purchase Agreement (Jun. 9, 2009); Kangar and Gongar Farms (James Glay and Marthaline Gongar) Redundant Rubber Tree Purchase Agreement (Nov. 10, 2009); Frederick Bryant Farm (Charles G. Bryant) Redundant Rubber Tree Purchase Agreement (Nov. 17, 2009); Nancy Lloyd Farm (Nathaniel Horace and Lawrence S. Reeves) Redundant Rubber Tree Purchase Agreement (Dec. 24, 2009); attached as Exhibit 3. Moreover, the provision in these contracts specifying that BR could remove new rubber trees at any time after 22 years from planting indicates that BR was potentially planning to remove the trees well before the end of their productive life. BR's own documents indicate that rubber trees in Liberia remain productive for approximately 32 years after planting (7 years to reach maturity and 25 years of productive life). *See* ESIA, *supra* note 24, at 88 n.7.

Furthermore, many of the contracts with the farmers refer to an Appendix A, which was supposed to provide more information regarding the scope of BR's work and responsibilities. None of the farmers, however, ever saw this Appendix. BR told SOMO that the Appendix was never developed and that reference to it was removed from later contracts. Email from Alexandra Baillie to Tim Steinweg (Jul. 7, 2011) (on file with Accountability Counsel). Finally, none of these contracts match up precisely with what BR told OPIC. *See* Harvesting Management Plan, *supra* note 14, at 8-9. In particular, nothing in the due diligence documents provided to OPIC, such as the Harvesting Management Plan or the ESIA, suggested that BR would either permanently own the new rubber trees or receive 25% of the net profits from the latex sales.

⁴⁵ Interview with Tebeh Gongar by Accountability Counsel (Apr. 5, 2013); Interviews with Gabriel Browne, Jr., Martha K. Massoud and the Barchue family by Accountability Counsel (Apr. 2, 2013).

⁴⁶ Interview with Charles G. Bryant, *supra* note 33; Jul. 2010 interviews, *supra* note 30. The Harvesting Management Plan's estimated timeline appears to confirm the farmers' understanding that BR Fuel intended to harvest old trees, prepare their land for replanting, do the replanting and maintenance, and *then return the farm to landowners after approximately 8 years from the date of harvesting*. Harvesting Management Plan, *supra* note 14, at 12.

⁴⁷ Jul. 2010, *supra* note 30.

company also failed to replant the land in a timely manner⁴⁸ and provided little to no maintenance.⁴⁹ Maintenance, such as weeding around each new seedling, must take place regularly to ensure that the seedlings can grow properly. When the farms are not maintained, other fast-growing tropical plants and underbrush take over, which retards growth and can kill the seedlings.⁵⁰ On some farms, a large percentage of the seedlings planted by BR died or failed to grow well.⁵¹



Rotten woodchips dumped on a smallholder farm.

Additionally, BR dumped large piles of rotten woodchips onto some of the farms, which, as discussed in more detail below, attracted stinging ants and contaminated water sources.⁵²

⁴⁸ Interviews with James S. Glay, Marthaline Gongar, a representative of Garlpue's Farm, Charles Holt and Pay-gar Zeon, Jun. 2011 interviews, *supra* note 30; Jul. 2010 interviews, *supra* note 30; *see also* Burning Rubber, *supra* note 20, at 57-58.

⁴⁹ Mar. 2, 2013, *supra* note 31; Jul. 2010, *supra* note 30; *see also* Burning Rubber, *supra* note 20, at 33. Although many of the contracts did not specify that BR would conduct maintenance on the farms following replanting, BR's documents corroborate the farmers' understanding that maintenance would be conducted. In particular, the Harvesting Management Plan specified that maintenance activities on all farms were initiated as soon as the sites were cleared and would continue for "six months and beyond." Harvesting Management Plan, *supra* note 14, at 72. Specific "[m]aintenance activities include[d], but [we]re not limited to:

- Implementation, maintenance and monitoring of erosion control measures, including, for example, creating and clearing drainage ditches, measuring topsoil levels, monitoring water and sediment run-off, planting necessary bush buffers or windbreaks;
- Circle and blanket weeding (to commence upon replanting);
- Pruning (to commence upon replanting);
- Application of fertilizer when required (to commence upon replanting); and,
- Replacement of dead seedlings when required (to commence upon replanting)."

Id.; *see also* Replanting and Farm Upkeep Chart, *supra* note 41.

Additionally, the Harvesting Management Plan discussed the objectives of small farmers, which make clear that BR Fuel had promised small farmers to: (1) pay them in a fair and timely manner for their old trees; (2) harvest trees in a manner that would not affect the growth of the new plantation; (3) replant at least as many trees as had been harvested; (4) carry out replanting within six months of the harvesting and manage the farm until it was productive, which takes seven years, before transferring it back to the owner; (5) provide farm management training; and (6) provide logistical and material support to enable farmers to manage the farm after it was turned back over to them, which would be provided under a new agreement with BR Fuel. Harvesting Management Plan, *supra* note 14, at 8-9.

⁵⁰ Burning Rubber, *supra* note 20, at 33.

⁵¹ Interviews with Sam Bonwin, Joseph Montgomery and a representative of Jerue Barchue's farm, Jun. 2011 interviews, *supra* note 30; Jul. 2010 interviews, *supra* note 30; *see also* Burning Rubber, *supra* note 20, at 57-58. Farmers were also suspicious that the type of trees being replanted were of a lower quality than the original trees. Burning Rubber, *supra* note 20, at 34.

⁵² *See* Burning Rubber, *supra* note 20, at 31; SOMO, Green Advocates International and Swedwatch, *Cut and Run: An update on the impacts of Buchanan Renewables' operations and Vattenfall's divestment*, 34, 37-38 (Mar. 2013), available at: http://somo.nl/publications-en/Publication_3942, (hereinafter "Cut and Run").

After affected farmers from Grand Bassa County formed the BRE Affected Farmers Union in June 2011 and began working with Netherlands-based SOMO and Liberia-based Green Advocates International to publicize the problems with BR's treatment of smallholder farmers, BR became more responsive to some of these issues. Until that point, however, many of the farmers had had no contact with BR for up to two years.⁵³ In June 2011, BR's first attempt to address farmers' concerns was to send FarmBuilders, a group set up by BR to try to convince farmers to renegotiate their contracts.⁵⁴ The FarmBuilders proposal was that it would provide maintenance on their farms for a fee.⁵⁵ The farmers, who believed that BR had already agreed to provide maintenance on their farms free of charge, rejected the proposal.⁵⁶ Nonetheless, maintenance was eventually provided for free on some of the farms.⁵⁷

BR then met with farmers in September 2011, and at some point that fall, BR and the farmers agreed to meet on the 15th of each month.⁵⁸ Additionally, in response to the draft *Burning Rubber* report circulated in August 2011, BR established a Farmers Grievance Committee, which included representatives from BR, the BRE Affected Farmers Union and civil society.⁵⁹ Gabriel Browne, Jr. and James S. Glay, President and Vice-President of the BRE Affected Farmers Union, were given the responsibility to patrol all farms and ensure that BR was performing proper maintenance.⁶⁰

BR improved a number of its practices during this time. For example, on several of the farms it had previously neglected, BR started regularly sending teams of workers to clear weeds and ensure growth of the young trees.⁶¹ BR also removed a number of the trees that had been abandoned on one of the farms and, in another instance, made a compensation payment to a farmer whose trees had been uprooted, but not removed.⁶² Finally, in some cases, BR spread out the piles of woodchips that were close to water sources, in an effort to avoid water contamination, although the farmers were still unhappy about the presence of the chips.⁶³

⁵³ *Burning Rubber*, *supra* note 20, at 32. This abandonment by BR was contrary to the Harvesting Management Plan, which indicated that following harvesting, the farms would "not be 'abandoned', especially if there are soil or water values to be considered." Harvesting Management Plan, *supra* note 14, at 44.

⁵⁴ *Burning Rubber*, *supra* note 20, at 37.

⁵⁵ *Id.* The proposal did not address any of the farmers' other concerns.

⁵⁶ *Id.* While the Harvesting Management Plan did not specify whether farmers would be expected to pay for any portion of BR Fuel's work on their farms and the ESIA suggested that farmers might have to pay for some services, *Time Magazine* reported, based on a conversation with Robert Baines, manager of the fuels division, that "[t]he rubber farmers have to do or pay nothing." Alex Perry, *Time Magazine*, *Rebuilding Liberia* (Jul. 13, 2009), available at: <http://www.time.com/time/magazine/article/0,9171,1908311,00.html>.

⁵⁷ *Burning Rubber*, *supra* note 20, at 37.

⁵⁸ *Id.*; Cut and Run, *supra* note 52, at 33.

⁵⁹ See Cut and Run, *supra* note 52, at 32-33.

⁶⁰ *Id.*

⁶¹ Interviews with affected farmers by Green Advocates International and SOMO (Oct. 27-30, 2012); see also Cut and Run, *supra* note 52, at 33.

⁶² Cut and Run, *supra* note 52, at 32-33.

⁶³ *Id.* at 33-34.



Little progress was made, however, regarding several other concerns, including disputes about outstanding payments and BR's failure, on some of the farms, to replant seedlings that had died for various reasons, including being: eaten by wildlife; destroyed by fires during the dry season; or killed by the cover grass planted, but not maintained, by BR.⁶⁴ Additionally, as discussed in more detail below, BR failed to address concerns regarding illness caused by contaminated drinking water, the stinging ant problem or the continued presence of woodchips on the farms.⁶⁵ Some of the farmers also remained concerned that BR was not providing enough maintenance.⁶⁶ For example, one farmer's experience was that it took three full-time workers to maintain his farm, but BR would only supply one person to work on his farm for a three-month period.⁶⁷

Although farmers had outstanding concerns regarding BR's activities, they were relatively happy during this period because of the BR's increased attention to their needs and increased maintenance of their farms.⁶⁸ Regardless of the terms of each farmers' contract, BR at least partially replanted and performed some maintenance on all of the farms. The goodwill and progress abruptly ended, however, following the April 15, 2012 meeting between the farmers and BR. At that meeting, FarmBuilders presented a loan scheme to help farmers pay for the maintenance on their farms.⁶⁹ Presentation of this loan scheme was a shock to the farmers because the company had promised to provide maintenance for free, as it had been sporadically doing since the previous year.⁷⁰ As it turns out, that was BR's last meeting with the farmers, although it did continue to do some maintenance on some farms after this meeting.

In May 2012, one of BR Fuel's major investors, a Swedish energy company called Vattenfall, announced that it was divesting from the project.⁷¹ Shortly thereafter, the Liberian House of Representatives unanimously voted to halt all BR operations, particularly the export of

⁶⁴ Interview with Gabriel Browne, Jr. by Green Advocates International (May 10, 2013); Cut and Run, *supra* note 52, at 35.

⁶⁵ Interview with Gabriel Browne, Jr., *supra* note 64; Cut and Run, *supra* note 52, at 37-38. At the September 2011 meeting between farmers and BR, BR maintained that the woodchips were good for the farms and ignored farmers' request that they instead be provided with the type of fertilizer used on large rubber plantations. BR also claimed that the stinging ants were a normal condition on the farms.

⁶⁶ Interview with Gabriel Browne, Jr., *supra* note 64; Cut and Run, *supra* note 52, at 37. At the September 2011 meeting, BR also told farmers that regular maintenance was not good for their farms and that grass should be allowed to grow, although farmers pointed out that large rubber plantations are very well maintained and that grass on such plantations is regularly cut.

⁶⁷ Cut and Run, *supra* note 52, at 37.

⁶⁸ *See id.* at 32-34.

⁶⁹ *Id.* at 41.

⁷⁰ Interviews with Martha K. Massoud and the Massoud family by Accountability Counsel (Apr. 2, 2013).

⁷¹ Vattenfall, *Q1 2012: Interim Report January – March*, 3, available at: http://www.vattenfall.com/en/file/Q1-2012-Report_20590608.pdf.

⁷² Libenews, *Lawmakers in Liberia Declare Buchanan Renewables Operations Dubious* (May 18, 2012), available at: <http://libenews.wordpress.com/2012/05/18/lawmakers-in-liberia-declare-buchanan-renewables-operations-dubious/> (hereinafter, "Lawmakers Declare Buchanan Renewables Dubious").

woodchips for commercial purposes,⁷² although Liberian President Ellen Johnson Sirleaf subsequently called for the halt order to be reconsidered and issued a letter of support for BR.⁷³

In the midst of this upheaval, and despite BR's devastating impacts on farmers' livelihoods, BR made a unilateral decision to terminate its contracts with the farmers. Between July and September 2012, BR coerced nearly all of the small farmers in Grand Bassa County into

... farmers felt that they had no choice but to sign the termination contracts and general releases that BR presented to them.

signing termination contracts and general releases that purported to end all of BR's remaining obligations to the farmers.⁷⁴ Although the company has described the decision as mutual, farmers felt that they had no choice but to sign the termination contracts and general releases that BR presented to them.⁷⁵ BR told many of the farmers that they were leaving the farms – and leaving the country – due to the “government's pressure,” and that whether the farmers signed or not would not stop the company from leaving.⁷⁶ They were told that since BR was leaving anyway, they should sign the contracts so that formal control of the farm would be returned to them.⁷⁷ A few farmers refused to sign because they believed that BR still owed them money for maintenance or replanting.⁷⁸ Many of the farmers who did sign the contracts were illiterate or only semi-literate and did not have the ability, or were not given the time, to read and fully understand the terms and consequences of these termination contracts and general releases.⁷⁹

The terminations were not accompanied by any form of compensation or anything that would have enabled the farmers to continue the maintenance of the farms on their own. Although farmers and their families can do some minimal maintenance on their own, the farms require enough maintenance – and the economic payoff is so remote – that farmers need

⁷³ Solomon Watkins, The African Standard, *Liberia's President Sirleaf Warns of Legal Consequences in Saga Involving Company Accused of Breaking Contractual Agreement* (Jun. 10, 2012), available at: http://www.africanstandardnews.org/index.php?option=com_content&view=article&id=496:solomon-watkins-ii-monrovia-liberia-231-0-886-427519-email-solomonwatkinsii@gmailcom&catid=3:newsflash.

⁷⁴ See Martha Kaizer Massoud Termination of Contract (Jul. 5, 2012) and Turnover Agreement and General Release (Jul. 5, 2012); Nathaniel Horace Termination of Contract (Jul. 5, 2012) and Turnover of Agreement (sic) Farm Agreement and General Release (Jul. 5, 2012); Gabriel Browne Termination of Contract (Jul. 13, 2012) and Turnover of Agreement (sic) Farm Agreement and General Release (Jul. 13, 2012); Sam Bonwin Termination of Contract (Aug. 22, 2012) and Turnover of Farm Agreement and General Release (Aug. 22, 2012); Jeremiah Glay Termination of Contract (Sept. 2, 2012) and Turnover of Agreement (sic) Farm Agreement and General Release (Oct. 22, 2012), attached as Exhibit 4.

⁷⁵ Interviews with Charles G. Bryant and Sam Bonwin, *supra* note 33; Interview with Gabriel Browne, Jr., *supra* note 45; *see also* Cut and Run, *supra* note 52, at 38.

⁷⁶ Mar. 2, 2013 interviews, *supra* note 31; *see also* Cut and Run, *supra* note 52, at 38.

⁷⁷ Cut and Run, *supra* note 52, at 38.

⁷⁸ Interviews with Charles G. Bryant and Sam Bonwin, *supra* note 33; Interview with Gabriel Browne, Jr., *supra* note 45; *see also* Cut and Run, *supra* note 52, at 38-39.

⁷⁹ Interviews with Tebeh Gongar and Martha K. Massoud, *supra* note 45.



substantial up front investment to repair BR's damage to their farms.⁸⁰ Yet, many of the farmers, who were left with no income after BR uprooted their rubber trees, do not have the resources to manage the current state of their farms and bring them back to an income-producing state.⁸¹

Although farmers and their families can do some minimal maintenance on their own, the farms require enough maintenance – and the economic payoff is so remote – that farmers need substantial up front investment to repair BR's damage to their farms.

The following sections provide more detail about issues of particular concern for the smallholder farmers in Grand Bassa County, specifically: livelihood impacts; environmental and health impacts; BR's bad faith negotiations and failure to comply with promises made to the farmers; impacts on vulnerable populations, including indigenous, low-income and female farmers; the displacement of farmers from portions of their farms; and BR's lack of information disclosure and consultation with farmers.

A. Livelihood Impacts

BR's "rejuvenation" of the farms has left the farmers in a much worse situation than they were in before BR arrived. Many of the farmers were receiving a steady income from their mature rubber trees, 80% of which were still producing latex. BR uprooted all of the trees at once – leading to an abrupt cut-off of an important source of income – in return for a cash payment and a number of unfulfilled promises.

Even before BR terminated its contracts with the farmers, some of the farmers were suffering from the loss of income from their rubber trees.⁸² For example, before BR's arrival, the Barchue family earned between US\$1,500 and US\$3,000 per month from latex sales, which it used to support the more than 70 people living on the farm.⁸³ The total payment from BR for nearly 10,000 old trees was only US\$3,968.28,⁸⁴ which was not sufficient for the family to survive, particularly considering that they would not have any productive rubber trees for seven years.⁸⁵

⁸⁰ Cut and Run, *supra* note 52, at 39-40.

⁸¹ *Id.*

⁸² Mar. 2, 2013 interviews, *supra* note 31.

⁸³ Interviews with a representative of Jerue Barchue's farm, Jun. 2011 and Jul. 2010 interviews, *supra* note 30; *see also* Burning Rubber, *supra* note 20, at 58.

⁸⁴ *See* Jerue Barchue Farm Payment Slip (May 6, 2008), attached as Exhibit 5.

⁸⁵ Interview with a representative of Jerue Barchue's farm, Jun. 2011 interviews, *supra* note 30; *see also* Burning Rubber, *supra* note 20, at 58.

BR's due diligence documents claimed that the company was planting cash or food crops on the farms to assist farmers during the wait for the new seedlings to mature.⁸⁶ These crops, however, were only planted on some of the farms.⁸⁷ Moreover, the company did not allow farmers to harvest the crops to feed their families,⁸⁸ at times even deploying security personnel to prevent families from harvesting the crops.⁸⁹ For instance, after community members took some of the butter beans BR had planted on the Browne farm, BR asserted its ownership of the crops and eventually removed them from the farm.⁹⁰ This is in stark contrast to the project BR described to OPIC, in which the cash crops were meant to help the farmers. BR later abandoned its plan to plant cash crops, without instituting any substitute measure to mitigate livelihood impacts to farmers while they waited for the new rubber trees to mature.⁹¹

Since BR left, some of the young rubber trees have died, and the farmers fear that all of their young trees will die, leaving them with nothing.⁹² The situation is desperate. Farmers are trying to make money through any means that may be available to them, including manual labor, harvesting natural oil palm, becoming charcoal producers or growing other crops.⁹³ These jobs, however, do not provide sufficient income to farmers to fully support their families,⁹⁴ and some

⁸⁶ ESIA, *supra* note 24, at 130 (Explaining that one of the *short term economic benefits for farmers* will come from “intercropping agricultural products (for sale and personal use) [which] should help improve food security status of the farmer until economic benefits of rubber production are attained.”); *see also id.* at 138 (“Apart from the initial payment to the farmers for harvested wood, intercropping as well as rehabilitation of the rubber trees *will provide financial and food security to the farmers* in the short and longer term.” (emphasis added)) and at 237 (“In many of the meetings held, intercropping rubber trees with some short-term fast growing species (pineapple, beans, pepper, etc.) was discussed as a major mitigation measure to the problem of monoculture that can also benefit the farmers by the time the replanted rubber trees grow.”). *See also* Harvesting Management Plan, *supra* note 14, at 18.

⁸⁷ Interview with Gabriel Browne, Jr. by Green Advocates International (Sept. 7, 2013); Interview with Sam Yeadieh by Green Advocates International (Jul. 22, 2013).

⁸⁸ *Id.*; Interview with Gabriel Browne, Jr., *supra* note 45; Jul. 2010 interviews, *supra* note 30.

⁸⁹ Interview with Gabriel Browne, Jr., *supra* note 45; Jul. 2010 interviews, *supra* note 30. It is possible that the security personnel sent by BR to protect the crops may have been hired to make sure that the crops were not stolen. In 2011, BR informed SOMO that it had stopped planting cash crops because the cash crops were getting stolen. Email from Alexandra Baillie to Tim Steinweg, *supra* note 44; *see also* Marc Engelhardt, The African Times, *Firewood for Berlin: Vattenfall wants to generate electricity from shredded rubber trees* (Oct. 2010) (Quoting BR representative Liam Hickey stating “First we tried to plant beans between the saplings... The beans were stolen. That’s why we stopped trying.”), available at: http://www.african-times.com/index.php?option=com_content&view=article&id=11835%3Afirewood-for-berlin&catid=118%3AOctober-2010-business&Itemid=63 (hereinafter, “Firewood for Berlin”). It is unclear, however, why security personnel refused to let farmers harvest crops that BR’s documents claim were planted for the benefit of those farmers.

⁹⁰ Interview with Gabriel Browne, Jr., *supra* note 45.

⁹¹ *See* Firewood for Berlin, *supra* note 89. Confusingly, in 2011 BR told SOMO that the cash crops were meant primarily to help stabilize the soil and that the company switched to planting grasses after realizing the cash crops were not effective for stabilizing soil because they were getting stolen. Email from Alexandra Baillie to Tim Steinweg, *supra* note 44. BR’s statement did not address the fact that the company’s documents indicated that the cash crops were also meant to provide an economic benefit to farmers during the time period in which the rubber seedlings were immature and unproductive.

⁹² Mar. 2, 2013 interviews, *supra* note 31.

⁹³ *See* Cut and Run, *supra* note 52, at 40.

⁹⁴ Interview with Tebeh Gongar, *supra* note 45; Interview with Sam Bonwin, *supra* note 33; Interview with Gabriel Browne, Jr., *supra* note 45; Interviews with Saturdamar Bonwin, Joseph Bryant, Rebecca Gbotoe and George Barchue by Accountability Counsel (Apr. 2, 2013).



of the jobs are dangerous.⁹⁵ With the money these families used to earn from their rubber trees, they had enough to eat and could send their children to school. Now, farmers are struggling to feed their families and buy medicine when they are sick.⁹⁶ Many have had to pull their children out of school because they can no longer afford the fees,⁹⁷ and families are facing difficult decisions, like having to choose which of their children they will send to school.⁹⁸

Livelihood Impacts on Smallholder Farmer James Glay

Before contracting with BR, James Glay depended on his rubber to support his family. He agreed, however, to sell the trees to BR for US\$5 per tree, or a total of US\$12,500. But BR unilaterally changed the pricing to US\$1.50 per metric ton of woodchips and also abandoned the majority of the trees they uprooted from his farm, processing only 983 of his 2,500 uprooted trees into woodchips. When James complained about the unprocessed trees, BR returned to his farm and, without his permission and without explanation, burned the abandoned trees. The US\$975 that James received from BR, and the other work that James did to try to make ends meet, was not sufficient to support his family. Faced with an inability to provide his three children with food, clothing and an education, James had to send them to live with relatives. None of his children have been able to complete their education.

Interview with James S. Glay by Green Advocates International (Sept. 10, 2013); Interview with James S. Glay during a Participatory Rural Appraisal conducted by Green Advocates International (Jul. 14, 2010).

B. Environmental and Health Impacts

BR's practice of clear-cutting farms and processing woodchips onsite had negative environmental consequences, including soil erosion, dust and increased wind storms.⁹⁹ BR's practices also caused significant negative impacts to drinking water on some of the farms.¹⁰⁰ On one farm, uprooted trees that BR never removed blocked the flow of a source of drinking

⁹⁵ For example, in early 2012, James S. Glay fell from an oil palm tree and broke his hand.

⁹⁶ Mar. 2, 2013 interviews, *supra* note 31.

⁹⁷ *Id.*

⁹⁸ This may disproportionately impact girls, if families favor sending their boys to school. This would not be unusual, considering that in Grand Bassa County, twice as many women as men are illiterate. Republic of Liberia, County Development Committee, Grand Bassa County Development Agenda 2008-2012, 31, available at: http://www.moepa.gov.lr/doc/grand_bassacda.pdf (hereinafter, "Development Agenda"); see also ESIA, *supra* note 24, at 76 (Discussing the disparate education levels of men and women in Liberia).

⁹⁹ Jul. 2010 interviews, *supra* note 30.

¹⁰⁰ See Cut and Run, *supra* note 52, at 37-38. Interviews with Sam Bonwin, and Charles Bryant, *supra* note 33; Interviews with the Barchue family, *supra* note 45; Interviews with Saturdamar Bonwin and Joseph Bryant, *supra* note 94; Jul. 2010 interviews, *supra* note 30; see also group interview with workers in the Agriculture Department by Accountability Counsel (April 5, 2013) (Agriculture workers working on the affected farms complained about water contamination from woodchips, but BR did nothing to address their complaints).

water.¹⁰¹ Although BR promised to fix the problem, it never did.¹⁰² Additionally, when BR's woodchips began rotting at the port of Buchanan, BR transported the rotted woodchips back to smallholder farms, claiming that the woodchips would provide excellent mulch for their rubber tree seedlings. In 2010, BR deposited giant mounds of these rotten woodchips near water sources on several smallholder farms in Grand Bassa County.

Farmers and family members living on the Barchue, Bonwin, Browne, Bryant and Montgomery farms suffered from contaminated drinking water caused by the rotten woodchips BR had dumped on their farms.¹⁰³ Contaminants from these woodpiles seeped into their only sources of water, which they used for drinking, bathing, medical needs and cooking.¹⁰⁴ Water sources that had previously provided safe drinking water became rancid.¹⁰⁵ "Before we had a little creek, but now the water is black," said Saturdamar Bonwin, "we have been sick, but there is no other way, so we just drink it."¹⁰⁶

On the Barchue farm, contaminants gave the farm's drinking water, on which more than 70 people depend, a foul smell and caused children and pregnant women on the farm to get sick.¹⁰⁷ They requested that BR do something to fix the problem, such as providing them with a hand pump, but the company did nothing.¹⁰⁸ Some of BR's agriculture workers also complained that the water supplies on smallholder farms had been contaminated, but BR Management ignored their complaints.¹⁰⁹

In addition to contaminating water supplies, the piles of woodchips caused other environmental problems. For example, they attracted stinging ants, which had never before been a problem on the farms.¹¹⁰ The stinging ants made some of the farms difficult to access¹¹¹ and prevented some farmers from planting and harvesting staple food crops.¹¹² The ants were a problem for BR workers as well; one worker has suffered from a hearing impairment ever since

¹⁰¹ Cut and Run, *supra* note 52, at 37.

¹⁰² *Id.*

¹⁰³ Interviews with Sam Bonwin, and Charles Bryant, *supra* note 33; Interview with the Barchue family, *supra* note 45; Interviews with Saturdamar Bonwin and Joseph Bryant, *supra* note 94. See also group interview with workers in the Agriculture Department, *supra* note 100; Cut and Run, *supra* note 52, at 37-38. The ESIA acknowledges that heavy rains on uncovered woodchip piles can impact water quality, although it addresses the issues only in relation to BR's woodchip piles at the port, without mentioning BR's practice of piling rotten woodchips on farms. See ESIA, *supra* note 24, at 109.

¹⁰⁴ Interview with the Barchue family, *supra* note 45; Interviews with Joseph Bryant and Rebecca Gbotoe, *supra* note 94; Interview with the Bonwin family by Accountability Counsel (Apr. 2, 2013).

¹⁰⁵ Interview with the Barchue family, *supra* note 45; Interview with the Bonwin family, *supra* note 104.

¹⁰⁶ Interview with Saturdamar Bonwin, *supra* note 94.

¹⁰⁷ Interview with the Barchue family, *supra* note 45; Interview with Rebecca Gbotoe, *supra* note 94; Cut and Run, *supra* note 52, at 37.

¹⁰⁸ Cut and Run, *supra* note 52, at 37-38.

¹⁰⁹ Group interview with workers in the Agriculture Department, *supra* note 100.

¹¹⁰ Cut and Run, *supra* note 52, at 34; Burning Rubber, *supra* note 20, at 33.

¹¹¹ Burning Rubber, *supra* note 20, at 33.

¹¹² Interview with Sam Bonwin, *supra* note 33; Interview with the Barchue family, *supra* note 45.

Water Contamination on the Bryant Farm

Residents of the Bryant farm believe that BR's failure to protect farmers' water sources has been fatal, resulting in the death of a child. BR's heavy machinery cracked open a family grave, which contained the corpse of Solomon Bryant. The Bryants went to Buchanan more than once to complain about the open grave, which was emitting a foul odor. They were also afraid that the open grave would contaminate a nearby creek that provided drinking water for residents on the farm. Although BR assured the Bryant family that it would provide them with a hand pump to mitigate the public health hazard posed by the open grave, it never followed through.

Heavy rains then flooded Solomon Bryant's open grave, washing yellow runoff from the grave into the adjacent creek. Around the same time, black and yellow liquid flowed from the piles of woodchips dumped on the farm by BR into the same creek, the Bryant's only water source. After drinking water from the creek, children and adults began experiencing chronic diarrhea. The Bryant family took the most gravely ill children to the clinic, where a doctor informed them that the illness was the direct result of drinking contaminated water. One of these children, a three-year-old named George Don, died.



Solomon Bryant's grave after being cracked open by BR.

Later, the creek nearly dried up, which it never had in the past. The residents of the farm believe that deforestation and erosion from BR's work is the cause. The Bryant family then searched for an alternative water source, as well as returning more than once to BR's headquarters to plead, unsuccessfully, for immediate assistance. Residents of the Bryant farm must now walk 35 minutes down a dangerous road to find water, which itself is not safe to drink. They are still waiting for the hand pump that BR promised them. Additionally, BR never returned to fix the open grave or clear the rotten woodchips from the farm.

Source: Interview with Joseph and Charles Bryant by Accountability Counsel (Apr. 2, 2013) and Interview with Joseph Bryant by Green Advocates International (Mar. 9, 2013).

ants crawled into her ear and bit her while she was planting rubber seedlings near woodchip piles on a smallholder farm.¹¹³ This infestation of stinging ants created a public health problem that was the direct consequence of BR's activities.

Finally, farmers strongly disagreed with BR's claim that the woodchips, which BR at times distributed around the young rubber trees, were appropriate mulch for the fragile rubber tree seedlings. Rather, farmers report that the woodchips retarded the growth of their trees.¹¹⁴

C. Bad Faith Negotiations and Failure to Comply with Promises

As described in detail above, farmers' experiences with BR have been characterized, from start to finish, by bad faith negotiations and broken promises. Many farmers were not given a chance to read and understand their initial contracts with BR, much less negotiate these contracts on equal footing with the company. BR promised high prices per tree and free maintenance, but then presented farmers, many of whom are illiterate or only semi-literate, with contracts that specified much lower prices and often did not mention maintenance. Many farmers felt that they had no choice but to sign the contracts.

BR's approach to getting the termination contracts and releases signed was even worse. Although farmers had been meeting with the company as a group and had organized themselves into a union, BR approached each farmer individually and coerced them into signing the contracts by saying that whether the farmers signed or not, BR was going to leave and stop all activities on the farms.¹¹⁵ In some cases, BR implied that if they did not sign, the farmers would be unable to regain formal control of their farms.¹¹⁶ In at least one case, BR repeatedly visited a farmer who had refused to terminate her contract and tried to convince her to sign the termination agreement, including by telling her that all of the other farmers had already done so.¹¹⁷ BR told the farmers that they had no legal recourse against BR because of its decision to leave.¹¹⁸ Additionally, BR demonstrated its bad faith by refusing to allow any negotiation of the conditions of its exit.¹¹⁹

In the intervening years between BR's initial contracts with farmers and the termination contracts, BR repeatedly demonstrated bad faith in its dealings with farmers, in both large ways

¹¹³ Interview with Charlesetta Williams by Accountability Counsel (Apr. 4, 2013).

¹¹⁴ *Id.*; Cut and Run, *supra* note 52, at 34.

¹¹⁵ Cut and Run, *supra* note 52, at 38.

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 38-39.

¹¹⁸ *Id.* at 38.

¹¹⁹ Interviews with Sam Bonwin and Charles G. Bryant, *supra* note 33; *see also* Cut and Run, *supra* note 52, at 38.



and small.¹²⁰ As described above, BR broke promises about a host of issues, including maintenance of the farms, removal of abandoned and uprooted trees, replanting schedules and the piles of woodchips. Similarly, although BR's documents discussed providing the farmers with trainings about farm management and care for the rubber trees,¹²¹ none of the farmers in Grand Bassa County ever received any trainings from BR or FarmBuilders.¹²²

D. Impacts on Vulnerable Populations

BR's activities have disproportionately affected vulnerable groups of farmers, including indigenous, low-income and female farmers. BR failed to consult with, or even recognize, these groups.

As mentioned above, most of the farmers in Grand Bassa County with whom BR had contracts are members of the Bassa tribe.¹²³ The Bassa constitute one of the main minority groups in Liberia. Roughly 10% of the Liberian population is Bassa,¹²⁴ and 94% of the residents of Grand Bassa County are Bassa speakers.¹²⁵ They were one of the first ethnic groups to inhabit Liberia, migrating from the north and east around the 12th century.¹²⁶ They are the traditional inhabitants of Grand Bassa County and owned the land there until the Liberian government took it over in the nineteenth century. The Bassa speak their own language—Bassa—and maintain their own indigenous writing system, called “Bassa” or “Vah,” which was developed around 1900.¹²⁷ In addition to having their own language, the Bassa have many traditional customs that set them apart from other Liberians. They have traditional houses, leadership structures,

¹²⁰ BR's model was to hold itself out as a caring, responsible, socially-oriented company, concerned with the welfare of smallholder farmers, while at the same time conducting itself on the ground in a way that was deceitful, coercive and ultimately destructive to the farmers' livelihoods. One relatively minor example, which is nonetheless emblematic of BR's treatment of the smallholder farmers, involves a statement from a farmer that BR put on its website. Shortly after paying him for his old rubber trees, BR had asked Sam Bonwin, one of the farmers, what he was going to do with the money. Interview with Sam Bonwin, Mar. 2, 2013 interviews, *supra* note 31. Sam replied that he was sending his children to school, and BR put his statement on their website. Sam, however, quickly became dissatisfied with BR's failure to maintain his farm, and he has made some of the strongest statements against BR in terms of the company's failed promises, saying that “BRE fooled us. Our farms are very dirty [e.g. poorly maintained] since we turned them over to BRE.” Interview with Sam Bonwin, Jun. 2011 interviews, *supra* note 30. He was very disappointed to learn that BR had used his previous statement to promote its business, even after he had become very vocal about his dissatisfaction with the company. Interview with Sam Bonwin, Mar. 2, 2013 interviews, *supra* note 31.

¹²¹ See ESIA, *supra* note 24, at 90, 129, 138; see also Harvesting Management Plan, *supra* note 14, at 9.

¹²² Interview with Charles Holt by Accountability Counsel (Apr. 5, 2013); Interview with Sam Bonwin, *supra* note 33; Interview with George Barchue, *supra* note 94; Interview with the Bryant family by Accountability Counsel (Apr. 2, 2013).

¹²³ According to the Liberian government, the Bassa are one of the major tribes in Grand Bassa County. Development Agenda, *supra* note 98, at ix.

¹²⁴ Minority Rights Group International, World Directory of Minorities and Indigenous Peoples: Liberia Overview, available at <http://www.minorityrights.org/?lid=5235>.

¹²⁵ Development Agenda, *supra* note 98, at 6.

¹²⁶ *Id.*

¹²⁷ *Id.*; see also Ayodeji Olukoju, *Culture and Customs of Liberia*, 4 (Greenwood Press 2006). Many of the farmers also speak Pidgin and some speak English.

marriage customs, songs, dances, hairstyles and art.¹²⁸ Additionally, adolescents attend traditional schools in the bush, called Poro and Sande societies, during which time they learn the customs of the Bassa and undergo coming-of-age rituals.¹²⁹ Yet, BR's project documents entirely failed to recognize that most of the farmers belonged to this indigenous group.¹³⁰

Additionally, many of the farmers should have been recognized as vulnerable due to their low-incomes and many dependents. What income they did have often came from their rubber trees, which BR uprooted. As noted above, many are now struggling to even feed themselves and their families. BR's failure to recognize their economically vulnerable position contributed to the harm they are now experiencing.

Finally, BR's dumping of rotten woodchips on farms and the resulting water contamination has severely and disproportionately impacted the livelihood and health of women. In rural Liberia, women and girls are traditionally responsible for domestic water supply and bear the burden of fetching water from the nearest water source. After their local water sources were contaminated, women and girls on the Barchue, Bonwin and Bryant farms were forced to walk long distances to get clean water, sometimes up to 45 minutes each way with heavy water buckets on their heads.¹³¹

. . . BR's dumping of rotten wood chips on farms and the resulting water contamination has severely and disproportionately impacted the livelihood and health of women.

Pregnant women also suffered disproportionate consequences from drinking contaminated water, such as unusually difficult pregnancies and increased risk of complications during delivery.¹³² Rebecca Gbotoe, a midwife living on the Barchue farm, felt humiliated that she had to use contaminated water while delivering babies on the Barchue farm.¹³³ The babies delivered under these conditions were failing to thrive, and mothers suffered from the unsanitary conditions.¹³⁴

E. Displacement

Due to farmers' inability to maintain their farms, and because of the problems BR created with stinging ants, farms are in the process of reverting back to tropical forests, which amounts

¹²⁸ See Olukoju, *supra* note 127, at 74, 89, 93, 141. For an example of Bassa art, see <http://www.africadirect.com/carvings/dan-bassa-kran-wee/e-price-bassa-standing-female-figure-with-short-arms-liberia-african-art.html>.

¹²⁹ See Development Agenda, *supra* note 98, at ix; see also Olukoju, *supra* note 127, at 89, 116-17.

¹³⁰ BR Fuel II Project Summary, *supra* note 3 ("Based on the findings during due diligence, it appears unlikely that there are communities that can be considered indigenous under PS 7 (Indigenous People) living in areas in which the project will operate.").

¹³¹ Interview with Sam Bonwin, *supra* note 33; Interviews with Rebecca Gbotoe and Saturdamar Bonwin, *supra* note 94.

¹³² Interview with Rebecca Gbotoe, *supra* note 94.

¹³³ *Id.*

¹³⁴ *Id.*

to an effective displacement of farmers from these portions of their farms. For example, parts of the Bonwin farm have become completely inaccessible. The vegetation is so thick around the young rubber trees that it is impossible to distinguish them from the encroaching weeds and vines, and the surrounding soil is no longer visible. Although BR promised to maintain the Bonwin farm, BR did not return to maintain the seedlings once they were planted.¹³⁵ Because BR left the farm in such an unmanageable state, the impoverished Bonwin family cannot afford to hire the many workers it would take to clear it again.¹³⁶

Similarly, the Gongar farm is so overgrown that residents cannot walk across the area where the old rubber trees were located without using a machete to clear a path. BR had felled the old rubber trees and had left them on the field to rot rather than processing them into woodchips.¹³⁷ When BR failed to clear the logs or maintain the seedlings that it eventually planted, dense vegetation



The overgrown Gongar farm.

crowded the fragile young trees and a thick blanket of vines grew over the logs, obscuring them from view. Despite complaints, BR never returned to remove the rotting, vine-covered logs from the Gongar farm, making it even more inaccessible.

Moreover, after signing the initial contracts, some farmers were under the impression that BR was taking care of their farms and would inform them when their farms were ready to be turned back over to them.¹³⁸ Additionally, in at least some cases, farmers were told that they had ceded control of their farms during the rejuvenation period and felt that they were not supposed to access the farms until the trees were mature.¹³⁹ BR constructively displaced these farmers from at least a portion of their farms by giving them the impression that they were not allowed on their own land or should not do any work on it until BR had turned the farm back over to them.

¹³⁵ Interview with Sam Bonwin, *supra* note 33. Sam Bonwin recalls promises from BR that it would maintain his farm, although his contract with BR did not say anything about maintenance. See Exhibit 3.

¹³⁶ *Id.*

¹³⁷ Interview with a representative of the Gongar farm, Jul. 2010 interviews, *supra* note 30.

¹³⁸ Interview with Charles G. Bryant, *supra* note 33.

¹³⁹ Jul. 2010 interviews, *supra* note 30.

F. Lack of Information Disclosure and Consultation

Throughout its tenure in Liberia, BR failed to appropriately inform and consult with farmers about projects on their farms. Farmers had very little concrete, accurate information about BR's plans prior to agreeing to participate. Despite BR's references to pre-harvesting consultations,¹⁴⁰ BR never held any formal consultations with the farmers prior to beginning the project¹⁴¹ or prior to making decisions that directly impacted farmers, such as dumping the piles of rotten woodchips on their farms. While BR made significant improvements in this regard between July 2011 and April 2012, it then promptly reverted to its old, nontransparent way of dealing with farmers by approaching farmers individually and coercing them into signing termination contracts.

III. NACUL and Charcoal Producers at Freeman Reserve

Liberia's long civil war caused its energy sector to collapse, leading to an over-dependence on charcoal, which is the primary energy source used in Liberia for daily cooking and heating needs.¹⁴² Charcoal producers in Liberia depend on the same raw material as BR: old rubber trees.¹⁴³ Thus, the National Charcoal Union of Liberia ("NACUL") was concerned from the beginning that BR's activities would negatively impact charcoal producers.¹⁴⁴



Sarah Monopolah, charcoal producer and NACUL Chairperson from Freeman Reserve.

Although BR acknowledged to NACUL that its business plan, including its operations at the Firestone plantation, would likely impact local charcoalers, BR made no genuine effort to

¹⁴⁰ Harvesting Management Plan, *supra* note 14, at 8, 12.

¹⁴¹ While the ESIA claims that consultations were held in September 2010, these meetings, which were not consultations, occurred after many of the smallholder farmers already had contracts with BR. *See* ESIA, *supra* note 24, at 236-44. Moreover, the meetings were held only in Monrovia and Buchanan and there is no indication that they included any small farmers. *See id.* at 236, 278-80.

¹⁴² Burning Rubber, *supra* note 20, at 38. While charcoal is a traditional energy source in Liberia, the collapse of the energy sector during the war significantly increased its use. *See* ESIA, *supra* note 24, at 70-71. NACUL estimates that approximately 85% of the population now relies on charcoal as a primary source of energy.

¹⁴³ Burning Rubber, *supra* note 20, at 38.

¹⁴⁴ Interviews with George Z. Weaymie, President, and Richard T. A. Dorbor, Vice President of NACUL, Mar. 2, 2013 Interviews, *supra* note 31.



mitigate these impacts.¹⁴⁵ Prior to BR's arrival, Firestone encouraged charcoal producers from Freeman Reserve to convert old rubber trees on the Firestone plantation into charcoal for free.¹⁴⁶ At the time, charcoalers operating on Firestone's plantation produced approximately 20,000 bags of charcoal each month.¹⁴⁷ Once BR's operations on the Firestone plantation began in December 2009,¹⁴⁸ however, the charcoalers' situation changed drastically.

BR claimed that it would minimize livelihood impacts on local charcoalers by leaving wood remnants behind after it felled rubber trees on the Firestone plantation. In truth, however, the wood left behind was insufficient, and competition for the woodpiles – both financial and physical – became common.¹⁴⁹ BR employees would auction them to the highest bidder, leaving those unable to pay without the wood they needed to make charcoal.¹⁵⁰ As discussed in more detail below, these payments can make the difference between a producer being able to make a profit or not – in other words, the difference between a livelihood and destitution.¹⁵¹ Additionally, even when charcoalers could pay, BR employees routinely double-sold the same woodpiles to other charcoalers at a higher price.¹⁵² Despite being alerted to these problems, BR did not respond and never put in place a formal structure to ensure that charcoal producers could freely access the wood left for them.¹⁵³

BR employees exacted an even higher price from female charcoalers. As discussed in more detail below, unmarried women were coerced into having sex with BR machine operators, field supervisors and security guards in order to access wood remnants.¹⁵⁴ Several children were fathered by BR employees out of this sexual abuse and left unsupported with their mothers on Freeman

. . . unmarried women were coerced into having sex with BR machine operators, field supervisors and security guards in order to access wood remnants.

¹⁴⁵ Interviews with George Z. Weaymie and Richard T. A. Dorbor by Accountability Counsel (Apr. 6, 2013). As discussed in more detail below, BR and NACUL signed an MOU in December 2007 that was meant to mitigate impacts on charcoalers. Attached as Exhibit 6. BR, however, never fulfilled its obligations under the agreement.

¹⁴⁶ Group interview with charcoal producers and community leaders in Freeman Reserve, Division 20 by Green Advocates International (Oct. 2, 2010) (hereinafter, "Oct. 2010 interviews"); *see also* Burning Rubber, *supra* note 20, at 38.

¹⁴⁷ Cut and Run, *supra* note 52, at 42.

¹⁴⁸ Interview with Moses M. Flomo by Green Advocates International (Jul. 20, 2013).

¹⁴⁹ *See* Cut and Run, *supra* note 52, at 46-48.

¹⁵⁰ Interviews with Kebbeh Kain, Mamie Momo and Moses M. Flomo by Accountability Counsel (Apr. 7, 2013); Interviews with Martin Gbar, John B. Money, Sarah Monopoloh and Fayiah Tamba by Accountability Counsel (Apr. 6, 2013). *See also* Cut and Run, *supra* note 52, at 47-48.

¹⁵¹ Oct. 2010 interviews, *supra* note 146; *see also* Cut and Run, *supra* note 52, at 45-46, 48.

¹⁵² Interviews with Mamie Momo and Moses M. Flomo, *supra* note 150.

¹⁵³ Interviews with Kebbeh Kain, Sarah Monopoloh and Fayiah Tamba, *supra* note 150; *see also* Cut and Run, *supra* note 52, at 48.

¹⁵⁴ Interviews with Kebbeh Kain, Moses M. Flomo and Fayiah Tamba, *supra* note 150; Interviews with Jane Does 1, 3 and 4 by Accountability Counsel (Apr. 7, 2013); Interview with Jane Doe 2 by Accountability Counsel (Apr. 6, 2013).

Reserve when BR left the Firestone plantation.¹⁵⁵ Some of these female charcoalers were under the age of legal consent when they were coerced into having sex in exchange for wood remnants.¹⁵⁶

The following sections provide more detail about issues of particular concern for NACUL and for the charcoal producers from Freeman Reserve, specifically: livelihood impacts; violence by Firestone contractors and BR employees; sexual exploitation by BR employees; impacts on vulnerable populations, including women, indigenous people, and low-income charcoalers; environmental and health impacts; BR's bad faith negotiations and failure to comply with promises made to NACUL; and BR's lack of information disclosure and consultation with charcoal producers.

A. Livelihood Impacts

BR's activities on the Firestone plantation created a scarcity of the raw materials used by charcoal producers, which severely impacted the charcoalers' ability to produce charcoal. Charcoalers prefer to use the trunk and large branches of a tree to produce charcoal.¹⁵⁷ BR used the same parts of the tree for producing woodchips, leaving behind only smaller parts for the charcoal producers, which were not sufficient to sustain their livelihoods.¹⁵⁸

Charcoal producers have always struggled to make a profit from producing charcoal, but scarcity of raw materials drove up production costs and further reduced charcoalers' profits. In the first three years after BR's arrival in Liberia, the production cost of charcoal nearly tripled.¹⁵⁹

In the first three years after BR's arrival in Liberia, the production cost of charcoal nearly tripled.

During that same time period, the selling price for charcoal producers to the middlemen who transport the charcoal to cities such as Monrovia only doubled, meaning that the producers were making far less money.¹⁶⁰

Moreover, the fees charged by BR employees for leftover wood directly impacted whether charcoal producers could make a profit. For example, in November 2011, James Paye calculated that had he been allowed to use a pile of wood for free, rather than pay a BR employee for it, he would have been able to make at least a small profit.¹⁶¹ Instead, he was left with a deficit after selling the charcoal that he produced from the BR-controlled woodpile.¹⁶²

¹⁵⁵ Interviews with Jane Does 1, 3 and 4, *supra* note 154; Interviews with Jane Does 5 and 6 by Accountability Counsel (Apr. 7, 2013).

¹⁵⁶ Interview with Jane Doe 1, *supra* note 154; Interview with Jane Doe 6, *supra* note 155.

¹⁵⁷ Cut and Run, *supra* note 52, at 44.

¹⁵⁸ *Id.*

¹⁵⁹ Oct. 2010 interviews, *supra* note 146; *see also* Burning Rubber, *supra* note 20, at 41.

¹⁶⁰ Burning Rubber, *supra* note 20, at 41.

¹⁶¹ *See* Cut and Run, *supra* note 52, at 45.

¹⁶² *Id.*

As a result of BR's practices, which violated its agreement with NACUL, charcoal producers from Freeman Reserve have been struggling to make enough money to feed their families and educate their children.¹⁶³

B. Violence by Firestone Contractors and BR Employees

The relationship between charcoalers and Firestone deteriorated rapidly after BR began clearing trees on the Firestone plantation, which led Firestone to prohibit the charcoalers from producing charcoal on its land.¹⁶⁴ Firestone also hired notorious ex-rebel commander Daniel K. Bracewell, aka DKB,¹⁶⁵ to enforce this rule and protect areas of the Firestone plantation cleared and replanted by BR.¹⁶⁶ DKB and other ex-fighters guarding the Firestone plantation terrorized local charcoal producers by: patrolling the Firestone plantation with AK-47 assault rifles, cutlasses, and machetes; violently attacking charcoalers; detaining charcoalers for up to a day; burning their tents; and stealing their charcoal, tools and money.¹⁶⁷ These security forces also

Violent Attack by Firestone Security

In an incident that seriously injured three charcoalers, DKB and his men struck one charcoaler on the head with a cutlass and attacked two others with sulfuric acid. John Money, one of DKB's victims, was forced to move his family from Freeman Reserve to a village located an hour and a half away because he feared that DKB would come back for him. He still feels pain from the head trauma he sustained when DKB struck him with a cutlass.

Source: Interview with John B. Money by Accountability Counsel (Apr. 6, 2013).

¹⁶³ Interviews with charcoal producers by Accountability Counsel (Apr. 6-7, 2013); Oct. 2010 interviews, *supra* note 146.

¹⁶⁴ Interviews with Moses M. Flomo, John B. Money, Sarah Monopoloh and Fayiah Tamba, *supra* note 150; Interview with Richard T.A. Dorbor by Accountability Counsel (Apr. 7, 2013); Interview with George Z. Weaymie, *supra* note 145.

¹⁶⁵ DKB was a former Deputy Chief of Staff of Taylor's Executive Mansion Presidential Force; he has admitted to participating in mass execution of fighters of the National Patriotic Front of Liberia. Alloycious David, *The News, Liberia: Ex-NPFL General Admits to Mass Execution*, (Dec. 5, 2008), available at: <http://allafrica.com/stories/200812050777.html>.

¹⁶⁶ Interviews with Martin Gbar, John B. Money, Sarah Monopoloh and Fayiah Tamba, *supra* note 150; Oct. 2010 interviews, *supra* note 146; *see also* Cut and Run, *supra* note 52, at 49 n.94.

¹⁶⁷ Interview with Martin Gbar, John B. Money, Sarah Monopoloh and Fayiah Tamba, *supra* note 150; Oct. 2010 interviews, *supra* note 146. *See also* Cut and Run, *supra* note 52, at 49 n.94; Burning Rubber, *supra* note 20, at 39; Ushahidi Incident Report, *Thugs Break Loose at Firestone* (Dec. 4, 2010), available at: <http://liberia.ushahidi.com/reports/view/647> (hereinafter, "Thugs at Firestone"). By October 2010, these ex-fighters had already attacked over 30 charcoal producers, stealing a total of more than 400 bags of charcoal and beating or detaining at least five charcoalers. Oct. 2010 interviews, *supra* note 146. The violence continued after that date. *See, e.g.*, Thugs at Firestone. Although the circumstances are unclear, DKB was removed from his position on the Firestone Plantation in late 2011. *See* Cut and Run, *supra* note 52, at 49.

charged additional “registration fees” to charcoalers to access wood left behind by BR and sometimes also charged fees to produce charcoal on the marshlands adjacent to the plantation.¹⁶⁸

To comply with Firestone’s new rules and avoid abusive treatment, charcoalers had to carry sticks and branches on their heads for an hour or more to reach a place to produce charcoal.¹⁶⁹

Additionally, on at least one occasion, one of BR’s own employees threatened a charcoaler with death if he refused to pay for the wood remnants that BR claimed it was leaving behind for the charcoalers to freely use.¹⁷⁰ In that incident, a BR truck driver buried the wood under a large pile of dirt when a charcoal producer refused to pay.¹⁷¹ When the charcoal producer tried to stop the driver from burying the wood, his life was threatened.¹⁷²

BR’s initial reaction to these issues was to assert that it had no influence on the relationship between Firestone and the charcoalers¹⁷³ and that it had a “zero tolerance” policy regarding the collection of fees by its employees for wood left behind.¹⁷⁴ Later, BR and NACUL discussed a proposal to formalize the charcoaling practices on the Firestone plantation, which BR believed would help ease tensions between parties over access to the wood left by BR.¹⁷⁵ The proposal, however, never materialized into a concrete agreement.

C. Sexual Exploitation by BR Employees

BR employees coerced several of the young, unmarried women charcoal producers into having sex with them.¹⁷⁶ If female charcoalers refused the sexual advances of BR employees, the men would deny them access to the woodpiles they needed to produce charcoal.¹⁷⁷ Seeing no alternative, many female charcoalers entered into sexual relationships with these BR employees.¹⁷⁸ Fayiah Tamba, NACUL’s Deputy Chairperson representing charcoalers from Freeman Reserve, also reported that BR’s employees created a situation in which several male

¹⁶⁸ Oct. 2010 interviews, *supra* note 146.

¹⁶⁹ Interviews with Kebbeh Kain, John B. Money and Sarah Monopoloh, *supra* note 150; Interview with George Z. Weaymie, *supra* note 145; Oct. 2010 interviews, *supra* note 146; *see also* Burning Rubber, *supra* note 20, at 39.

¹⁷⁰ Burning Rubber, *supra* note 20, at 38.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *See id.* at 39.

¹⁷⁴ Cut and Run, *supra* note 52, at 45.

¹⁷⁵ *Id.* at 43.

¹⁷⁶ Interviews with Kebbeh Kain, Moses M. Flomo and Fayiah Tamba, *supra* note 150; Interviews with Jane Does 1, 2, 3 and 4, *supra* note 154.

¹⁷⁷ Interviews with Moses M. Flomo, Sarah Monopoloh and Fayiah Tamba, *supra* note 150; Interviews with Jane Does 1, 3 and 4, *supra* note 154.

¹⁷⁸ Interviews with Jane Does 1, 2, 3 and 4, *supra* note 154; Interview with Jane Doe 5, *supra* note 155.



charcoalers felt required to offer their daughters to BR employees for sexual abuse, understanding that it was the only way to secure wood for charcoal.¹⁷⁹

One of the female charcoalers said that over 100 female charcoalers had sex with BR employees to access charcoal wood while BR was operating on the Firestone plantation.¹⁸⁰ Women who entered into sexual relationships with BR employees were given access to woodpiles only as long as the sexual abuse lasted.¹⁸¹ Male and female charcoalers agreed that it was extremely difficult for female charcoalers to gain access to woodpiles if they did not agree to the sexual exploitation by BR employees.¹⁸²

Sexual Exploitation of an Underage Charcoal Producer

Jane Doe 1 was underage when a BR security guard approached her while she was collecting the wood remnants from a field that BR had cleared. The security guard confiscated the wood remnants that Jane Doe 1 had collected and demanded that she have sex with him. He told her that he would give her back the wood, and pay her school fees, if she acquiesced, and he threatened that if she refused him, he would ensure that she would never access BR wood remnants again. Jane Doe 1 was a virgin at the time and did not want to have sex with him, but she agreed out of fear that her family could not survive without the wood she collected, which her mother used to make charcoal. Once the sexual abuse began, the BR security guard made sure that Jane Doe 1 could harvest leftover wood. Within a few months she was pregnant with his child and had to drop out of school to care for her baby. The BR security guard left Freeman Reserve when Jane Doe 1 was one month pregnant, and she has not heard from him since.

Source: Interview with Jane Doe 1 (name changed to protect her safety and privacy) by Accountability Counsel (Apr. 7, 2013).

D. Impacts on Vulnerable Populations

BR's impacts on charcoal producers disproportionately harmed vulnerable groups including women, as described above, indigenous people and low-income charcoalers. Many of the charcoal producers from Freeman Reserve are indigenous, with the majority of indigenous charcoalers belonging to the Kpelle tribe and speaking Kpelle as their first language. Other charcoalers belong to the Kissi, Lorma, Mano and Gio tribes. Yet, there is no indication that BR ever recognized that its activities at the Firestone plantation were impacting indigenous people.

¹⁷⁹ Interview with Fayiah Tamba, *supra* note 150.

¹⁸⁰ Interview with Jane Doe 2, *supra* note 154.

¹⁸¹ Interviews with Jane Does 1, 3 and 4, *supra* note 154; Interview with Jane Doe 5, *supra* note 155.

¹⁸² Interviews with Kebbeh Kain, Moses M. Flomo and Fayiah Tamba, *supra* note 150; Interviews with Jane Does 1, 2 and 4, *supra* note 154.

Additionally, as described above, even under the best of circumstances, it was difficult to make a living producing charcoal. Many of the producers affected by BR's activities had very low-incomes to begin with and were, therefore, particularly vulnerable as BR's operations created scarcity and drove up prices.

E. Environmental and Health Impacts

As a result of the harsh competition for the piles of wood left by BR, as well as the intimidation and harassment from Firestone's security personnel, nearly 100 charcoal producers began cutting down trees in the natural forest located between Firestone's plantation and Freeman Reserve to produce charcoal.¹⁸³ This destruction of natural forest was a foreseeable result of BR's use of the rubber trees that these charcoalers had previously been converting into charcoal.

Additionally, BR's operations on the Firestone estate had negative environmental consequences. Similar to the problems experienced on smallholder farms, the clear-cutting of old rubber trees and processing of woodchips on the plantation caused problems for Freeman Reserve residents, including soil erosion, dust and wind storms.¹⁸⁴ Additionally, BR left piles of woodchips sitting at the plantation, which attracted stinging ants, causing a similar public health concern as noted above with the farmers.¹⁸⁵ The woodchips also leached pollutants into water sources used by residents of Freeman Reserve for washing and cooking.¹⁸⁶ BR eventually removed these woodchips, which helped alleviate the ant problem. However, the company never addressed the water contamination caused by the woodchips, and the water used by residents of Freeman Reserve is still contaminated.¹⁸⁷

¹⁸³ Interviews with Moses M. Flomo, John B. Money and Fayiah Tamba, *supra* note 150; Interview with Richard T. A. Dorbor, *supra* note 164; Interview with George Z. Weaymie, *supra* note 145; *see also* Cut and Run, *supra* note 52, at 48-49. Even these producers faced abuse by BR employees, some of whom stole the trees they cut down, converting them into planks to sell for construction purposes. Cut and Run, *supra* note 52, at 49.

¹⁸⁴ Oct. 2010 interviews, *supra* note 146.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* This is not an isolated incident. Several other communities have been faced with severe shortages of safe drinking water due to BR's activities on the Firestone plantation, which polluted creeks and other traditional water sources. *Id.*

¹⁸⁷ Interview with Sarah Monopoloh, *supra* note 150.



F. Bad Faith Negotiations and Failure to Comply with Promises

NACUL first came into contact with BR at a national energy planning meeting in 2007, and shortly thereafter began trying to work with BR to mitigate the impacts of BR's activities on charcoal producers. On December 11, 2007, NACUL and BR signed a Memorandum of Understanding ("MOU"), in which BR agreed to take measures to mitigate impacts on charcoalers, including providing assistance with "skills training, technology development, transportation, raw materials development [and] micro-finance."¹⁸⁸ NACUL's hopes quickly faded, however, as BR failed to take any steps to implement the agreement and the negative impacts of BR's activities on NACUL members became apparent. BR had not yet taken any genuine steps to fulfill this agreement by the time OPIC was signing its first Financing Agreement with BR in late 2008.¹⁸⁹

In September 2010, BR began trying to convince NACUL to renegotiate the MOU. BR wanted a new MOU that would significantly reduce its responsibility to assist charcoalers and that referenced an annex that was incomplete.¹⁹⁰ Moreover, although the period from late 2010 until late 2012 was characterized by BR's renewed attention and promises to help mitigate impacts on charcoal producers, the only concrete achievement by BR was to assist with the building of an office space for NACUL.¹⁹¹

G. Lack of Information Disclosure and Consultation

While BR did engage with NACUL, the company failed to disclose project-related information to, or consult with, the charcoalers actually operating on or near the Firestone plantation, despite the clearly foreseeable impact of its activities on their livelihoods.¹⁹² Charcoalers were not adequately informed about BR's "zero tolerance" policy with regard to BR employees' practice of charging charcoalers for the wood piles, nor were they aware of how much wood BR intended to leave behind for their use.¹⁹³ Moreover, charcoalers did not know how to lodge complaints to BR regarding these issues when BR clearly and repeatedly violated its policy.

¹⁸⁸ Exhibit 6. The MOU was signed when BR was still under its old ownership, before Pamoja Capital acquired a controlling interest in the company.

¹⁸⁹ Mar. 2, 2013 interviews, *supra* note 31; *see also* Burning Rubber, *supra* note 20, at 40.

¹⁹⁰ Interviews with George Z. Weaymie and Richard T. A. Dorbor, *supra* note 145.

¹⁹¹ *See* Cut and Run, *supra* note 52, at 42-43.

¹⁹² Interviews with Moses M. Flomo and Sarah Monopoloh, *supra* note 150; Interview with George Z. Weaymie, *supra* note 145.

¹⁹³ *See* Cut and Run, *supra* note 52.

IV. Buchanan Renewables' Workers

BR sold its project to OPIC in part by highlighting the training and “permanent jobs” it would provide to local Liberians. In reality, while BR did employ many locals, its practices were often abusive and unfair.¹⁹⁴

Several workers started working for BR as unpaid volunteers, often for long periods of up to one or two years.¹⁹⁵ Additionally, even when hired into paid positions, some workers were employed under time-bound contracts, as short as three months,¹⁹⁶ making the “permanent” nature of their employment questionable. BR’s interactions with workers were also characterized by broken promises regarding compensation and benefits, described in more detail below.



Group of female agriculture workers.

Working conditions, as discussed further below, were also abusive and unsafe. Several BR workers experienced serious workplace accidents, some of which left them permanently disabled and unable to continue to work in manual labor jobs. Moreover, many injured workers had trouble receiving disability benefits through Liberia’s National Social Security and Welfare Corporation because BR did not properly report workplace accidents or provide injured workers

¹⁹⁴ At least some of these problems were publicly known, as evidenced by members of the plenary of the Liberian House of Representatives discussing BR’s problematic labor practices during a May 2012 session in which the body voted to halt BR operations. See *Lawmakers Declare Buchanan Renewables Dubious*, *supra* note 72.

¹⁹⁵ Interviews with Ophelia Diakpo and Daniel Corpoe by Accountability Counsel (Apr. 4, 2013); Individual and group interviews with affected workers by Accountability Counsel (Apr. 4-5, 2013); Interviews with Sam Yeadieh and Edna Y. Williams by Green Advocates International (Mar. 8, 2013); Mar 2, 2013 interviews, *supra* note 31.

¹⁹⁶ Individual and group interviews with workers from the Workshop, Port and Agriculture Departments by Accountability Counsel (Apr. 4-5, 2013).

¹⁹⁷ Interview with John Zeo by Accountability Counsel (Apr. 5, 2013); Group interview with workers from the Maintenance Department by Accountability Counsel (Apr. 5, 2013); Interviews with Florence Johnson and Junior Gayman by Accountability Counsel (Apr. 3, 2013); Interviews with former BR workers by Green Advocates International (Mar. 8-10, 2013) (hereinafter, “Mar. 2013 worker interviews”). BR Human Relations employees informed some injured workers that their medical files were being withheld or had been deliberately destroyed. Interview with Lloyd Reeves by Accountability Counsel (Apr. 3, 2013); Interview with John Zeo and Mar. 2013 worker interviews, *supra* note 197.



with copies of their medical records.¹⁹⁷ These serious injuries were directly related to BR's consistent failure to provide employees with adequate training and protective gear.¹⁹⁸

In addition to its failure to provide workers with adequate training and safety equipment, BR's field workers faced other problematic and at times dangerous working conditions. As discussed in more detail below, pregnant women suffered disproportionately from the unsafe working conditions, and BR failed to accommodate their needs. Additionally, on at least one

. . . pregnant women suffered disproportionately from the unsafe working conditions . . . [and] many female agricultural workers faced routine sexual harassment and sexual coercion from their supervisors.

occasion workers were sent to an unsafe training area where they faced threats of violence and lacked basic necessities.¹⁹⁹ Moreover, abuse of workers, both male and female, by BR supervisors was commonplace. In particular, and as discussed below, many female agricultural workers faced routine sexual harassment and sexual coercion from their supervisors.

Although BR documents described grievance procedures,²⁰⁰ many workers were not aware of a formal grievance mechanism for addressing their complaints.²⁰¹ Instead, most workers would bring complaints to their supervisors, and many had to bribe their supervisors in order to stop abusive treatment or get them to take any other action.²⁰² In some cases, raising complaints with supervisors led to retribution or threats of retribution.²⁰³

¹⁹⁸ Mar. 2, 2013 interviews, *supra* note 31.

¹⁹⁹ Interviews with Ophelia Diakpo and Daniel Corpoe, *supra* note 195; Interviews with Naomi Baryogar, Deborah Bennie, Sayee Caine, Mamie Garmondeh, Jerry Gbotoe, Elizabeth Goueh, Mary Foster, Ellen Kangar, Mama Kaykay, Hannah Jacobs, Jamesetta Maneah, Dorris Matthies, Felecial Reeves, Mary William and Beatrice Zarzar by Accountability Counsel (Apr. 4, 2013); Interview with Photo Karngar, Mar. 2, 2013 interviews, *supra* note 31.

²⁰⁰ See Buchanan Renewables: Employee Handbook, § 5.19 (Jul. 2009) (hereinafter, "Employee Handbook"), attached as Exhibit 7; Collective Bargaining Agreement between Buchanan Management Services, Inc. and the United Steel, Industrial & Rail Workers' Union of Liberia, Art. 43 (Oct. 1, 2012) (hereinafter, "CBA"), attached as Exhibit 8. Workers report that they were employed by the BR subsidiary Buchanan Management Services, Inc.

²⁰¹ Interviews with former BR workers by Accountability Counsel (Apr. 3-5, 2013).

²⁰² Interviews with Sayee Caine, Mama Kaykay, Hannah Jacobs and Beatrice Zarzar, *supra* note 199; Interviews with Ophelia Gardner, Comfort Harris and Esther Daniel by Accountability Counsel (Apr. 4, 2013).

²⁰³ Interview with Mama Kaykay, *supra* note 199; Interviews with Isaac B. Suatt and Tamba Fayah by Accountability Counsel (Apr. 3, 2013).

With all of these problems as a backdrop, BR workers attempted to negotiate a Collective Bargaining Agreement (“CBA”) with BR. After lengthy negotiations,²⁰⁴ a CBA was signed on October 1, 2012.²⁰⁵ But within a few months of signing the CBA, and before workers saw any improvement in working conditions, workers began hearing rumors that BR was planning on leaving Liberia.²⁰⁶ Instead of addressing the rumors and clarifying its plans, BR kept workers in the dark.²⁰⁷

Then, shortly before beginning layoffs of the majority of its workforce, BR called workers to a meeting at the port in Buchanan and told them that the company had made the decision to exit Liberia.²⁰⁸ Shortly after the announcement, BR presented workers with termination agreements and severance packages.²⁰⁹ In order to receive severance pay, however, laid off workers had to sign a form releasing BR from all liability related to their employment and termination. Many workers did not understand the terms of the employee release, but nevertheless signed the agreements out of desperation to support their families.²¹⁰

Since being laid off, many workers are now facing difficulties providing sufficient food for their families and an education for their children.²¹¹ Complainants include workers from a variety of positions at BR, including chainsaw operators, workers employed to fuel vehicles and store fuel drums, agricultural workers, security personnel and road maintenance workers. Many of the Complainants had been working for BR for several years, some starting as early as 2008, and worked until they were laid off at the end 2012 or early in 2013.²¹²

The following sections provide more detail about issues of particular concern for the former BR workers submitting this Complaint, specifically: worker health, safety and security; a dangerous training site to which several women were sent for a month; sexual harassment and abuse by BR supervisors; unfair and dishonest hiring and compensation practices; impacts on

²⁰⁴ Interview with Sam Yeadieh by Accountability Counsel (Apr. 5, 2013).

²⁰⁵ Exhibit 8, CBA.

²⁰⁶ Interviews with Ola G. Hunter and Esther Briggs by Accountability Counsel (Apr 3, 2013).

²⁰⁷ Interviews with Ola G. Hunter and Esther Briggs, *supra* note 206; Interviews with Comfort Cercee and Love Ocee by Accountability Counsel (Apr. 3, 2013).

²⁰⁸ Group interviews with workers from the Port and Production Departments by Accountability Counsel (Apr. 5, 2013); Interview with Esther Briggs, *supra* note 206.

²⁰⁹ Per Liberian law and the terms set forth in the Employee Handbook, the severance packages were equal to one and a half months wages for each year of work with BR and one month wages to compensate for BR’s lack of notice regarding the termination of employment, in addition to back pay and accrued annual leave. *See* Exhibit 7, Employee Handbook at § 2.4(a); *see also* Buchanan Management Services: Employee Handbook, Revision 2, § 2.4(a) (Feb. 2011) (hereinafter, “Revised Employee Handbook”), attached as Exhibit 9. Monthly salaries for Complainants varied widely depending on the job, with the range roughly between US\$70 and US\$800 per month.

²¹⁰ Interviews with Ola G. Hunter and Esther Briggs, *supra* note 206; Interviews with Comfort Cercee, and Love Ocee, *supra* note 207.

²¹¹ Interviews with former BR workers, *supra* note 201.

²¹² The majority of Complainants who recently lost their jobs at BR were laid off at the end of January 2013, but a few were laid off as early as the end of November 2012 or as late as mid-March 2013. Some Complainants lost their jobs with BR prior to the recent layoffs.



vulnerable populations, including women, low-income workers and indigenous people; and BR's failure to comply with the terms of the CBA.

A. Worker Health, Safety and Security

Although BR told OPIC that it would provide all necessary protective equipment, personal protective gear and safety training to its employees,²¹³ it failed to do so.²¹⁴ Moreover, when the safety equipment that was issued did not fit or wore out, workers had to wait several months to receive replacements.²¹⁵ BR workers also suffered from a lack of safety training and the failure to implement procedures for safe tree felling and operation of heavy machinery.²¹⁶

As a direct result of these failures, grievous accidents were not uncommon for BR's workers. Several workers sustained serious injuries while on the job, including broken legs and arms.²¹⁷ In many cases, these workers were not provided with adequate medical care and were

²¹³ See Harvesting Management Plan, *supra* note 14, at 38 ("Every worker involved with harvesting operations will be provided with Personal Protective Equipment (gloves, steel toe boots, ear plug, helmet, overhaul, goggles etc) as needed") and at 39 ("Anybody using a chainsaw during harvesting operation will be required to wear safety footwear (a minimum of a steel toe-cap), leg protection, ear muffs and high visibility safety helmet and clothing"); ESIA, *supra* note 24, at 169 (Describing recommended on-site mitigation measures as including provision of "appropriate personal protective equipment such as gloves, masks, ear plugs, gas detectors, brightly colored working overalls equipped with light reflecting stripes, safety boots, safety helmets, etc."), and at 192 (Requiring that for off-site workers, "Workers have to be provided with proper protective fittings; protective clothing (long sleeves), helmets, resistant gloves, air purifying masks, safety glasses, ear protection (ear muffs, ear plugs) as required for their specific tasks."). See also Exhibit 7, Employee Handbook at §§ 2.2, 2.10(a), 3.13(a-c); Exhibit 9, Revised Employee Handbook at §§ 2.2, 2.10(a), 3.13 (a-c).

²¹⁴ In November 2012 – years after its due diligence documents acknowledged the necessity of such protective gear – BR's Public Relations Officer Benson Whea told a Liberian newspaper that the company was in the process of distributing safety gear to all workers. O. Testimony Zeongar, *Heritage Liberia, Aggrieved Buchanan Renewables Female Workers want Ellen's Intervention* (Nov. 30, 2012), available at: <http://www.news.heritageliberia.net/index.php/inside-heritage/human-rights/972-aggrieved-br-female-workers-want-ellen-s-intervention> (hereinafter, "Aggrieved BR Female Workers").

²¹⁵ Interview with Florence Johnson by Accountability Counsel (Apr. 4, 2013); Interview with Lloyd Reeves, *supra* note 197; Interviews with Naomi Baryogar and Mama Kaykay, *supra* note 199; Interview with Ola G. Hunter, *supra* note 206; Interview with Love Ocee, *supra* note 207; Group interview with workers from the Agriculture Department, *supra* note 100.

²¹⁶ Interviews with Florence Johnson and Lloyd Reeves, *supra* note 197; Interview with Love Ocee, *supra* note 207; Interview with Aderlyn D. Barnard by Accountability Counsel (Mar. 30, 2013).

²¹⁷ Interviews with John Zeo, Florence Johnson and Lloyd Reeves, *supra* note 197; Interview with Ola G. Hunter, *supra* note 206; Interview with Andrew Dolo by Accountability Counsel (Apr. 3, 2013); Interview with Aderlyn D. Barnard, *supra* note 216; Interviews with Ola G. Hunter, Andrew Dolo and Lloyd Reeves by Green Advocates International (Mar. 9, 2013); Interview with Aderlyn D. Barnard by Green Advocates International (Mar. 8, 2013).

²¹⁸ Interview with Comfort Cercee, *supra* note 207; Interviews with Annie Nagbe and Oretha Williams by Accountability Counsel (Apr. 4, 2013); Interviews with Richard Bay and Isa Biswaw by Accountability Counsel (Apr. 3, 2013); Interview with Aderlyn Barnard, *supra* note 217.

pressured by BR to return to work before they had fully recovered.²¹⁸ Many of these workers are still suffering from these injuries and are struggling to get further, necessary medical attention.²¹⁹



Injured worker with a photo of his injuries.

In addition to failing to take steps that would prevent serious injuries, such as providing necessary training to workers, BR did not always provide basic protective gear. For example, for a period of time, some agricultural workers were forced to graft rubber trees in bare feet or sandals, despite the risk of snakebites.²²⁰ As described in more detail below, at least one woman was bitten on the foot by a poisonous snake because of this practice.²²¹ When BR

eventually issued boots for workers to wear in the field, the boots were sometimes multiple sizes too large or small to fit the workers' feet.²²² When these workers complained and asked for replacement boots, BR refused to provide replacement pairs in their size.²²³ Frustrated by BR's failure to provide adequate footwear, some workers resorted to using their meager salaries to buy new boots.²²⁴

Moreover, BR frequently issued defective and/or substandard gear that wore out quickly and did not provide adequate protection.²²⁵ For example, BR issued most agriculture workers gloves every six months to protect them from agricultural chemicals and the wear and tear of manual labor, but the gloves were often too worn, too big or too thin to provide protection.²²⁶

²¹⁹ Interviews with Lomine Passaway and Victor G. Gbargee by Accountability Counsel (Apr. 5, 2013); Interview with Annie Nagbe, *supra* note 218; Interviews with Florence Johnson and Lloyd Reeves, *supra* note 197; Interview with Andrew Dolo, *supra* note 217; Interview with Aderlyn D. Barnard, *supra* note 216.

²²⁰ Interviews with Sayee Caine, Elizabeth Goueh and Mama Kaykay, *supra* note 199; Mar. 2013 worker interviews, *supra* note 197; *see also* Aggrieved BR Female Workers, *supra* note 214. BR's due diligence documents recognized the risk of snakebites. *See* Harvesting Management Plan, *supra* note 14, at 37; ESIA, *supra* note 24, at 123.

²²¹ Interview with Sayee Caine, *supra* note 199.

²²² Interview with Mama Kaykay, *supra* note 199; Interview with Florence Johnson, *supra* note 215.

²²³ *Id.*

²²⁴ Interview with Annie Wright by Accountability Counsel (Apr. 4, 2013); Interviews with female agriculture workers by Accountability Counsel (Apr. 4, 2013).

²²⁵ Mar. 2013 worker interviews, *supra* note 197.

²²⁶ Interviews with female agriculture workers, *supra* note 224.

Inadequate Medical Care After a Serious Workplace Injury

Aderlyn Barnard began working in BR's Agriculture Department in 2008, but was transferred to the Production Department in September 2011. Her new job was to record the number of trees felled by the felling crew, but she received no safety training prior to being sent into the field. When she complained to BR about her lack of training, she was told to go anyway. On September 16, 2011, during her first field assignment, one of the trees fell on her, knocking her unconscious. It took a few minutes for the felling crew to realize that Aderlyn was missing. When they found her, she had a broken leg and wrist and dislocated arm.

After the accident, Aderlyn was forced to move between several hospitals in an attempt to get appropriate care. BR originally sent her to Firestone's rubber plantation hospital, where she spent three painful weeks prior to even being seen by a doctor. When the doctor finally arrived, he treated Aderlyn for her broken leg and wrist, but failed to diagnose her dislocated arm.



Aderlyn Barnard.

After about a month, BR transferred her to Buchanan, rejecting her request to be transferred to Monrovia to be near her family. In Buchanan, Aderlyn continued to suffer from her injuries, which were swollen and painful, but doctors there ignored her. BR's lead doctor later told her that he had recommended to BR Management that she be flown to South Africa for treatment, but his request was denied.

In an attempt to get BR to take her injuries seriously, Aderlyn and her husband, Amos, went to Mittal Steel's hospital in Buchanan and paid for an X-ray. When they showed the X-ray to BR, the company sent her back to the Firestone hospital, but the doctor never came, and she had to be sent to Monrovia for further treatment. Aderlyn eventually received some compensation, but not enough to cover the costs of her recovery time, X-ray, ongoing medical treatment – which she now has to pay for herself – and continuing disabilities.

Source: Interviews with Aderlyn D. Barnard by Accountability Counsel (Mar. 30 and Apr. 8, 2013); Interview with Aderlyn D. Barnard by Green Advocates International (Mar. 8, 2013).

Yet, BR would insist that workers wait six months for new gloves, regardless of these problems.²²⁷ At least one worker became very sick after working with chemicals without proper protective gear and had to be transferred to a different BR department.²²⁸

Workers in other departments had similar problems: chainsaw operators were not issued adequate safety equipment and did not receive training on how to fell trees safely;²²⁹ road maintenance workers²³⁰ and workers who were exposed to woodchip dust²³¹ lacked proper safety equipment; truck drivers were forced to drive without working headlights, leading to at least one collision resulting in a serious injury;²³² fuel workers who were not issued coveralls had fuel spilled directly onto their skin;²³³ and warehouse workers were forced to off-load pallets containing Caterpillar machine parts from ships at the port with their bare hands before BR eventually provided them with forklifts.²³⁴

BR's practices of failing to provide safe drinking water, food or shelter to agricultural workers deployed in the field were also detrimental to the workers' health. Although BR provided expatriate managers with bottled water, the company broke its express commitment to provide safe water for Liberian workers,²³⁵ forcing them to drink polluted creek water while working in the field.²³⁶ When BR discovered Liberian workers retrieving used water bottles from BR's dumpster so they could fill them in Buchanan and carry clean water to the field, BR management forbade them from taking used water bottles from BR's headquarters.²³⁷ Workers – who were routinely forced to do manual labor in scorching heat for hours every

Although BR provided expatriate managers with bottled water, the company broke its express commitment to provide safe water for Liberian workers, forcing them to drink polluted creek water while working in the field.

²²⁷ Id.

²²⁸ Id.

²²⁹ Interviews with Junior Gayman and Lloyd Reeves, *supra* note 197; Interviews with Richard Bay and Isa Biswaw, *supra* note 217; Interview with Thomas Fayed by Accountability Counsel (Apr. 3, 2013); Group interview with workers from the Production Department, *supra* note 208; Interview with Isaiah Cole by Green Advocates International (Mar. 9, 2013).

²³⁰ Group interview with workers from the Maintenance Department and Mar. 2013 worker interviews, *supra* note 197.

²³¹ Interview with Andrew Dolo, *supra* note 217.

²³² Interview with John Zeo, *supra* note 197.

²³³ Mar. 2013 worker interviews, *supra* note 197.

²³⁴ Group interview with workers from the Warehouse Department by Accountability Counsel (April 5, 2013).

²³⁵ Exhibit 8, CBA at Art. 38.

²³⁶ Interview with Janjay Mingle by Accountability Counsel (Apr. 4, 2013); Interview with Lloyd Reeves, *supra* note 197; Individual and group interviews with workers from the Agriculture Department, *supra* note 196; Mar. 2, 2013 interviews, *supra* note 31.

²³⁷ Interview with Janjay Mingle, *supra* note 236.



day without access to clean drinking water²³⁸ – have reported cases of cholera, typhoid and chronic diarrhea resulting from being forced to drink from creeks near their worksites.²³⁹ Additionally, BR supervisors notified workers that they would be declared unfit to work and laid off if they visited the BR Clinic more than three or four times.²⁴⁰

Workers in BR’s Agricultural and Production Departments were also frequently deployed to work for extended periods in remote, rural areas without adequate housing, despite BR having agreed to provide housing or a rental allowance for such situations.²⁴¹ Workers had to sleep on the ground in makeshift structures or flimsy tents, and in pools of muddy water when their tents flooded during the rainy season.²⁴² When an expatriate sent by BR visited a group of chainsaw operators in the field, he told them that their living conditions were so abysmal, that he “wouldn’t even allow his dog to sleep there.”²⁴³ Contrary to BR’s stated policies,²⁴⁴ these workers also had to use their own money for transportation to the remote farms, and BR did not provide them with adequate food or water once they arrived.²⁴⁵

BR also failed to reimburse workers for transportation costs to and from work, as it had agreed to do, and when workers stayed late on the job, they sometime had no means of getting home.²⁴⁶ Expecting farmers to work late when they would have no way to get home also presented a security concern.

²³⁸ Interview with Charlesetta Williams, *supra* note 113; Interviews with Elizabeth Goueh, Hannah Jacobs and Beatrice Zarzar, *supra* note 199; Interview with Ophelia Gardner, *supra* note 202; Interview with Janjay Mingle, *supra* note 236; Interviews with Helen Suah and Theresa Smith by Accountability Counsel (Apr. 4, 2013); Interview with Andrew Dolo, *supra* note 217; Group interview with workers from the Agriculture Department, *supra* note 100.

²³⁹ Group and individual interviews with workers from the Agriculture Department, *supra* note 196; Interview with Ola G. Hunter, *supra* note 206; Interview with Andrew Dolo, *supra* note 217; *see also* Aggrieved BR Female Workers, *supra* note 214.

²⁴⁰ Interview with William Topayoun by Accountability Counsel (Apr. 5, 2013); Interview with Beatrice Zarzar, *supra* note 199; Interviews with female agriculture workers, *supra* note 224.

²⁴¹ Interviews with Florence Johnson and Lloyd Reeves, *supra* note 197; Interview with Jerry Gbotoe, *supra* note 199; Interview with Ola G. Hunter, *supra* note 206; Individual and group interviews with workers from the Agriculture Department, *supra* note 196; Individual and group interview with workers from the Production Department by Accountability Counsel (Apr. 4-5, 2013); Mar 2, 2013 interviews, *supra* note 31. *See also* Exhibit 7, Employee Handbook at § 2.7(a); Exhibit 9, Revised Employee Handbook at § 2.7(a).

²⁴² Interviews with Florence Johnson and Lloyd Reeves, *supra* note 197; Interview with Ola G. Hunter, *supra* note 206; Interview with Thomas Fayed, *supra* note 229; Group interview with workers from the Agriculture Department, *supra* note 100; Group interview with workers from the Production Department, *supra* note 208.

²⁴³ Group interview with workers from the Production Department, *supra* note 208.

²⁴⁴ Exhibit 7, Employee Handbook at § 2.7(a); Exhibit 9, Revised Employee Handbook at § 2.7(a).

²⁴⁵ Interview with Jerry Gbotoe, *supra* note 199; Individual interviews with workers from the Agriculture Department, *supra* note 196; Group interview with workers from the Production Department, *supra* note 208; Mar. 2013 worker interviews, *supra* note 197.

²⁴⁶ Mar. 2, 2013 interviews, *supra* note 31; *see also* Exhibit 8, CBA at Art. 16.

B. Dangerous Training Site

On at least one occasion, BR sent workers for offsite training to a notoriously dangerous location, without providing them with adequate shelter, food, clean water, safety equipment or medical care. After BR decided to use bud grafting to cultivate more productive rubber trees, it sent thirty-seven planters from the Agriculture Department, mostly women, to a month-long training program at one of Liberia's rubber plantations, the Liberia Agriculture Company ("LAC").²⁴⁷ While there, these workers had to live at a campsite called "Dirty Way Camp," which was notorious for kidnappings, gender-based violence and ritualistic killings.²⁴⁸ "Hide men," as the ritualistic killers are known, would routinely terrorize the trainees. One woman was chased and barely escaped being kidnapped and killed.²⁴⁹ Another woman reported that hide men would pound on trainees' doors at night and taunt them while they tried to sleep.²⁵⁰ Jerry Gbotoe, a former LAC employee who was recruited by BR to teach BR trainees how to bud graft, reported that during the nine years he spent living at the camp, he had seen many bodies of people killed by the hide men.²⁵¹ Community members could tell that hide men were responsible for the killings because the bodies had been mutilated in ritualistic ways: genitals, hearts, and fetuses had been removed from the victims.²⁵²

Because of these threats, supervisors and trainers at the camp did not allow BR's female trainees to leave their living quarters after dark, which left them without access to toilets after nightfall because there were no indoor bathroom facilities.²⁵³ Additionally, trainees were not provided with beds, mattresses or mosquito nets, but instead had to sleep on the bare floor, unprotected from insects.²⁵⁴ As a result, several women contracted malaria and others were attacked by cockroaches while they slept.²⁵⁵ Roaches ate flesh off of the lips and fingers of female trainees, causing at least

Roaches ate flesh off of the lips and fingers of female trainees, causing at least one woman to have to go to the hospital for her injuries.

²⁴⁷ Interview with Daniel Corpoe, *supra* note 195; Interview with Photo Karngar, Mar. 2, 2013 interviews, *supra* note 31.

²⁴⁸ Interview with Daniel Corpoe, *supra* note 195; Interviews with Deborah Bennie, Sayee Caine, Jerry Gbotoe, Elizabeth Goueh, Ellen Kangar, Mama Kaykay, Hannah Jacobs, Jamesetta Maneah, Dorris Matthies, Mary William and Beatrice Zarzar, *supra* note 199; Interview with Photo Karngar, Mar. 2, 2013 interviews, *supra* note 31.

²⁴⁹ Interviews with Jerry Gbotoe and Mama Kaykay, *supra* note 199.

²⁵⁰ Interview with Beatrice Zarzar, *supra* note 199.

²⁵¹ Interview with Jerry Gbotoe, *supra* note 199.

²⁵² *Id.*; see also U.S. Department of State, 2012 Human Rights Report: Liberia (Apr. 19, 2012), § 6, available at: <http://www.state.gov/j/drl/rls/hrrpt/2012/af/204136.htm>.

²⁵³ Interviews with Naomi Baryogar, Deborah Bennie, Sayee Caine, Jerry Gbotoe, Elizabeth Goueh, Mama Kaykay and Beatrice Zarzar, *supra* note 199.

²⁵⁴ Interviews with Ophelia Diakpo and Daniel Corpoe, *supra* note 195; Interviews with Sayee Caine, Elizabeth Goueh, Ellen Kangar and Felecial Reeves, *supra* note 199; Mar. 2013 worker interviews, *supra* note 197.

²⁵⁵ Interviews with Mary Foster, Mamie Garmondeh, Jerry Gbotoe, Ellen Kangar, Mama Kaykay, Jamesetta Maneah, Felecial Reeves and Beatrice Zarzar, *supra* note 199; Mar. 2013 worker interviews, *supra* note 197; Interview with Photo Karngar, Mar. 2, 2013 interviews, *supra* note 31.



one woman to have to go to the hospital for her injuries.²⁵⁶ In another case, cockroaches burrowed into a woman's hair and chewed into her scalp.²⁵⁷ When women complained to their BR trainers about the abysmal housing conditions, they were told that they had to "just bear it."²⁵⁸

Working conditions at the training camp were also dangerous. Although poisonous snakes lived in the fields where trainees were working, BR did not provide adequate footwear for the trainees.²⁵⁹ Two trainees reported that they were told to bud graft in bare feet, so that their shoes would not ruin the rubber buds.²⁶⁰ Other trainees wore only sandals while they were bud grafting in the bush.²⁶¹

Near Fatal Workplace Accident

A poisonous snake bit Sayee Caine, a BR worker who was not provided proper footwear, when she was completing a training exercise wearing sandals. Because there was no clinic at Dirty Way Camp and BR did not provide first aid or emergency medical transport for trainees, Sayee nearly died from the snakebite. Initially, the only treatment she received was to have a man suck the venom from her foot and bandage it. A short time later, she became violently ill and had to pay a LAC truck driver to take her to the hospital in Buchanan. Sayee spent three days receiving treatment at the hospital, but then returned to Dirty Way Camp before she had fully recovered because BR representatives told her that if she did not return to the camp immediately, she would not be able to become a bud grafter for BR. Sayee paid for her own medical treatment and transport to and from the hospital in Buchanan.

Source: Interviews with Sayee Caine, Deborah Bennie, Mary William and Jerry Gbotoe by Accountability Counsel (Apr. 4, 2013).

Finally, although BR provided the trainees with a few bags of rice to take with them, their rations ran out before the end of the training.²⁶² BR also did not provide a source of safe drinking water for the trainees; they had to fetch their own drinking water from a local creek that

²⁵⁶ Interviews with Deborah Bennie, Mary Foster, Mamie Garmondeh, Jerry Gbotoe, Elizabeth Goueh, Mama Kaykay and Hanna Jacobs, *supra* note 199.

²⁵⁷ Interview with Mamie Garmondeh, *supra* note 199.

²⁵⁸ Interviews with Deborah Bennie and Beatrice Zarzar, *supra* note 199.

²⁵⁹ Interviews with Deborah Bennie, Sayee Caine and Elizabeth Goueh, *supra* note 199.

²⁶⁰ Interviews with Elizabeth Goueh and Mama Kaykay, *supra* note 199.

²⁶¹ Interviews with Deborah Bennie and Sayee Caine, *supra* note 199.

²⁶² Interview with Ophelia Diakpo, *supra* note 195; Interviews with Deborah Bennie, Elizabeth Goueh, Dorris Matthies, Mary William and Beatrice Zarzar, *supra* note 199; Interview with Photo Karngar, Mar. 2 Interviews, *supra* note 31.

²⁶³ Interview with Daniel Corpoe, *supra* note 195; Interviews with Naomi Baryogar, Elizabeth Goueh, Mama Kaykay and Beatrice Zarzar, *supra* note 199.

was a thirty-minute walk from the camp.²⁶³ Many of the trainees fell seriously ill after drinking the creek water, contracting typhoid and other waterborne illnesses.²⁶⁴

C. Sexual Harassment and Abuse by BR Management

Many workers were subjected to constant abuse by their supervisors while working at BR. One common form of retribution against workers was for supervisors to mark them absent without cause.²⁶⁵ Some workers were also called names and repeatedly threatened with termination.²⁶⁶

In addition to the general verbal abuse, female agricultural workers faced routine sexual harassment and physical abuse. Several women reported that they had been sexually harassed or witnessed the sexual harassment of others while working in the field.²⁶⁷ Male supervisors would approach female planters and bud grafters while they were working in the field and demand sex from them.²⁶⁸ Those who agreed were rewarded with better work assignments and better treatment.²⁶⁹ Women who refused were forced to take on additional field labor and work longer hours than their colleagues, without overtime pay.²⁷⁰ One woman reported being forced to do

Sexual Harassment of a Female Worker

When Jane Doe 10's supervisor demanded sex and she refused, her supervisor told her that he would mark her absent for the days she worked, even if she came to work and completed all of her assignments. When she protested, he gave her additional, more strenuous tasks to do after she finished her standard workload. Jane Doe 10 was exhausted by the additional field labor, but steadfastly refused his sexual demands. Her workload continued to increase. At the end of the month, she saw that her supervisor had marked her absent and docked her pay, even though she had worked full shifts and completed the additional tasks.

Source: Interview with Jane Doe 10 (name changed to protect her identity and privacy) by Accountability Counsel (Apr. 4, 2013).

²⁶⁴ Interview with Daniel Corpoe, *supra* note 195; Interviews with Deborah Bennie, Sayee Caine, Jerry Gbotoe, Ellen Kangar and Mama Kaykay, *supra* note 199.

²⁶⁵ Interviews with Deborah Bennie, Sayee Caine and Beatrice Zarzar, *supra* note 199; Interview with Teetee Reeves by Accountability Counsel (Apr. 4, 2013); Mar. 2, 2013 interviews, *supra* note 31.

²⁶⁶ Mar. 2, 2013 interviews, *supra* note 31.

²⁶⁷ Interviews with Jane Does 7, 8, 9, 10, 11 and 12 by Accountability Counsel (April 4, 2013).

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ Interviews with Jane Does 7, 8, 9, 10 and 11, *supra* note 267.



twice as much work each day with no additional pay after she refused to have sex with her supervisor.²⁷¹ Other women who refused to have sex with their supervisors were marked absent without cause, docked pay, threatened with termination and, in some cases, fired.²⁷²

BR did not address this pattern of harassment and sexual abuse, which began as early as 2008,²⁷³ despite its “strict policy prohibiting all forms of harassment and maltreatment, including sexual harassment.”²⁷⁴

D. Unfair and Dishonest Hiring and Compensation Practices

BR systematically exploited Liberians desperate for work by paying low or no wages. Several of the Complainants suffered from BR’s unfair compensation practices, which began with them working as unpaid “volunteers,” even though they were performing critical jobs for BR.²⁷⁵ These volunteers worked full-time without pay in the hope that BR would eventually employ them, but some volunteers were never employed. For example, Sam Yeadieh worked as a volunteer for BR from 2007-2008 before becoming a paid employee.²⁷⁶ During that time, he was not given any compensation for his work planting and maintaining BR’s vegetable gardens.²⁷⁷ Edna Williams worked as a volunteer for BR in 2008 and 2009, but was never employed.²⁷⁸ According to Edna and Sam, there were 88 such volunteers working for BR around that time.²⁷⁹ Another man reported that there were between 100 and 200 volunteers when he volunteered for 3 months in 2008.²⁸⁰

BR systematically exploited Liberians desperate for work by paying low or no wages.

Moreover, as mentioned above, even when hired into paid positions, some workers were employed under time-bound contracts, as short as three months.²⁸¹ Such workers therefore had to constantly confront periods of job insecurity, especially when BR failed to renew contracts in a timely manner. This happened at least once, in 2009, when BR failed to renew multiple contracts that expired at the end of 2008,²⁸² leaving employees in a state of uncertainty about

²⁷¹ Interview with Jane Doe 11, *supra* note 267.

²⁷² Interviews with Jane Does 7, 8, 9, 10 and 12, *supra* note 267.

²⁷³ Interviews with Jane Does 7, 8, 9, 10, 11 and 12, *supra* note 267.

²⁷⁴ Exhibit 7, Employee Handbook at § 3.15(c); Exhibit 9, Revised Employee Handbook at § 3.15(c).

²⁷⁵ Interview with Sam Yeadiah, *supra* note 202; Interviews with Ophelia Diakpo and Daniel Corpoe, *supra* note 195; Mar. 2013 worker interviews, *supra* note 197.

²⁷⁶ Interview with Sam Yeadieh, *supra* note 195.

²⁷⁷ *Id.*

²⁷⁸ Interview with Edna Y. Williams, *supra* note 195.

²⁷⁹ *Id.*

²⁸⁰ Interview with Daniel Corpoe, *supra* note 195.

²⁸¹ Individual and group interviews with workers from the Workshop, Port and Agriculture Departments, *supra* note 196.

²⁸² See Letter from Joel Strickland, President of Buchanan Renewables, to employees (Apr. 30, 2009), attached as Exhibit 10.

their employment status for several months into the next year. As of April 30, 2009, BR still had not resolved the problem,²⁸³ meaning that some employees had been working for at least four months without a contract.

Moreover, the contract renewal process was far from transparent or equitable. Although BR was aware that many of its workers were illiterate, workers were lined up and forced to quickly sign their contracts in front of HR staff and department supervisors.²⁸⁴ Workers who asked for more time to adequately review their employment contracts were admonished for delaying the process and told that they would forfeit their employment if they did not sign immediately.²⁸⁵ Additionally, the BR representatives supervising the process would often cover the terms of the contracts with their hands and demand that workers sign without viewing the terms to which they were agreeing.²⁸⁶ Numerous workers confirmed that this practice persisted throughout BR's tenure in Liberia.²⁸⁷



Group of former BR workers.

Workers were also lied to and misled by BR regarding benefits and compensation. For instance, BR promised many workers that they would receive benefits for their families – such as assistance in sending their children to school – as a result of employment with BR.²⁸⁸ Even workers who filled out the paperwork BR told them was necessary to receive such benefits, however, never received assistance.²⁸⁹

²⁸³ *See id.*

²⁸⁴ Interview with Beatrice Zarzar, *supra* note 199; Interviews with Comfort Cercee and Love Ocee, *supra* note 207; Interview with Andrew Dolo, *supra* note 217; Interview with Helen Suah, *supra* note 238; Group interviews with workers from the Workshop and Port Departments, *supra* note 196; Group interviews with workers from the Transport Department by Accountability Counsel (April 5, 2013).

²⁸⁵ *Id.*

²⁸⁶ *Id.*

²⁸⁷ *Id.*

²⁸⁸ Interviews with former BR workers, *supra* note 201.

²⁸⁹ *Id.*



BR's compensation practices were even worse. Some workers were kept on "probation salaries," which were much lower than the salary they expected after their three-month probationary period.²⁹⁰ For example, BR kept at least three workers from the Workshop Department on probation salaries for 2-5 years, despite their satisfactory performance.²⁹¹ Many workers also did not receive their agreed compensation because BR failed to provide them with overtime pay. BR supervisors did not keep accurate accounts of overtime and would send workers away when they tried to report overtime.²⁹²

Additionally, several workers believe that BR had a practice of keeping two payrolls: an official payroll that it shared with overseas partners and an unofficial payroll, which represented the much lower amounts – at least three times less – that it actually paid workers.²⁹³ For instance, workers in the Production and Transport Departments learned from some expatriates that their official salaries were US\$900 per month, due to the risky nature of their jobs, whereas in reality, they were earning only US\$300.²⁹⁴ Some workers also heard BR Management reporting inflated salaries to foreigners who had come to view the project. For instance, one worker heard his manager tell foreigners that workers in his division were making US\$400-\$700 a month, whereas in reality, they were earning only US\$119 a month.²⁹⁵ Similarly, another worker reported that BR would tell foreigners that workers in his division, who earned only US \$300 a month, were making at least US\$700-\$800 a month.²⁹⁶ BR would also keep foreigners away from the workers so that they could not speak with them directly.²⁹⁷

Finally, workers being trained in bud grafting endured the abysmal working and living conditions at Dirty Way Camp because BR promised them better jobs and raises for completing their training there.²⁹⁸ But after they completed the training and returned to Buchanan, graduates

²⁹⁰ Group interviews with workers from the Workshop and Agriculture Departments, *supra* note 196. *See also* Exhibit 7, Employee Handbook at § 2.1(b); Exhibit 9, Revised Employee Handbook at § 2.1(b).

²⁹¹ Group interview with workers from the Workshop Department, *supra* note 196.

²⁹² Group interviews with former workers, *supra* note 201.

²⁹³ Mar. 2013 worker interviews, *supra* note 197.

²⁹⁴ *Id.*

²⁹⁵ Interview with Daniel Corpoe, *supra* note 195.

²⁹⁶ Interview with Willian Topayoun, *supra* note 240.

²⁹⁷ *Id.*

²⁹⁸ Interviews with Ophelia Diakpo and Daniel Corpoe, *supra* note 195; Interviews with Naomi Baryogar, Deborah Bennie, Sayee Caine, Mary Foster, Mamie Garmodeh, Jerry Gbotoe, Elizabeth Goueh, Ellen Kangar, Mama Kaykay, Hannah Jacobs, Jamesetta Maneah, Doris Matthies, Felecial Reeves, Mary William and Beatrice Zarzar, *supra* note 199; Interview with Teetee Reeves, *supra* note 265; Interviews with Mary Voedeh, Mamie Passawa and Annie Doe by Accountability Counsel (Apr. 4, 2013); Interview with Photo Karngar, Mar. 2, 2013 interviews, *supra* note 31.

of the bud grafting training program did not receive the promotions and salary increases that BR had promised, despite the workers' repeated follow-up requests to BR Management.²⁹⁹

E. Impacts on Vulnerable Populations

BR's impacts on its workers disproportionately impacted vulnerable groups including women, low-income workers and indigenous people. As noted above, many of BR's female workers experienced routine sexual harassment and abuse. In addition to creating a hostile working environment for its female employees, BR failed to accommodate the needs of pregnant workers. BR supervisors forced women to do strenuous field assignments throughout their pregnancies – often working 12-hour days doing hard manual labor – and refused to provide them with shade and safe drinking water.³⁰⁰

The strain of digging holes, hauling stumps and planting rubber trees in scorching heat caused several women to suffer severe pregnancy complications.³⁰¹ For example, Hannah Jacobs became seriously ill during her ninth month of pregnancy from planting in the hot sun without access to shade or clean water.³⁰² She still suffers from a back injury she sustained while doing

The strain of digging holes, hauling stumps and planting rubber trees in scorching heat caused several women to suffer severe pregnancy complications.

strenuous field assignments during her last trimester.³⁰³ Retta Johnson reported that she started bleeding during her ninth month of pregnancy after she was forced to work on an overgrown rubber tree plantation.³⁰⁴ When she asked for leave to get treatment, her request was denied, and she was forced to return to work.³⁰⁵

Pregnant women's requests for less strenuous assignments were also denied.³⁰⁶ For example, when Charlesetta Williams complained to her supervisors that working conditions and her 12-hour workday were too harsh while she was nine months pregnant, she was told that she

²⁹⁹ Interviews with Ophelia Diakpo and Daniel Corpoe, *supra* note 195; Interviews with Naomi Baryogar, Deborah Bennie, Sayee Caine, Mary Foster, Mamie Garmodeh, Jerry Gbotoe, Elizabeth Goueh, Ellen Kangar, Mama Kaykay, Hannah Jacobs, Jamesetta Maneah, Doris Matthies, Felecial Reeves, Mary William and Beatrice Zarzar, *supra* note 199; Interview with Teetee Reeves, *supra* note 265; Interviews with Mary Voedeh and Annie Doe, *supra* note 298; Interview with Joanna Belleh by Accountability Counsel (Apr. 4, 2013); Interview with Photo Karngar, Mar. 2, 2013 interviews, *supra* note 31; *see also* Aggrieved BR Female Workers, *supra* note 214 (Reporting that several women received training in 2009 for various skills, for which BR promised increases in their US\$130 per month salaries, along with medical and education benefits and food and housing allowances, but such promises were not kept.).

³⁰⁰ Interview with Charlesetta Williams, *supra* note 113; Interviews with Sayee Caine, Mama Kaykay, Hannah Jacobs and Beatrice Zarzar, *supra* note 199; Interview with Ophelia Gardner, *supra* note 202; Interview with Theresa Smith, *supra* note 238; Interview with Retta Johnson by Accountability Counsel (April 4, 2013).

³⁰¹ Interview with Beatrice Zarzar, *supra* note 199; Interviews with Helen Suah and Theresa Smith, *supra* note 238.

³⁰² Interview with Hannah Jacobs, *supra* note 199.

³⁰³ *Id.*

³⁰⁴ Interview with Retta Johnson, *supra* note 300.

³⁰⁵ *Id.*

³⁰⁶ Interview with Charlesetta Williams, *supra* note 113; Interview with Joanna Belleh, *supra* note 299.



had to continue working or face termination.³⁰⁷ Similarly, when Johanna Belleh requested less strenuous work assignments during her pregnancy, her supervisors told her that she “didn’t have the right to get pregnant while [she] was working.”³⁰⁸

Some women were also forced to return to work very shortly after giving birth or face termination. For example, in violations of its own policy,³⁰⁹ BR denied Hellen Morris’s request for maternity leave, and she was forced to return to BR nine days after giving birth.³¹⁰ When she protested, her supervisor threatened to fire her if she did not return to work immediately.³¹¹

For many of these women, as well as BR’s other workers, their desperation for a job led them to stay with BR despite abusive practices. Many of the Complainants were vulnerable to exploitation by BR because of their status as low-income, poorly educated Liberians and because BR was one of the few companies operating in Buchanan at the time. Some of these workers traveled from other parts of Liberia to try to get a job with BR and were willing to volunteer with the hope of eventually getting even a meager salary.³¹² Although they faced harassment and potentially grievous injuries while working for BR, they stayed because they had no other way to make a living. BR took advantage of this situation, which enabled it to secure cheap labor and to cut corners on issues such as the safety of its workers. BR’s abrupt departure then disproportionately impacted these workers, some of whom were essentially stranded in Buchanan, away from their families, without a job or enough money to return home.

Finally, many of the workers employed by BR are indigenous, with the majority of indigenous workers belonging to the Bassa tribe and speaking Bassa. As described above, the Bassa are the traditional indigenous group in the project area. There is no indication that BR considered its responsibilities vis-à-vis employing indigenous workers.

F. Failure to Comply with the Collective Bargaining Agreement

As noted above, BR signed a Collective Bargaining Agreement (“CBA”) on October 1, 2012. BR failed, however, to comply with several important aspects of the CBA in the intervening months before terminating the majority of workers.³¹³ In particular, BR failed to

³⁰⁷ Interview with Charelsetta Williams, *supra* note 113.

³⁰⁸ Interview with Joanna Belleh, *supra* note 299.

³⁰⁹ Exhibit 7, Employee Handbook at § 2.9(e); Exhibit 9, Revised Employee Handbook at § 2.9(e).

³¹⁰ Interview with Hellen Morris by Accountability Counsel (April 4, 2013).

³¹¹ *Id.*

³¹² Interview with Sam Yeadiah, *supra* note 202; Interview with Marvin M. Soromon by Accountability Counsel (Apr. 5, 2013).

³¹³ Interview with Sam Yeadieh, *supra* note 202.

³¹⁴ See Exhibit 8, CBA at Art. 15.2.

³¹⁵ See *id.* at Art. 26.

provide employees with agreed overtime pay,³¹⁴ adequate housing or a housing allowance,³¹⁵ or transportation to and from work or a transportation allowance.³¹⁶

V. Policy Violations

OPIC revised its accountability framework in 2010, thus OPIC's old social and environmental policies applied to the loan to BR Power and first loan to BR Fuel, whereas OPIC's updated policies applied to the second loan to BR Fuel.³¹⁷ Regardless of these distinctions, OPIC's support for each of these projects violated OPIC's mandate to fund projects with net positive development impacts, its obligation to conduct appropriate due diligence of social and environmental impacts; and its requirement to fully investigate the financial feasibility of projects. These violations have caused, and continue to cause, significant harm to the Complainants.

Additionally, BR's activities in Liberia violated almost all of the International Finance Corporation's ("IFC") policies identified by OPIC as applicable, namely: IFC Performance Standard ("PS") 1 (Social and Environmental Assessment and Management Systems); IFC PS 2 (Labor and Working Conditions); IFC PS 3 (Pollution Prevention and Abatement); IFC PS 4 (Community Health, Safety and Security); IFC PS 6 (Biodiversity Conservation and Sustainable Natural Resource Management); IFC PS 8 (Cultural Heritage); IFC General Environmental, Health and Safety ("EHS") Guidelines; and IFC EHS Guidelines for Forest Harvesting Operations. Moreover, BR's activities should have been assessed under IFC PS 7 (Indigenous Peoples) and considered in light of the principles articulated in IFC PS 5 (Land Acquisition and Involuntary Resettlement).

³¹⁶ See *id.* at Art. 16.

³¹⁷ The social and environmental policies applicable to the loan to BR Power and the first loan to BR Fuel were OPIC's Environmental Handbook (Feb. 2004), available at http://www.opic.gov/sites/default/files/docs/notices/2004_Environmental_Handbook.pdf (hereinafter, "OPIC Environmental Handbook") and OPIC's more general Handbook (Feb. 2006), available at: http://www.opic.gov/sites/default/files/docs/OPIC_Handbook.pdf (hereinafter, "OPIC Handbook"). Additionally, OPIC specified that the first loan to BR Fuel had to comply with the International Finance Corporation's ("IFC") Environmental, Health, and Safety ("EHS") Guidelines for Forest Harvesting Operations (2007), available at: <http://www.ifc.org/wps/wcm/connect/1057c08048855740bbccfb6a6515bb18/Final%2B-%2BForest%2BHarvesting%2BOperations.pdf?MOD=AJPERES> (hereinafter, "IFC EHS Guidelines for Forest Harvesting Operations") and the IFC's General EHS Guidelines (2007), available at: <http://www.ifc.org/wps/wcm/connect/554e8d80488658e4b76af76a6515bb18/Final%2B-%2BGeneral%2BEHS%2BGuidelines.pdf?MOD=AJPERES> (hereinafter, "IFC General EHS Guidelines").

On October 15, 2010, OPIC released its new Environmental and Social Policy Statement ("ESPS"), http://www.opic.gov/sites/default/files/consolidated_esps.pdf (hereinafter, "OPIC ESPS"), which adopted the IFC Performance Standards ("PS") (2006), available at: http://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/IFC+Sustainability/Sustainability+Framework/Sustainability+Framework+-+2006/, as well as articulating OPIC's other social and environmental policies. These new standards were applicable to the second loan to BR Fuel. The IFC's PSs have since been updated, but this Complaint refers throughout to the 2006 version of the PSs, as these were the standards applicable at the time.

Finally, BR failed to follow the OPIC rule that all OPIC-supported projects must comply with host country environmental regulations.³¹⁸ Particularly relevant to this Complaint is Liberian environmental law and labor law.

A. BR's Operations in Liberia Undermined Development, Leaving Affected Groups Impoverished and Worse Off

OPIC approved financing for a combined total of nearly 70% of three separate BR projects in Liberia, none of which met OPIC's requirements of providing significant positive development impacts. OPIC's rules allow it to support only those projects that will deliver "significant benefits to the social and economic development of the host country."³¹⁹ As a development assistance agency of the U.S. Government, OPIC's activities must adhere to the principal goals of U.S. development cooperation policy, as set forth in Section 101 of the Foreign Assistance Act, which include: "alleviation of the worst physical manifestation of poverty;" "promotion of conditions enabling developing countries to achieve self sustaining economic growth with equitable distribution of benefits;" and "[t]he encouragement of development processes in which individual civil and economic rights are respected and enhanced."³²⁰ OPIC "will not support projects that could . . . adversely affect . . . the host country's development or environment."³²¹ To fulfill these requirements, "[t]he contribution of a proposed investment to the economic and social development of the host country *will be carefully examined*."³²²



Fayiah Tamba, charcoal producer from Freeman Reserve.

Nonetheless, in this case, OPIC supported projects that foreseeably failed to achieve promised development outcomes and left hundreds of Liberians worse off. Smallholder farmers have been stripped of regular income that they used to support their large, extended families. Moreover, BR has now left these farmers with overgrown farms and rubber seedlings that will likely die because farmers cannot afford the necessary maintenance to keep the young trees alive until they become productive. Similarly, charcoal producers from Freeman Reserve lost an

³¹⁸ See OPIC Environmental Handbook, *supra* note 317, at 16; OPIC ESPS, *supra* note 317, at ¶ 4.2.

³¹⁹ OPIC Handbook, *supra* note 317, at 5.

³²⁰ See OPIC ESPS, *supra* note 317, at § 1.2.

³²¹ OPIC Handbook, *supra* note 317, at 5.

³²² *Id.* at 6 (emphasis added).

important source of raw materials for producing charcoal, driving up their cost of production and making it nearly impossible for them to make enough money to support their families. Finally, workers injured on the job have been left with hefty medical expenses that BR refused to pay for, while facing obstacles in applying for workers' compensation due to BR's failure to properly report workplace accidents.

OPIC should have more carefully examined BR's claims from the beginning. Had it done so, OPIC would have found that the project would not have a strong development impact, given that many of the problems described above began even before OPIC approved the first loan to BR Fuel. Moreover, OPIC had ample opportunity to discover the serious, inherent flaws in BR's model prior to its second loan to BR Fuel. For example, in July 2010, Green Advocates International conducted a Participatory Rural Appraisal workshop with several smallholder farmers, at which such problems were discussed. A summary of the findings from this workshop – including the fact that without corrective action, BR's activities would exacerbate, not alleviate, poverty for smallholder farmers – was later presented to a visiting delegation from BR and Vattenfall.³²³ Thus, had OPIC required true consultation with affected groups or questioned BR or Vattenfall about whether any complaints had been received from farmers about the project, it would have discovered that BR's project was not providing its promised positive development impacts in Liberia.

B. Had Appropriate Due Diligence Been Conducted, Fundamental Design Flaws in BR's Project Would Have Been Revealed

BR's project has suffered from a lack of transparency and due diligence from the start: the company never conducted any serious analysis of the potential negative effects of its activities on the income and subsistence of local communities. Even the U.S. Embassy in Monrovia questioned the lack of available information about BR's impacts and benefits in Liberia, stating, in a leaked 2009 diplomatic cable, "the company has yet to share an environmental impact assessment, *projections of income-generation for small holders*, or an engineering feasibility study, stating only that they submitted documents to OPIC's satisfaction."³²⁴ Yet, OPIC failed to conduct appropriate due diligence, which should have revealed the flaws in BR's claims that its interventions in Liberia would have only positive impacts.³²⁵

Perhaps the starkest example relates to BR's claim – fundamental to its promises of a significant, positive development impact – that it was removing *unproductive* rubber trees from

³²³ See Burning Rubber, *supra* note 20, at 11.

³²⁴ U.S. Embassy in Monrovia, Diplomatic Cable, *Liberia: Buchanan Renewables Deal Stalls Over Price Dispute* (Oct. 5, 2009), from Wikileaks (Aug. 26, 2011) (emphasis added), available at: <http://www.cablegatesearch.net/cable.php?id=09MONROVIA725&q=buchanan%20renewable> (hereinafter, "Diplomatic Cable").

³²⁵ Both OPIC's old and new social and environmental policies require OPIC to conduct due diligence into the social and environmental impacts of projects it is considering. See OPIC Handbook, *supra* note 317, at 6-7; OPIC Environmental Handbook, *supra* note 317, at 2, 5, 7, 9-11; OPIC ESPS, *supra* note 317, at §§ 2-3.



smallholders' farms and thereby helping them rehabilitate unproductive farms.³²⁶ OPIC's description of BR's activities in Liberia emphasized this point, stating that rubber trees "at the end of their latex producing lives" had not been cleared to make way for new seedlings, thus "exacerbate[ing] the country's widespread poverty and eliminate[ing] a key source of revenue for many small farmers."³²⁷ However, had OPIC more closely looked into the matter by talking to the smallholder farmers directly — or requiring BR to do so — it would have learned that many of these old rubber trees were producing vital, regular income for large, extended families such as the Barchues, who estimate that they were making up to US\$3,000 a month from their "unproductive" rubber trees. Any project proposing that a family give up US\$3,000 a month for a one time payment of just under US\$4,000 — and a seven year wait before new rubber seedlings produced any income — would run a high risk of driving that family deeper into poverty.³²⁸ Yet, BR's ESIA maintained that there were *no negative economic impacts anticipated* as a result of the project,³²⁹ arriving at that conclusion without any analysis of farmers' income from these end-of-life trees or whether the contract price per ton of woodchips was sufficient to support farmers' livelihoods. There is no indication that OPIC questioned BR's unsupported conclusion.

Furthermore, BR's Harvesting Management Plan and ESIA failed to adequately address the risk that either the cash crops or the seedlings planted by BR Fuel would not survive or flourish as envisioned,³³⁰ including: the risk that the crops or seedlings would get destroyed by pests, wildlife or weather conditions; the risk that they would be stolen;³³¹ or the risk that they would not grow properly because of inadequate maintenance, fertilizer or other inputs. Given that the success of BR Fuel's "rejuvenation" plan for the farms hinged on the survival of the seedlings — as well as the survival of the cash crops, which were to provide farmers with an income during the intervening years when the trees were not producing rubber — the absence of

³²⁶ BR's recent communications with Accountability Counsel emphasize that the company uprooted only trees that farmers themselves had determined were no longer producing latex at economically viable rates. Letter from Don Durand, Buchanan Renewables Fuel Group Liberia, B.V. to Natalie Bridgeman Fields, Accountability Counsel (Mar. 31, 2013) (on file with Accountability Counsel). However, the project's due diligence should have focused on whether the production rates were economically viable for the smallholder farmers — as well as whether and how farmers could survive without this income for seven years. Yet, none of the due diligence documents discuss the important fact that many of the trees were continuing to provide an income, however minimal, for smallholder farmers, nor do they adequately address the difficulty that these farmers might face in the years when the new trees were not yet producing rubber.

³²⁷ OPIC, *OPIC in Action: Biomass in Liberia*, available at: <http://www.opic.gov/projects/biomass-in-liberia> (hereinafter: "OPIC in Action").

³²⁸ In 2011, BR explained to SOMO that their model was providing farmers with significant additional financial benefits because it eliminated the cost to farmers of clearing old trees and replanting seedlings. Email from Alexandra Baillie to Tim Steinweg, *supra* note 44. The explanation failed to take into account how farmers were going to sustain themselves during the long wait for the new rubber trees to mature.

³²⁹ ESIA, *supra* note 24, at 133. In the same vein, the ESIA stated that BR was "expected to have only a positive impact on Human Rights issues in the areas in which it operate[d]." *Id.* at 131.

³³⁰ The Harvesting Management Plan contains one reference to replacing dead seedlings when required, *see* Harvesting Management Plan, *supra* note 14, at 72, but does not otherwise address the risk that crops and seedlings might not survive. The ESIA contains two references to replacing dead erosion control vegetation, *see* ESIA, *supra* note 24, at 212, 219, but does not address replacement of dead seedlings, nor otherwise discuss the risk of seedlings not surviving.

³³¹ *See* Firewood for Berlin, *supra* note 89.

any analysis of their projected failure rate, or any detailed mitigation plans to address the above mentioned risks, is startling and inexcusable.

Additionally, BR's ESIA claimed, on the one hand, that using rubber trees for biomass would not create a food security problem,³³² but then obliquely acknowledged the possibility of exactly that problem by suggesting that intercropping of agricultural products with the young rubber trees could "help improve food security status of the farmer until economic benefits of rubber production are attained."³³³ It is difficult to imagine how BR envisioned that the farmers would realize this benefit, however, considering the company's practice of prohibiting farmers from harvesting the cash crops it had planted alongside the young



Woman working on the Bonwin farm.

rubber trees. Moreover, BR publicly acknowledged as early as October 2010 that the company was no longer planting these cash crops because there had been problems with them being stolen.³³⁴ It is therefore difficult to understand why the ESIA, also dated October 2010, emphasized the economic and food security benefits of these crops without acknowledging the potential that this aspect of the project would fail.

OPIC similarly failed to conduct appropriate due diligence regarding impacts on charcoal producers, particularly those operating on and near the Firestone plantation. Although the ESIA acknowledged that Liberians relied on charcoal as a fuel source,³³⁵ and specified that BR would leave behind a portion of the roots and branches of uprooted trees for local charcoal producers,³³⁶

³³² ESIA, *supra* note 24, at 80.

³³³ *Id.* at 130; *see also id.* at 138 ("Apart from the initial payment to the farmers for harvested wood, intercropping as well as rehabilitation of the rubber trees *will provide financial and food security to the farmers* in the short and longer term." (emphasis added)).

³³⁴ *See* Firewood for Berlin, *supra* note 89. As noted above, BR later explained to SOMO that the cash crops were meant primarily to help stabilize the soil, which made the company switch to planting grasses that would not be stolen. Email from Alexandra Baillie to Tim Steinweg, *supra* note 44. This explanation, however, does not address the fact that BR's documents indicated that the cash crops were also meant to provide an economic benefit to farmers during the time period in which the rubber seedlings were immature and unproductive. *See* ESIA, *supra* note 24, at 130, 138.

³³⁵ ESIA, *supra* note 24, at 71.

³³⁶ *Id.* at 91, 93, 191. The ESIA noted that the amount of wood left behind for charcoalers was expected to decrease over time, but failed to address how that would impact charcoalers' livelihoods. *Id.* at 93.

the document claimed that old rubber trees were traditionally nothing more than agricultural waste and were used on only a “small scale” to produce charcoal.³³⁷ Moreover, while the ESIA recommended that BR Fuel “gather more information on the potential long-term impact of its operation on charcoal production,” it dismissed without analysis any risk that BR’s current operations were negatively impacting charcoal producers. The ESIA relied on statements made in various consultations, none of which included local charcoal producers or NACUL representatives, in arriving at this inaccurate conclusion.³³⁸ The ESIA similarly dismissed without analysis the risk that BR’s operations would lead to increased deforestation if competition with charcoalers pushed these producers into natural forests.³³⁹ Yet, had BR properly consulted either NACUL or the charcoal producers operating on or near the Firestone plantation, both the livelihood risk to charcoalers and the risk of deforestation would have become apparent.³⁴⁰

BR’s project documents also failed to analyze the project’s impacts on indigenous peoples or its potential gender impacts. OPIC’s description of the second BR fuel loan noted that “[b]ased on the findings during due diligence, it appears unlikely that there are communities that can be considered indigenous under PS 7 (Indigenous People) living in areas in which the project will operate.”³⁴¹ Such an oversight is difficult to understand given the circumstances of BR’s operations in Liberia. As discussed above, some of the main beneficiaries of BR’s farm “rejuvenation” project were smallholder farmers in Grand Bassa County, the majority belonging to the Bassa tribe and speaking Bassa as their primary or first language.³⁴² Similarly, many of BR’s workers were Bassa or from other indigenous tribes, and many of the charcoalers working on or near the Firestone plantation belong to indigenous groups. With such a high percentage of project-affected people belonging to widely-recognized indigenous groups, BR’s failure to identify them as such in its project documents is remarkable. Moreover, given the Liberian government’s recognition of the high percentage of Bassa-speaking people in Grand Bassa County,³⁴³ OPIC could have discovered the indigenous status of these project-affected people for itself and, as explained in more detail below, should have held BR to all of the standards applicable under the IFC’s Performance Standard 7 on Indigenous People.

³³⁷ *Id.* at 99.

³³⁸ *Id.* at 131; *see also id.* at 221 (“Although some stakeholders revealed that operations are not expected to impact charcoal prices or availability in the near future, it is strongly recommended that BR Fuel works with the Forest Development Authority to gather more information and undertake research regarding potential long-term impacts of project activities especially with regards to impacts of expansion and increased scope of the project.”). *See id.* at 240 and Appendix D for an explanation of who participated in these consultations.

³³⁹ *Id.* at 138.

³⁴⁰ When Green Advocates International consulted with charcoalers from Freeman Reserve in October 2010, the same month the ESIA was finalized, charcoalers were already concerned about many of the issues described in this Complaint.

³⁴¹ BR Fuel II Project Summary, *supra* note 3.

³⁴² The Liberian government has recognized the Bassa as one of the major tribes in Grand Bassa County, and a 2006 survey showed that 94% of the County’s population was Bassa-speaking. Development Agenda, *supra* note 98, at ix, 6.

³⁴³ *See id.*

As for the project's gender impacts, it is particularly difficult to understand why, in a recently post-conflict country like Liberia, where women suffered extreme gender violence during a long civil war, BR and OPIC would not have considered the risk of project-related gender impacts. This is especially true given that, aside from the gendered aspects of Liberia's civil war, women and girls are a vulnerable group in Liberia, with "discrimination start[ing] from

. . . it is particularly difficult to understand why, in a recently post-conflict country like Liberia, where women suffered extreme gender violence during a long civil war, BR and OPIC would not have considered the risk of project-related gender impacts.

childhood."³⁴⁴ Moreover, according to the Liberian government, Grand Bassa County, the seat of BR's operations, has seen a "feminization of poverty," caused by the limited access of women and girls to education, health and judicial services and their exclusion from decision-making at "all levels of . . . society."³⁴⁵ The County also has a high rate of gender-

based sexual violence and domestic abuse.³⁴⁶ Yet, despite the Liberian government's goal of incorporating "[g]ender equity considerations . . . in the development and implementation of the economic growth strategy" for the County,³⁴⁷ there is no indication that BR conducted any gender-impact risk analysis,³⁴⁸ nor put in place measures adequate to prevent the pattern of sexual harassment and coercion perpetrated on female charcoalers and workers.

Finally, although OPIC used BR's "sustainable biomass project" as a public example of the agency's renewable energy portfolio,³⁴⁹ it failed to conduct adequate due diligence regarding the project's claims to carbon neutrality.³⁵⁰ The ESIA makes the unsupported claim that the

³⁴⁴ Olukoju, *supra* note 127, at 101.

³⁴⁵ Development Agenda, *supra* note 98, at 30.

³⁴⁶ *Id.*

³⁴⁷ *Id.* at 31.

³⁴⁸ Although the ESIA briefly acknowledged some problems with gender disparity in Liberia – namely regarding education and HIV-status, as well as the disproportionate impact that certain country conditions, such as Liberia's poor infrastructure or the prevalence of biomass fuels, have on women and children – it failed to include any analysis regarding the relationship between these instances of gender disparity and BR's project. *See* ESIA, *supra* note 24, at 76-78, 144. The ESIA's only allusions to BR's impacts on, or relationship with, women were: (1) the statement that BR would include both genders "during land preparation and replanting to ensure that females are not excluded from the benefits of the project," *id.* at 129; (2) statements regarding the fact that BR was employing both men and women, *id.* at 243, 314; and (3) the recommendation that BR seek out local, female Community Relations Assistants to "assist in development and implementation of capacity building programs for the village women." *Id.* at 245.

³⁴⁹ *See* OPIC Agency Overview, *supra* note 21.

³⁵⁰ *See* ESIA, *supra* note 24, at 73, 81, 100, 116, 145; Harvesting Management Plan, *supra* note 14, at 13. Moreover, Vattenfall's due diligence on this issue, *see* Nordström, et. al., Vattenfall, *Climate Considerations of the Monroe Project, Liberia* (Aug. 12, 2009; revised May 18, 2010), was strongly criticized by James Johnston, Faculty Research Assistant at Oregon State University Institute for Natural Resources in direct correspondence with both Vattenfall and BR. Correspondence between James Johnston and Don Durand, Annika Andersson, Mikael Nordlander and Jan Sandberg (Sept.-Oct. 2010) (on file with Accountability Counsel) (*hereinafter*, "James Johnston communications"). Johnston particularly criticized Vattenfall's report for its failure to take into account carbon emissions related to short rotation harvesting of the rubber trees, and questioned the accuracy of calculations for carbon emissions related to transporting woodchips from Liberia to Europe.

project has “no net contribution to climate change” because the cut rubber trees are replanted,³⁵¹ yet it does not include any analysis of the carbon emissions associated with harvesting the trees, the carbon storage capacity of older rubber stands or the lag between logging and regrowth. Nor does the ESIA address the scientific literature questioning the assumption that short rotation harvesting of forests for biofuels (e.g. BR’s project) is climate neutral.³⁵² Moreover, OPIC lacks support for its statements that BR’s scheme of exporting woodchips for use in Europe would have positive climate impacts.³⁵³ To support such a claim, OPIC would have needed to conduct a climate analysis that took into account not only the potentially negative climate impacts of short rotation harvesting of forests for biofuels, but also compared the carbon emissions associated with transporting tons of woodchips thousands of miles before burning them with the carbon emissions from utilization of rubber wood by local consumers in the form of charcoal.³⁵⁴



BR’s project drove charcoalers who previously produced charcoal from rubber wood to degrade natural forests.

Despite these significant gaps in due diligence, OPIC approved three separate loans to BR, totaling more than \$200 million. Moreover, OPIC failed to conduct sufficient due diligence to uncover problems – such as BR’s broken promises to farmers regarding the price of old rubber trees and some of the instances of sexual coercion – that occurred prior to OPIC’s approval of the

³⁵¹ ESIA, *supra* note 24, at 116. *See also id.* at 104-05.

³⁵² *See, e.g.,* Stephen R. Mitchell, et. al., *Harvesting forests for biofuels likely to yield a near-term increase in atmospheric CO₂*, presented during the proceedings of the 95th ESA Annual Meeting (Aug. 4, 2010) (“Regardless of initial landscape condition and harvesting intensity (50-100%), forests that were harvested for biofuels every 25 to 50 years required over 100 years to achieve a net offset of atmospheric CO₂. Harvesting forests for biofuels production lowers carbon storage without providing an equitable offset of fossil fuel CO₂, since the amount of energy released per unit of carbon in biofuels is considerably lower than that in fossil fuels. Consequently, repeated harvests over a long time period are required to achieve a net offset of atmospheric CO₂, indicating that a substitution of forest biomass for fossil fuels is unlikely to provide any significant near-term amelioration of rising atmospheric CO₂ concentrations and associated threats from continued climatic change.”), available at: <http://eco.confex.com/eco/2010/techprogram/P22679.HTM>; Eric Johnson, *Goodbye to carbon neutral: Getting biomass footprints right*, Environmental Impact Assessment Review (“Most guidance for carbon footprinting, and most published carbon footprints or LCAs, presume that biomass heating fuels are carbon neutral. However, it is recognised increasingly that this is incorrect: biomass fuels are not always carbon neutral. Indeed, they can in some cases be far more carbon positive than fossil fuels.”), available at: <http://www.maforests.org/Carbon.pdf>.

³⁵³ *See* OPIC in Action, *supra* note 327.

³⁵⁴ Both BR and Vattenfall were aware of these issues at least as early as September 2010. *See* James Johnston communications, *supra* note 350.

first BR Fuel loan, which it screened as Category B.³⁵⁵ Additionally, although OPIC properly screened its second loan to BR Fuel as Category A, its due diligence still failed to uncover BR's pattern of abuses.

C. OPIC Failed to Properly Assess the Financial Feasibility of BR's Projects

In addition to failing to conduct adequate due diligence, OPIC did not comply with its mandate to support only financially sound projects.³⁵⁶ Had OPIC properly evaluated the financial feasibility of BR's model, particularly its claims of rejuvenating smallholder farms and planting at least one tree for each tree removed, it would have learned that such a scheme was not economically viable. In fact, in July 2011, BR's representative, Alexandra Baillie, told SOMO that BR had not initially included replanting in its contracts with farmers, but then agreed to include both replanting and maintenance "[o]nce BR realized that most farmers did not have the capacity to replant and care for their land."³⁵⁷ Because it was not anticipated properly in project design, "[t]he increased cost of replanting, however, was not financially viable for BR."³⁵⁸ In fact, according to Baillie, BR had to create an NGO in order to conduct this portion of its operations, because "as a company, [BR was] unable to address all of the[] challenges [involved with rejuvenating smallholder farms] while remaining sustainable."³⁵⁹ Given BR's ready admission that it was not financially viable for the company to replant and rejuvenate smallholder farms, OPIC's approval of not one, but two loans for BR Fuel's farm rejuvenation scheme violated its mandate to support only financially sound

... BR had not initially included replanting in its contracts with farmers, but then agreed to include both replanting and maintenance "[o]nce BR realized that most farmers did not have the capacity to replant and care for their land." Because it was not anticipated properly in project design, "[t]he increased cost of replanting, however, was not financially viable for BR."

³⁵⁵ This categorization is a policy violation in and of itself, considering the project's serious and lasting impacts on the livelihoods of indigenous farmers and charcoalers, not to mention injured workers. Moreover, even if OPIC could not have discovered, at the time, the "major impacts [and] serious socioeconomic concerns" underlying BR's project, it should have recognized that the project – which centered on felling and chipping trees – was a forestry project, which OPIC's own rules categorize as a Category A industry. See OPIC Environmental Handbook, *supra* note 317, at 42. Confusingly, OPIC's own project summary acknowledged that the project was a "forest harvesting" project, in the same sentence in which it justified classifying it as a Category B project. See BR Fuel I Project Summary, *supra* note 3. Moreover, OPIC mandated that the project comply with the IFC's EHS Guidelines for Forest Harvesting Operations. *Id.*

³⁵⁶ See OPIC Handbook, *supra* note 317, at 9-11.

³⁵⁷ Email from Alexandra Baillie to Tim Steinweg, *supra* note 44.

³⁵⁸ *Id.* This inherently contradicts OPIC's project summaries for its loans to BR Fuel, both of which specify that the project will include "planting new seedlings." See BR Fuel I Project Summary; BR Fuel II Project Summary, *supra* note 3.

³⁵⁹ Email from Alexandra Baillie to Tim Steinweg *supra* note 44.



projects.³⁶⁰

Moreover, considering BR's long time horizon for turning a profit³⁶¹ – and the apparent financial infeasibility of actually replanting one tree for each felled, not to mention the cost of maintaining these seedlings until they reached maturity – OPIC should have required BR to produce detailed contingency or project closure plans to ensure that BR had adequate measures in place to protect smallholder farmers and vulnerable workers should the project collapse, as it eventually, and foreseeably, did. The resulting risk for smallholder farmers in particular, who were dependent on BR's promises to maintain their young rubber trees for the seven years necessary for them to reach maturity, was a fundamental flaw in BR's business model, and one that OPIC should have identified from the beginning. OPIC's failure to identify and mitigate these risks contributed to the situation in which farmers and workers now find themselves after BR's abrupt close of activities in Liberia.

D. Violations of the IFC Performance Standards and Environmental, Health and Safety Guidelines

As mentioned above, BR's activities in Liberia also violated nearly all of the International Finance Corporation's ("IFC") policies identified by OPIC as applicable. Moreover, the project should have been assessed under IFC PS 7 on Indigenous Peoples and considered in light of the principles articulated in IFC PS 5 on Land Acquisition and Involuntary Resettlement.

For each of BR's violations described below, OPIC failed to verify BR's compliance with the Performance Standards.³⁶² Given the Performance Standards violations described below, had OPIC exercised appropriate oversight, it would have been forced to either decline to support BR or require fundamental changes to project design and planning.³⁶³ Moreover, OPIC failed to adequately monitor the project and rectify BR's lack of compliance.³⁶⁴

³⁶⁰ OPIC's support of BR Power's plan to construct a biomass power plant is also questionable from the point of view of its financial feasibility. The tariffs suggested by BR were so high that donors warned the Government of Liberia that they "could threaten the financial solvency of the Liberian Electricity Corporation (LEC) and deter small businesses and residential consumers from connecting to the power grid." Diplomatic Cable, *supra* note 325. At least one Liberian newspaper specifically questioned "how OPIC's Board of Directors could have agreed to fund a 112 million dollar project in Liberia without a bankable feasibility [study]." Public Agenda Online, *BRE to Undermine LEC's Function* (Sept. 24, 2008), available at: http://www.publicagendanews.com/index.php?option=com_content&view=article&id=98:bre-to-undermine-lecs-function&catid=1:latest-news&Itemid=2.

³⁶¹ Emily Schmall and Wade Williams, *Jump starting Liberia's rubber industry*, GlobalPost (Jun. 15, 2011) (Reporting the BR did not plan to even break even in its woodchip operations until 2013.), available at: <http://www.globalpost.com/dispatch/news/business-tech/innovation/110609/liberia-rubber-industry>.

³⁶² See OPIC ESPS, *supra* note 317, at §§ 2.4, 3.2-3.4, 4.2, 5.7, 6.2, 7.2-7.4.

³⁶³ See *id.* at § 3.6.

³⁶⁴ See *id.* at §§ 7.2-7.5.

1. Performance Standard 1: Social and Environmental Assessment and Management Systems

Failure to Identify Affected Groups

PS 1 required BR to identify vulnerable groups and individuals in order to “propose and implement differentiated measures so that adverse impacts d[id] not fall disproportionately on them.”³⁶⁵ In identifying vulnerable groups and individuals, BR should have “consider[ed] factors such as gender, ethnicity . . . poverty or economic disadvantage, and dependence on unique natural resources.”³⁶⁶

BR’s failure to follow this mandate regarding vulnerable populations has caused great suffering to vulnerable farmers, charcoalers and workers. In particular, because BR failed to identify and mitigate the vulnerable economic situation of many smallholder farmers and charcoalers, they are now struggling to secure basic necessities, such as clean water and sufficient food, for themselves and their families. Additionally, BR’s failure to assess the gender impacts of its operations directly led to serious pregnancy complications for several of BR’s pregnant agriculture workers and allowed a pattern of sexual abuse by BR workers to exist unchecked throughout BR’s tenure in Liberia.

Failure to Collect Adequate Baseline Data and Conduct an Appropriate Assessment

BR’s failure to identify impacts on vulnerable populations was directly related to its failure to collect accurate, up-to-date and sufficiently-detailed baseline data, as required by PS 1.³⁶⁷ Such baseline data would have formed the basis for BR’s Social and Environmental Assessment, which should have “consider[ed] *all* relevant social and environmental risks and impacts of the project, including the issues identified in Performance Standards 2 through 8, and those who w[ould] be affected by such risks and impacts.”³⁶⁸

As discussed above, BR’s project documents left large gaps in vital baseline data, such as farmers’ incomes from “non-producing” rubber trees and charcoal production rates at the Firestone plantation. Without such data, it is not surprising that BR’s documents also failed to fully assess risks to these populations.

Inadequate Engagement, Disclosure and Consultation with Affected Communities

BR also consistently failed to meet PS 1’s requirements regarding community engagement, disclosure and consultation. According to IFC PS 1, effective consultation:

³⁶⁵ IFC PS 1, *supra* note 317, at ¶ 12. *See also* IFC PS 1 Guidance Note at ¶ G15.

³⁶⁶ IFC PS 1 at n.2.

³⁶⁷ *Id.* at ¶ 4. *See also* IFC PS 1 Guidance Note at ¶¶ G10, G16.

³⁶⁸ IFC PS 1 at ¶ 4.



- (i) should be based on the *prior* disclosure of relevant and adequate information, including draft documents and plans;
- (ii) should begin *early* in the Social and Environmental Assessment process;
- (ii) will focus on the social and environmental risks and adverse impacts, and the proposed measures and actions to address these; and
- (iv) will be carried out on an *ongoing* basis as risks and impacts arise.³⁶⁹

At a minimum, BR's consultations with affected communities should have been undertaken in an "inclusive and culturally appropriate" manner that allowed smallholder farmers and charcoalers "to express their views on project risks, impacts, and mitigation measures."³⁷⁰ Moreover, given the project's significant adverse impacts on both smallholder farmers and charcoalers – impacts BR failed to even identify – BR had a responsibility to conduct a "consultation process [that] ensure[d] their free, prior and informed consultation and facilitate[d] their informed participation."³⁷¹ The "on-going process" of community engagement should have been conducted in a way that was "free of external manipulation, interference, or coercion, and intimidation, and conducted on the basis of timely, relevant, understandable and accessible information."³⁷² Finally, BR should have disclosed relevant project information in a manner that would have helped farmers and charcoalers "understand the risks, impacts and opportunities of the project."³⁷³

In direct violation of these requirements, BR failed to hold consultations with smallholder farmers or charcoalers prior to beginning operations that directly impacted resources on which these groups relied to support themselves. As discussed in detail above, BR's approach to contracting with smallholder farmers in Grand Bassa County was to promise them high prices for old trees – as well as replanting and seven years of maintenance – and then present contracts with significantly different terms, without giving farmers an opportunity to fully understand what they were signing. BR never made an attempt to first hold consultations about the project's potential risks – as well as its opportunities – or to understand farmers' economic situation and needs in order to incorporate that information into project design. In fact, BR's own representatives have admitted that the company did not realize, prior to contracting with the first smallholder farmers, that most farmers did not have the capacity to replant and care for their

³⁶⁹ *Id.* at ¶ 21 (emphasis added).

³⁷⁰ *Id.*

³⁷¹ *Id.* at ¶ 22.

³⁷² *Id.* at ¶ 19.

³⁷³ *Id.* at ¶ 20.

farms.³⁷⁴ Yet, BR did not learn from this mistake, as evidenced by the strong recommendation in the ESIA “that BR Fuel hold[] consultation sessions as part of the public consultation and disclosure program prior to and during harvesting activities.”³⁷⁵ The language used in this recommendation suggests that by October 2010 when the ESIA was published, BR had not yet begun holding such consultations, despite having been working with smallholder farmers since 2008. Early consultations with the farmers would have clarified issues regarding the project’s financial feasibility – for both BR and the farmers – from the start, potentially leading to a sustainable and less harmful project.

Moreover, as discussed above, BR similarly failed to hold consultations with charcoalers, despite some acknowledgement in the ESIA that BR’s operations put it in direct competition with charcoal producers for old rubber trees.³⁷⁶ Instead of undertaking consultations with directly-impacted charcoal producers, or their union, NACUL, the ESIA relied on statements made by a farmers’ association as a basis for asserting that the wood remnants being left behind were more than enough for charcoal production.³⁷⁷ Moreover, these consultations apparently focused on whether the wood remnants left behind by BR were sufficient for production of charcoal *by farmers*, not by people whose livelihoods depended on charcoal production.³⁷⁸ Had charcoal producers operating on or near the Firestone plantation been consulted, they would have told BR what they told Green Advocates International in October 2010: that BR’s operations were having significant and ongoing negative impacts.³⁷⁹



Affected charcoalers gathered at Freeman Reserve.

³⁷⁴ Email from Alexandra Baillie to Tim Steinweg, *supra* note 44. It is important to note that this statement is at odds with OPIC’s project documents, which indicate that BR’s knowledge that farmers were unable to do this work themselves was the basis for engaging with them and for arguing that BR’s activities would have a strong development impact. See BR Fuel II Press Release, *supra* note 19.

³⁷⁵ See ESIA, *supra* note 24, at 235.

³⁷⁶ See *id.* at 99, 131.

³⁷⁷ See *id.* at 131.

³⁷⁸ *Id.* (“The results of these consultations show that in fact remnants from harvest operations (roots/branches) left over for charcoal production are not currently being completely utilized, being more than what is needed for current charcoal production levels *by farmers*.” (emphasis added)).

³⁷⁹ Oct. 2010 interviews, *supra* note 146.

Inadequate Risk Management and Mitigation

In large part due to its failure to properly identify and consult with affected groups, BR also failed to adequately identify, mitigate, monitor, and report on serious project impacts.³⁸⁰ As a result of this failure, BR's activities cause harm that could have been avoided or mitigated had risks been properly identified early on. Moreover, as a result of BR's failure to monitor and report on its impacts as required by PS 1,³⁸¹ there is little to no publicly-available information on some of the most significant negative impacts of BR's operations in Liberia, including livelihood impacts, water contamination, worker injuries, and gender impacts.

Inadequate Grievance Mechanisms

Despite the foreseeable livelihood and other serious adverse impacts caused by BR's activities, the company failed to establish a grievance mechanism to address the concerns of smallholder farmers in Grand Bassa County until late 2011, after farmers began working with SOMO and Green Advocates International to bring more attention to the harm they were experiencing. At that point, farmers had been experiencing harm for years without access to a grievance mechanism.³⁸² The approach to resolving community concerns recommended in the ESIA – which was to have a Community Relations Officer report all grievances to appropriate managers and assist in the resolution of disputes – was not sufficiently robust considering the severe harm caused by BR's activities and, in any case, did not function in practice as specified in the ESIA.³⁸³ In fact, until just prior to the creation of the Farmers Grievance Committee in late 2011, many of the farmers had not had contact with anyone from BR for as long as two years³⁸⁴ and were not aware of a process for lodging complaints.

Moreover, BR never established a similar grievance committee to address concerns of charcoal producers from Freeman Reserve, despite being alerted by SOMO and Green Advocates International to significant problems faced by these charcoal producers as a result of BR's activities. Similarly, and as discussed in more detail below, many BR workers were not aware of a formal process for lodging complaints about working conditions or abusive treatment by supervisors.

³⁸⁰ See IFC PS 1, *supra* note 317, at ¶ 13 (“[T]he client will establish and manage a program of mitigation and performance improvement measures and actions that address the identified social and environmental risks and impacts.”); ¶ 16 (“[T]he client will prepare an Action Plan” which will “reflect the outcomes of consultation on social and environmental risks and adverse impacts and the proposed measures and actions to address these.”); ¶ 24 (“[T]he client will establish procedures to monitor and measure the effectiveness of the management program.”); ¶ 26 (“The client will disclose the Action Plan to the affected communities” and “will provide periodic reports . . . in a format accessible to the affected communities” and at a “frequency . . . proportionate to the concerns of affected communities but not less than annually.”).

³⁸¹ See *id.* at ¶¶ 24, 26.

³⁸² See *id.* at ¶ 23.

³⁸³ See ESIA, *supra* note 24, at 246; IFC PS 1, *supra* note 317, at ¶ 23.

³⁸⁴ Burning Rubber, *supra* note 20, at 32.

Failure to Plan for Risks Associated with Project Closure

Finally, BR's project documents entirely failed to address any of the risks associated with the possible closure of the project, in violation of the PS 1's mandate that "risk and impacts . . . be analyzed for the key stages of the project cycle, including . . . closure."³⁸⁵ Considering the high risk nature of an unproven company implementing a development project in a recently post-conflict country whose infrastructure and political system had been devastated by years of civil war, the possibility that the project might not be successful should have been considered from the beginning. Moreover, as discussed above, BR knew that its project would, under the best circumstances, take a significant amount of time to become profitable and that it was not economically feasible for BR to provide all of the support needed to rejuvenate the smallholder farms. Under these circumstances, it was particularly important to identify and analyze any potential adverse impacts associated with a sudden closure of the project. Had such analysis taken place, a plan could have been created that would have ensured that BR's closure of activities in Liberia did not have such dire consequences for farmers who were relying on BR to rejuvenate their now-destroyed farms.

. . . Considering the high risk nature of an unproven company implementing a development project in a recently post-conflict country whose infrastructure and political system had been devastated by years of civil war, the possibility that the project might not be successful should have been considered from the beginning.

2. Performance Standard 2: Labor and Working Conditions

Failure to Provide Reasonable Working Conditions and Terms of Employment

In violation of PS 2, BR failed to provide reasonable working conditions and terms of employment for all of its employees.³⁸⁶ As described in detail above, BR workers faced a pattern of abuse, ranging from unfair compensation practices to sexual harassment and coercion, throughout BR's tenure in Liberia. Many workers also faced unreasonably dangerous working conditions, resulting in an unacceptably high rate of workplace injuries and serious consequences for vulnerable workers such as pregnant women.

³⁸⁵ IFC PS 1, *supra* note 317, at ¶ 6.

³⁸⁶ IFC PS 2 at ¶ 8. Such conditions "include the physical environment, health and safety precautions and access to sanitary facilities. Treatment of workers includes . . . respect for worker's personal dignity (such as avoiding physical punishment or abusive language)." IFC PS 2 Guidance Note at ¶ G13.

Gender Discrimination and Discrimination Against Liberian Workers

Moreover, despite BR's explicit anti-discrimination policies,³⁸⁷ and the requirements of PS 2,³⁸⁸ many workers faced a pattern of workplace discrimination. Many female agriculture workers, in particular, faced gender-based discrimination in the form of sexual harassment and abuse. Women who refused their supervisors' demands for sex were forced to do extra work, assigned the most strenuous tasks, docked pay and, in some cases, fired. BR also discriminated against Liberian workers by failing to provide safe drinking water, despite providing bottled water for expat managers.

. . . many workers faced a pattern of workplace discrimination . . . [including] sexual harassment and abuse.

Failure to Provide a Safe and Healthy Work Environment

As described above, BR failed to take steps, including those identified in the ESIA, that would have "prevent[ed] accidents, injury, and disease arising from, associated with, or occurring in the course of work."³⁸⁹ In particular, although the ESIA identified risks to workers' health "if proper safety and protective gear is not employed,"³⁹⁰ BR systematically failed to provide adequate personal protective gear. BR similarly ignored the ESIA's warning that "a lack of proper training of the staff in charge of operations and maintenance could expose them to adverse health risks."³⁹¹ Additionally, despite its commitment to doing so, BR failed to implement the ESIA's recommendation that it "[p]erform laboratory tests for any source of drinking water given to staff."³⁹² As a result, many BR workers suffered from serious workplace injuries and water-borne diseases. BR's failure to create a safe and healthy work environment also caused several women to suffer severe pregnancy complications.

Moreover, BR also ignored PS 2's requirement that it "document[] and report[] o[n] occupation accidents, diseases, and incidents." BR's failure to document and report such incidents made it impossible for many injured workers to claim disability benefits.

³⁸⁷ See Exhibit 7, Employee Handbook at § 3.15(a-c); Exhibit 9, Revised Employee Handbook at § 3.15(a-c); see also ESIA, *supra* note 24, at 132 (Noting the BR had a "strong anti-discrimination and equal opportunity policy").

³⁸⁸ IFC PS 2, *supra* note 317, at ¶ 11 ("The client will base the employment relationship on the principle of equal opportunity and fair treatment, and will not discriminate with respect to aspects of the employment relationship, including . . . compensation . . . working conditions . . . [and] termination."). According to the IFC, "[d]iscrimination in employment is defined as any distinction, exclusion or preference . . . made on the basis of personal characteristics unrelated to inherent job requirements that nullifies or impairs equality of opportunity or treatment in employment or occupation." IFC PS 2 Guidance Note at ¶ G 26.

³⁸⁹ IFC PS 2 at ¶ 16.

³⁹⁰ ESIA, *supra* note 24, at 122; see also *id.* at xxi, xxiii, 169-70, 175, 192, 198, 338, 343.

³⁹¹ *Id.* at 123; see also *id.* at 169-70, 192, 198, 229-31, 331, 343.

³⁹² *Id.* at 343 (Chart detailing off-site mitigation measure that BR had committed to implementing); see also *id.* at 194 ("Physical, chemical and biological tests have to be performed for any newly found resource used to supply drinking water to the workers off-site.").

Failure to Establish an Easily Accessible Grievance Mechanism

As discussed above, although BR documents describe grievance procedures,³⁹³ many workers were not aware of any formal grievance mechanism for handling their complaints. Considering the serious abuses suffered by BR workers, it is a clear violation of PS 2 that BR's grievance mechanism for workers, to the extent that it even existed in practice, was not "easily accessible."³⁹⁴ In fact, even when workers complained to their supervisors, they were not advised about any grievance mechanism or any grievance procedures that would "address concerns promptly, using an understandable and transparent process."³⁹⁵ Moreover, in an additional violation of PS 2's requirements regarding grievance mechanisms,³⁹⁶ some workers reported being retaliated against for raising concerns about working conditions or abuse by supervisors.

Failure to Respect the Collective Bargaining Agreement

As noted above, in the short time between signing the Collective Bargaining Agreement ("CBA") and laying off the majority of its workforce, BR failed to make any noticeable changes in its practices, indicating a lack of respect for the CBA in violation of PS 2.³⁹⁷

Failure to Develop a Retrenchment Plan in Consultation with Employees

Finally, although PS 2 explicitly required BR to develop a retrenchment plan that "reflect[ed] the client's consultations with employees,"³⁹⁸ BR decided to leave Liberia and lay off the majority of workers without consulting with, and providing very little notice to, these workers. Far from consulting with employees regarding compensation payments³⁹⁹ or developing a plan "to address the adverse impacts on workers and their community" including "issues such as . . . assistance in retraining efforts and job placement,"⁴⁰⁰ BR unilaterally determined the amount of severance pay and required all workers, even those suffering from continuing, work-related medical issues, to sign a release form or get nothing at all.

³⁹³ See Exhibit 7, Employee Handbook at § 5.19; Exhibit 8, CBA at Art. 43.

³⁹⁴ IFC PS 2, *supra* note 317, at ¶ 13.

³⁹⁵ *Id.*

³⁹⁶ See *id.*

³⁹⁷ See *id.* at ¶ 8.

³⁹⁸ *Id.* at ¶ 12.

³⁹⁹ See IFC PS 2 Guidance Note at ¶ G35.

⁴⁰⁰ *Id.* at ¶ G33.

3. Performance Standard 3: Pollution Prevention and Abatement

In violation of PS 3, BR failed to take steps that would have avoided adverse human health impacts by avoiding or minimizing pollution from project activities.⁴⁰¹ IFC Guidance directed BR to consider local communities and water supplies.⁴⁰² In line with this directive, both the ESIA and the earlier Harvesting Management Plan document many potential negative impacts of BR's project on water quality and human health; recommend several mitigation measures to protect water quality; and direct BR to conduct extensive water quality monitoring.⁴⁰³ In fact, the ESIA noted that because "the local population depends on water from shallow wells for drinking and on surface water in streams, ponds, for washing, fishing, and irrigation, it would be necessary to effectively control the impacts on water resources through appropriate design and site management practices," including by "preventing the contact of rain water with the wood[chip] piles."⁴⁰⁴ Nonetheless, BR piled woodchips on smallholder farms and at Firestone plantation, contaminating vital sources of clean water. Additionally, BR's harvesting operations on smallholder farms often did not adequately protect water resources, despite the detailed recommendations in the ESIA about how to do so.

4. Performance Standard 4: Community Health, Safety and Security

Failure to Prevent Impacts on Water Sources Traditionally Relied on by Communities

Similarly to PS 3, PS 4 required BR to "avoid or minimize adverse impacts due to project activities on . . . water . . . in use by the affected communities."⁴⁰⁵ Moreover, IFC Guidance cautioned BR to take "special precautions . . . to prevent . . . a reduction in the availability of surface water . . . and prevent the degradation in quality of these



Women and children were particularly impacted by water pollution associated with the project.

⁴⁰¹ See IFC PS 3 at ¶ 1.

⁴⁰² IFC PS 3 Guidance Note at ¶ G4.

⁴⁰³ See ESIA, *supra* note 24, at xxii, 107-12, 115-19, 122, 157, 160-62, 175, 178-82, 196-97, 201-09, 211-12, 221-23, 238, 242, 312, 321-22, 327-28, 333-34, 337, 341; Harvesting Management Plan, *supra* note 14, at 23-27, 38, 42, 53-54.

⁴⁰⁴ ESIA, *supra* note 24, at 160-61 (recommendation made in reference to woodchip piles at the port, not on smallholder farms). Confusingly, the ESIA also recommends using wood waste as mulch to avoid erosion and prevent deterioration of water quality. *Id.* at 180. It does not say anything, however, about BR's practice of leaving large piles of rotten woodchips on farms without spreading them out for use as mulch.

⁴⁰⁵ IFC PS 4, *supra* note 317, at ¶ 9.

resources.”⁴⁰⁶ In doing so, BR should have been particularly concerned with “prevent[ing] or minimiz[ing] the potential for community exposure to water-borne, water-based [or] water-related . . . disease.”⁴⁰⁷ Yet, not only did BR generally fail to protect community water sources, as discussed above, it also failed to appropriately respond when its harvesting activities cracked open a gravesite on the Bryant farm, ultimately contaminating the only water source on that farm, which family members believe caused the death of a child.

Failure to Evaluate Risks Posed by Security Arrangements Related to BR’s Operations

As discussed in detail above, DKB, a notorious ex-rebel commander, terrorized charcoalers during his stint providing security on the Firestone plantation. BR did not directly retain DKB and therefore was not bound by PS 4.⁴⁰⁸ Nonetheless, it should have assessed the situation in light of the principles articulated in PS 4,⁴⁰⁹ particularly given that BR was operating in a recently post-conflict country and that Firestone was hiring security to enforce rules and guard seedlings directly related to BR’s operations on the Firestone plantation.

Yet, rather than “urg[ing] appropriate parties to take action,”⁴¹⁰ BR’s initial approach was to deny responsibility for the situation. Specifically, although such incidents began at least as early as October 2010,⁴¹¹ BR’s September 2011 response to SOMO regarding the DKB situation and other problems for charcoalers on the Firestone plantation was to claim that it had no influence over the relationship between charcoalers and Firestone. Under the principles articulated in PS 4, BR’s response should have been to proactively do what it could to prevent reoccurrence of the human rights abuses committed by Firestone’s security personnel.⁴¹²

⁴⁰⁶ IFC PS 4 Guidance Note at ¶ G16.

⁴⁰⁷ IFC PS 4 at ¶ 10.

⁴⁰⁸ See IFC PS 4 at ¶ 13 (“When the client directly retains employees or contractors to provide security to safeguard its personnel and property. . . .”)

⁴⁰⁹ See *id.* (The client “will assess risks to those within and outside the project site posed by its security arrangements. . . . The client will make reasonable inquiries to satisfy itself that those providing security are not implicated in past abuses, will train them adequately in the use of force (and where applicable, firearms) and appropriate conduct toward workers and the local community, and require them to act within the applicable law. The client will not sanction any use of force except when used for preventive and defensive purposes in proportion to the nature and extent of the threat. A grievance mechanism should allow the affected community to express concerns about the security arrangements and acts of security personnel.”). See also IFC PS 4 Guidance Note at ¶ G28 (“If there is social unrest or conflict in the project’s area of influence, the client should understand not only the risks posed to its operations and personnel but also whether its operations could create or exacerbate conflict.”); ¶ G32 (“The appropriate conduct of security personnel should be based on the principle that providing security and respecting human rights can and should be consistent.”); and ¶ G33 (“Who provides security is as relevant as how security is provided. When employing or engaging any security personnel, the client should make reasonable inquiries to investigate the employment record and other available records, including any criminal record, of individuals or firms and should not employ or use any individuals or companies that have been credibly alleged to have abused or violated human rights in the past.”).

⁴¹⁰ IFC PS 4 at ¶ 15.

⁴¹¹ Oct. 2010 interviews, *supra* note 146.

⁴¹² See IFC PS 4, *supra* note 317, at ¶ 15.

5. Performance Standard 5: Land Acquisition and Involuntary Resettlement

Although PS 5 does not apply to voluntary land transactions such as those that took place in this case between smallholder farmers and BR,⁴¹³ clients are still urged to “consider applying the requirements of Performance Standard 5, even where no initial land acquisition was involved,” if project impacts on land use or access to resources “become significantly adverse at any stage of the project.”⁴¹⁴ That was the case here.

Although BR did not acquire land from the smallholder farmers through the use or threat of a compulsory land acquisition process, the livelihood impacts on farmers from BR’s acquisition of their rubber trees have been severe. As described in detail above, many of the smallholder farmers in Grand Bassa County have lost the ability to sustain themselves and their families, as a direct result of BR’s acquisition of their still-producing rubber trees.⁴¹⁵ Moreover,



Overgrown smallholder farm where weeds have overtaken seedling rubber trees.

without sufficient resources to maintain the new seedlings planted by BR until they become productive, these farmers now face the high probability that the young trees will die and that they may never again have productive rubber farms. Finally, many of the farms are now so overgrown from lack of maintenance that farmers cannot access the areas of their farms on which BR’s activities took place, amounting to displacement from these portions of their land.

Given the severity of this situation, BR should have applied the requirements of PS 5 regarding economic displacement. Importantly, economically displaced persons should be compensated for lost assets (in this case the farmers’ still-producing rubber trees and accessible farms) at full replacement cost.⁴¹⁶ In this case, full replacement cost is the total cost to farmers of again having accessible farms and productive rubber trees. Neither is possible without

⁴¹³ See IFC PS 5 at ¶¶ 5-6.

⁴¹⁴ *Id.* at ¶ 6.

⁴¹⁵ As noted above, although it was not a term in BR’s contracts with farmers, BR also led some farmers to believe that they had ceded control over portions of their farms until the seedlings became productive rubber trees.

⁴¹⁶ See IFC PS 5 at ¶ 20.

significant maintenance of the farms.⁴¹⁷ BR's abrupt termination of contracts with farmers, without consultation and without putting in place any mechanism to ensure that farmers would get the full replacement cost of their lost rubber trees, violated the standards articulated in PS 5.

6. Performance Standard 6: Biodiversity Conservation and Sustainable Resource Management

Failure to Properly Assess and Mitigate Foreseeable Losses to Biodiversity

PS 6 required BR to assess its impacts on biodiversity in the project area and develop mitigation measures to avoid and minimize losses to biodiversity.⁴¹⁸ Yet, although the ESIA notes that a cumulative indirect impact of BR's activities could be pushing charcoalers into Liberia's tropical forests, it dismissed that risk without analysis.⁴¹⁹ Instead of investigating the actual impact of BR's operations at the Firestone plantation or consulting with local charcoal producers, the ESIA relied on the "surplus in aged rubber trees" in Liberia to support its assertion that BR's project was "not expected to impact the current rate of deforestation."⁴²⁰ Proper consultation with charcoalers at Freeman Reserve, however, would have revealed foreseeable losses to natural forests and endangered trees located near the Firestone plantation.

Failure to Sustainably Manage Renewable Natural Resources

With regard to its rubber harvesting operations on smallholder farms in Grand Bassa County, BR also failed to adhere to PS 6's requirement that it "manage renewable natural resources in a sustainable manner."⁴²¹ PS 6 defines "[s]ustainable resource management" as:

the management of the use, development and protection of resources in a way, or at a rate, which enables people and communities, including Indigenous Peoples, to provide for their present social, economic and cultural well-being while also sustaining the potential of those resources to meet the reasonably foreseeable needs of future generations and safeguarding the life-supporting capacity of air, water and soil ecosystems.⁴²²

BR's harvesting of trees on smallholder farms, which was often done by clearing an entire farm at one time, was not done at a rate that enabled the indigenous farmers to provide for their social, economic and cultural well-being. As discussed above, these farmers are struggling to provide for themselves and their families now that the income from their rubber trees has disappeared.

⁴¹⁷ As noted above, BR promised that it would maintain the farms, and farmers agreed to BR's acquisition of their still-producing rubber trees in reliance on that promise.

⁴¹⁸ IFC PS 6 at ¶¶ 4, 8.

⁴¹⁹ See ESIA, *supra* note 24, at 138.

⁴²⁰ *Id.*

⁴²¹ IFC PS 6, *supra* note 317, at ¶ 14.

⁴²² *Id.* at n.7.

Moreover, BR's failure to maintain the new seedlings it planted will likely result in many of the young trees dying before they reach maturity, further violating BR's mandate to sustainably manage natural resources. BR's commitment "to ensuring that at least one tree is replanted for every tree removed to maintain the sustainability of the project and achieve relative carbon neutrality"⁴²³ is meaningless if the trees die because of lack of necessary maintenance that BR promised farmers to provide.

Additionally, it is important to note the negative climate impacts of these two violations of PS 6. The net result of BR's failure to identify and mitigate its cumulative indirect impacts on Liberia's tropical forests, combined with the many seedling rubber trees that will die before they reach maturity, is that, far from being the climate friendly project touted by OPIC, BR's operations led to an overall decrease in both natural trees and rubber trees in Liberia, with resulting negative climate implications.⁴²⁴

7. Performance Standard 7: Indigenous Peoples

As noted above, OPIC determined that it was "unlikely that . . . communities that can be considered indigenous under PS 7" were living in the project area,⁴²⁵ despite the Liberian government's own recognition that 94 percent of the population of the County was Bassa-speaking⁴²⁶ and that "[t]raditional culture remain[ed] strong."⁴²⁷ There is no evidence in the ESIA or any other due diligence documents that either OPIC or BR undertook the analysis necessary to determine whether the smallholder farmers should be recognized as Indigenous Peoples under PS 7.

PS 7 acknowledges that there is no universally accepted definition of, or terminology for, Indigenous Peoples and explicitly recognizes that Indigenous Peoples may be referred to as "tribal groups" in some countries.⁴²⁸ According to PS 7, Indigenous Peoples are "a distinct social and cultural group possessing the following characteristics in varying degrees:

- Self-identification as members of a distinct indigenous cultural group and recognition of this identity by others;
- Collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories;

⁴²³ ESIA, *supra* note 24, at 81.

⁴²⁴ These negative climate impacts are in addition to the negative impacts that are inherent to the type of short rotation forest harvesting for biofuels conducted by BR, in addition to the transportation of woodchips thousands of miles.

⁴²⁵ BR Fuel II Project Summary, *supra* note 3.

⁴²⁶ Development Agenda, *supra* note 98, at 6.

⁴²⁷ *Id.* at ix.

⁴²⁸ IFC PS 7, *supra* note 317, at ¶ 4.

- Customary cultural, economic, social, or political institutions that are separate from those of the mainstream society or culture; or
- A distinct language or dialect, often different from the official language or languages of the country or region in which they reside.”⁴²⁹

Considering the clear and readily available evidence pointing to smallholder farmers’ indigenous status, BR should have, at minimum, undertaken a rigorous assessment of whether smallholder farmers should have been recognized as indigenous under PS 7.⁴³⁰ Had BR undertaken this assessment as required by PS 7, it would have recognized the farmers as Indigenous Peoples because they exhibit all of the characteristics described above. First, many of the farmers self-identify as members of the Bassa tribe,⁴³¹ which is, in turn, recognized by others as one of the major tribes in Grand Bassa County.⁴³² Grand Bassa County has been the ancestral home of the Bassa tribe for centuries, and the natural resources in the area play a role in Bassa culture, particularly in the traditional bush school, the Poro and Sande societies, for adolescent boys and girls. The Bassa have their own traditional leadership structures and continue to practice many unique cultural and social traditions that are separate from those of mainstream Liberian culture. Finally, the Bassa have their own language, which, as noted above, is widely spoken in Grand Bassa County, including by many of the smallholder farmers involved in BR’s project.

Proper identification of the farmers as indigenous would have helped protect farmers from the devastating impacts to their livelihoods and environment caused by BR’s activities. In particular, BR would have been subject to heightened requirements to: avoid adverse impacts; engage with farmers; ensure their free, prior, and informed consultation; and facilitate their informed participation on matters directly impacting them.⁴³³

Additionally, given the many charcoalers and workers speaking indigenous languages, BR should have at least considered whether the charcoalers from Freeman Reserve and many of BR’s workers qualified as Indigenous Peoples under PS 7’s definition.

⁴²⁹ *Id.* at ¶ 5. IFC Guidance further explains that “[e]ach characteristic is evaluated independently, and no characteristic weighs more than the others.” IFC PS 7 Guidance Note at ¶ G5.

⁴³⁰ IFC Guidance indicates that such an assessment should potentially have included activities such as: investigation of applicable laws and regulations, including obligations under international law; archival research; ethnographic research, including documentation of culture, customs, institutions and customary law; and participatory appraisals. *Id.* at ¶ G6. The Guidance also suggests that BR should have considered “retain[ing] competent experts to assist in this work.” *Id.*

⁴³¹ Interview with Tebeh Gongar, *supra* note 45; Interview with Charles Holt, *supra* note 122; Interviews with Charles G. Bryant and Sam Bonwin, *supra* note 33; Interviews with Gabriel Browne, Jr. and Martha K. Massoud, *supra* note 45.

⁴³² Development Agenda, *supra* note 98, at ix.

⁴³³ See IFC PS 7, *supra* note 317, at ¶¶ 7-9.



8. Performance Standard 8: Cultural Heritage

Had BR complied with PS 8's requirements regarding the protection of cultural heritage, including by consulting with affected communities⁴³⁴ during the preparation of the site-specific harvesting plans BR was required to create for each small farm,⁴³⁵ the desecration of Solomon Bryant's grave could have been avoided. Consultations with the Bryant family about any culturally or religiously significant sites on their farm⁴³⁶ would have revealed the location of the grave prior to BR's harvesting activities, which presumably could have then been conducted in a way that avoided running heavy equipment through the gravesite. Moreover, respect for cultural heritage dictates that BR should, at a minimum, have taken immediate measures to rectify the situation once the grave had been broken open by BR's harvesting equipment. Yet, despite complaints of the Bryant family, BR never did anything to repair the damage, and in fact did not even provide the promised hand pump that could have helped the Bryant family access safe water.

9. Environmental, Health and Safety Guidelines

The IFC's General EHS Guidelines set out detailed requirements regarding the type of training, protective equipment, and monitoring needed to satisfy the BR's "oblig[ation] to implement *all reasonable precautions* to protect the health and safety of workers."⁴³⁷ Moreover, the IFC's EHS Guidelines for Forest Harvesting Operations provide specific requirements for safety precautions that BR should have taken during tree cutting and felling operations.⁴³⁸ Had BR followed these requirements, serious workplace accidents – like Aderlyn's injuries from the tree that fell on her – could have been avoided.

⁴³⁴ See IFC PS 8 at ¶¶ 1, 3, 6.

⁴³⁵ See BR Fuel I Project Summary, *supra* note 3.

⁴³⁶ See IFC PS 8, *supra* note 317, at ¶ 3.

⁴³⁷ IFC General EHS Guidelines, *supra* note 317, at § 2.0 (emphasis added). See, e.g., *id.* at § 2.2 ("The employer should ensure that workers . . . *prior to the commencement of new assignments*, have received adequate training and information enabling them to understand work hazards" and "A basic occupational training program and specialty courses should be provided, as needed, to ensure that workers are oriented to the *specific hazards of individual work assignments*." (emphasis added); *id.* at § 2.9 ("The employer should establish procedures and systems for reporting and recording: [o]ccupational accidents and diseases [and] [d]angerous occurrences and incidents" all of which "should be investigated" to "[e]stablish what happened; [d]etermine the cause of what happened; [and] [i]dentify measures necessary to prevent a recurrence.")).

⁴³⁸ See, e.g. IFC EHS Guidelines for Forest Harvesting Operations, *supra* note 317, at § 1.2 ("Workers should be properly trained in the safe use of cutting equipment, including work group coordination and safety measures . . . Workers should be provided with, and required to use, all necessary personal protective equipment (e.g. gloves, footwear, protective clothing, helmets) . . . No worker other than the chainsaw operator and an assistant should be within two tree lengths when trees are felled . . . [and] Workers should be trained in clearance of wind throw before entering an affected area.").

E. Violations of Liberian Laws and Regulations

1. Environmental Law Violations

The Environment Protection and Management Law of the Republic of Liberia⁴³⁹ (“Environment Protection Law”) establishes a legal framework for the sustainable development, management, and protection of the environment.⁴⁴⁰ Under Section 6 of the Environment Protection Law, all projects and activities falling within the agriculture, forestry, energy, and/or wood sectors⁴⁴¹ require an environmental impact assessment (“EIA”) license before a project developer may commence any project-related activities.⁴⁴² The Environment Protection Law specifies that a project developer must submit an application for an EIA license⁴⁴³ and comply with a number of procedural requirements before an EIA license may be issued.⁴⁴⁴ A review of the procedures followed by BR reveals several violations of Liberian law.

The Liberian Environmental Protection Agency (“EPA”) issued an Environmental Certificate to BR Fuel on August 19, 2009.⁴⁴⁵ BR’s activities in Liberia, however, began as early as December 11, 2007, when the company signed the MOU with NACUL.⁴⁴⁶ BR also began removing trees and replanting seedlings on smallholder farms more than a year prior to the August 2009 issuance of the Environmental Certificate. In fact, the Environmental Certificate itself appears to



Firestone, Division 21, after being cleared by BR.

⁴³⁹ Environment Protection and Management Law of the Republic of Liberia (Nov. 26, 2002), available at: http://www.unesco.org/culture/natlaws/media/pdf/liberia/liberia_act2002_engorof.pdf (hereinafter, “Environment Protection Law”).

⁴⁴⁰ *Id.* at § 1.

⁴⁴¹ For a complete list of projects and activities requiring an EIA, see *id.* at Annex I.

⁴⁴² *Id.* at § 6(1); An Act Creating the Environment Protection Agency of the Republic of Liberia, § 37(2) (Nov. 26, 2002), available at http://www.moa.gov.lr/doc/epa_act.pdf.

⁴⁴³ Environment Protection Law, *supra* note 438, at § 6(2).

⁴⁴⁴ *Id.* at §§ 7-9 and 11-15.

⁴⁴⁵ Environmental Protection Agency, Environmental Certificate No. EPA/EMP/0010809, issued to Buchanan Renewables Fuel, August 19, 2009 (hereinafter, “Environmental Certificate”), attached as Exhibit 11.

⁴⁴⁶ See Exhibit 6.



suggest that BR's activities in Liberia had begun prior to its receipt of the required permit. As Section 4.0 of the Environmental Certificate states, "...this Environmental Certificate is issued authorizing Buchanan Renewables Fuel, to *continue* harvesting operations of nonproductive rubber trees in Liberia."⁴⁴⁷ As the text of the Environment Protection Law makes clear, a project developer may not undertake project-related activities before receiving the required certificate. BR therefore violated Liberian law by beginning harvesting prior to August 2009.

It also appears that BR failed to submit several required documents and failed to follow the Environment Protection Law's requisite timelines and procedures. For example, according to the EPA, BR did not submit an ESIA until June 2011, nearly two years after the company received its Environmental Certificate.⁴⁴⁸ Moreover, the ESIA submitted by BR was dated October 2009, indicating that the company's assessment of environmental risks was not completed until two months after it had received the Certificate, and nearly two years after it actually began project-related activities. Because BR failed to follow the procedures and timelines required of project developers operating in Liberia, its activities did not comply with Liberian law.

2. Labor Law Violations

Finally, BR's practices with regard to working conditions and terms of employment, described in detail above, violated several provisions of Liberian Labor Law. Violations include: a disregard for Liberia's minimum wage laws, as demonstrated by the practice of using unpaid, volunteer labor for significant periods of time;⁴⁴⁹ a failure to properly remunerate workers for all work over 8 hours per day;⁴⁵⁰ the practice of keeping employees on probation pay for long periods of time, despite the requirement that probationary periods not exceed 3 months;⁴⁵¹ and the failure to comply with many provisions of Liberia's workmen's compensation laws.⁴⁵²

VI. Attempts to Resolve Problems Caused by Buchanan Renewables

Complainants have made numerous efforts to directly address these issues with OPIC, BR, BR's former parent entities: Pamoja Capital and the McCall MacBain Foundation. Members of all three groups of Complainants made multiple attempts to resolve many of the above issues during the period of BR's operations in Liberia. Additionally, since early 2013, an international coalition of groups have made several attempts to engage with relevant stakeholders

⁴⁴⁷ Exhibit 11, Environmental Certificate at § 4.0 (emphasis added).

⁴⁴⁸ Burning Rubber, *supra* note 20, at 26.

⁴⁴⁹ See Labor Law As Enacted by the National Legislature, Reproduced by the Ministry of Labor, Liberia, Title 18A, Part II, Chapter 6 (date unclear, sometime after 1986), available at: http://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=LBR&p_classification=01.02&p_origin=COUNTRY&p_sortby=SORTBY_COUNTRY.

⁴⁵⁰ See *id.* at Chapter 8, §§ 701(1), 703.

⁴⁵¹ See *id.* at Part III, Chapter 16, § 1500-A.

⁴⁵² See *id.* at Part V, Chapter 36.

in order to address problems faced by the farmers, charcoalers and workers negatively impacted by BR's activities and abrupt departure from Liberia. These efforts have included communications by Accountability Counsel, on behalf of Complainants, with OPIC, FarmBuilders, the Chairman of the McCall MacBain Foundation, John McCall MacBain and U.S. Embassy staff in Monrovia.⁴⁵³ Some of the Complainants also attempted to engage in dialogue with remaining BR employees in March and April 2013.

In November 2013, OPIC, which had previously dismissed Complainants' concerns, expressed interest in privately exploring remedy for harm caused by the project. However, after numerous attempts to engage over a period of two months, Complainants are lodging this public Complaint because private dialogue with OPIC did not result in a commitment from OPIC to engage in a process for discussing remedy.

VII. Requested Next Steps

Complainants call on OPIC's President and CEO to convene a transparent and independent process for addressing harm caused by BR's operations. Throughout this process, Complainants ask that they be consulted and involved in any dialogue about the project impacts and proposed remedies. Complainants seek the following from such a process:

- Farmers request that they be provided with:
 1. Immediate support for maintenance of their farms;
 2. Livelihood support, including immediate intervention to assist farmers who are currently unable to feed their families; and
 3. Hand pumps or other means of accessing clean water for farmers whose water sources have been contaminated.
- Charcoal producers and NACUL request that the following measures be undertaken to protect charcoal producers:
 1. Mitigation for all impacts of BR's operations on charcoal producers;
 2. Livelihood support; and
 3. Remedy for those charcoalers who suffered individual abuses.
- Former BR workers request that they be provided with:
 1. All back-pay due to them as a result of uncompensated overtime;
 2. All benefits that should have accrued under the Collective Bargaining Agreement; and
 3. Remedy for those workers who suffered individual abuses.

Complainants also request that OPIC critically evaluate its role in the serious harm associated with BR's activities in Liberia by launching an independent investigation of the

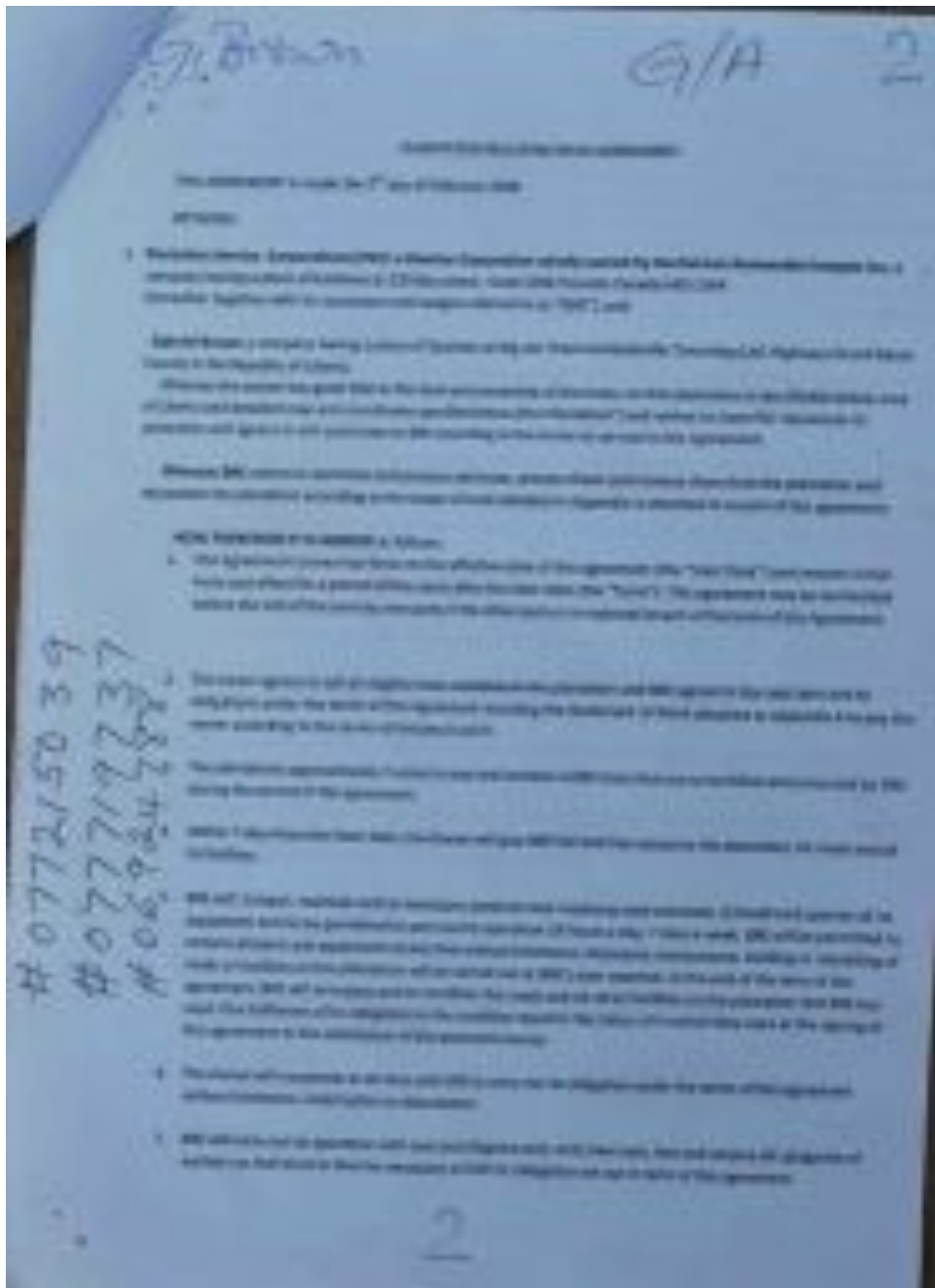
⁴⁵³ All written communications are on file with Accountability Counsel. A detailed description of attempts to resolve the issues described in this Complaint is available at Exhibit 12.



project's serious human rights and environmental abuses. The investigation should provide recommendations to further OPIC's institutional learning and prevent the perpetuation of such abuses through OPIC's financing of future projects.

Exhibits

Exhibit 1: Gabriel Browne contract





2/5/08

Exhibit 2: Barchue Farm contract

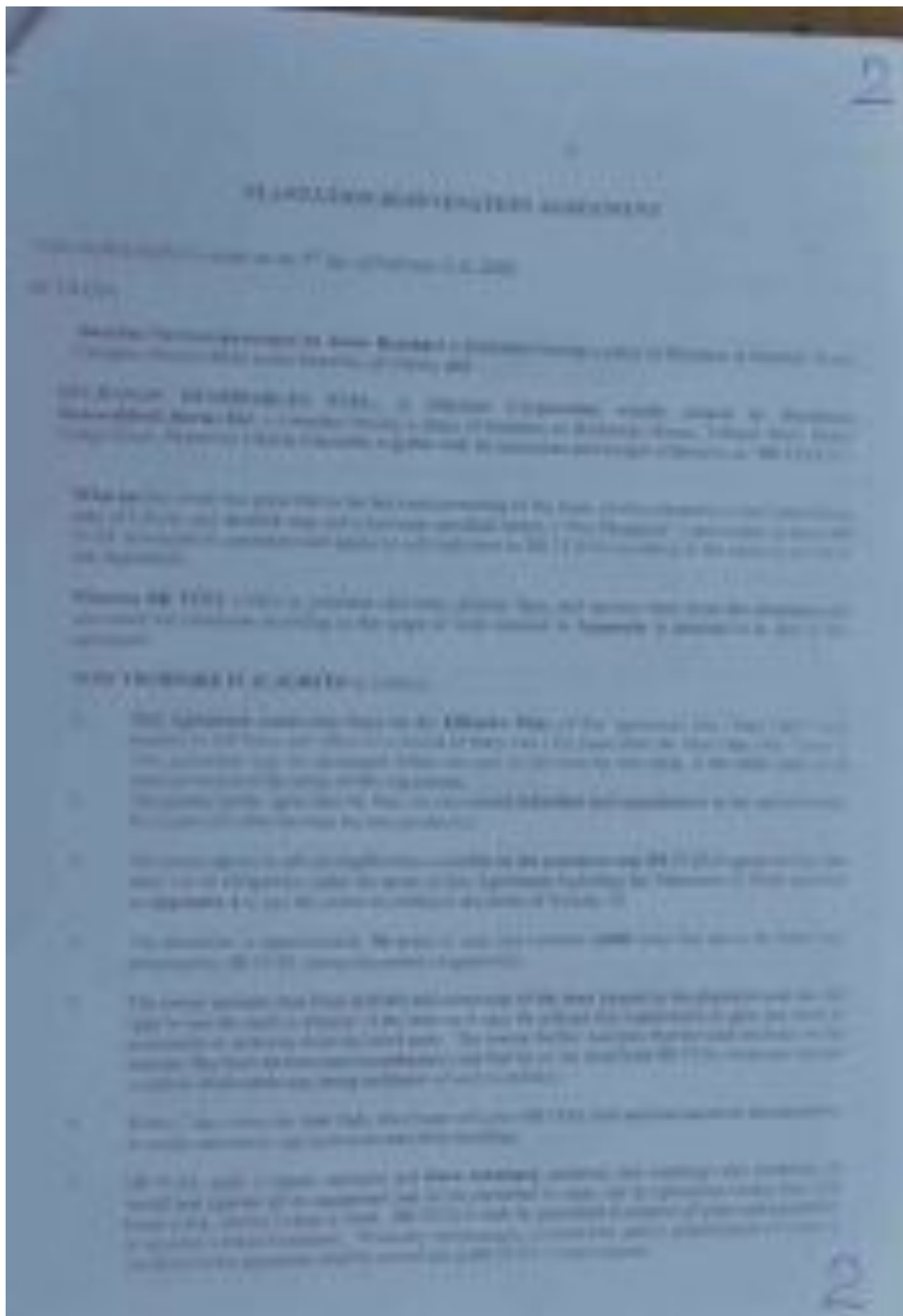
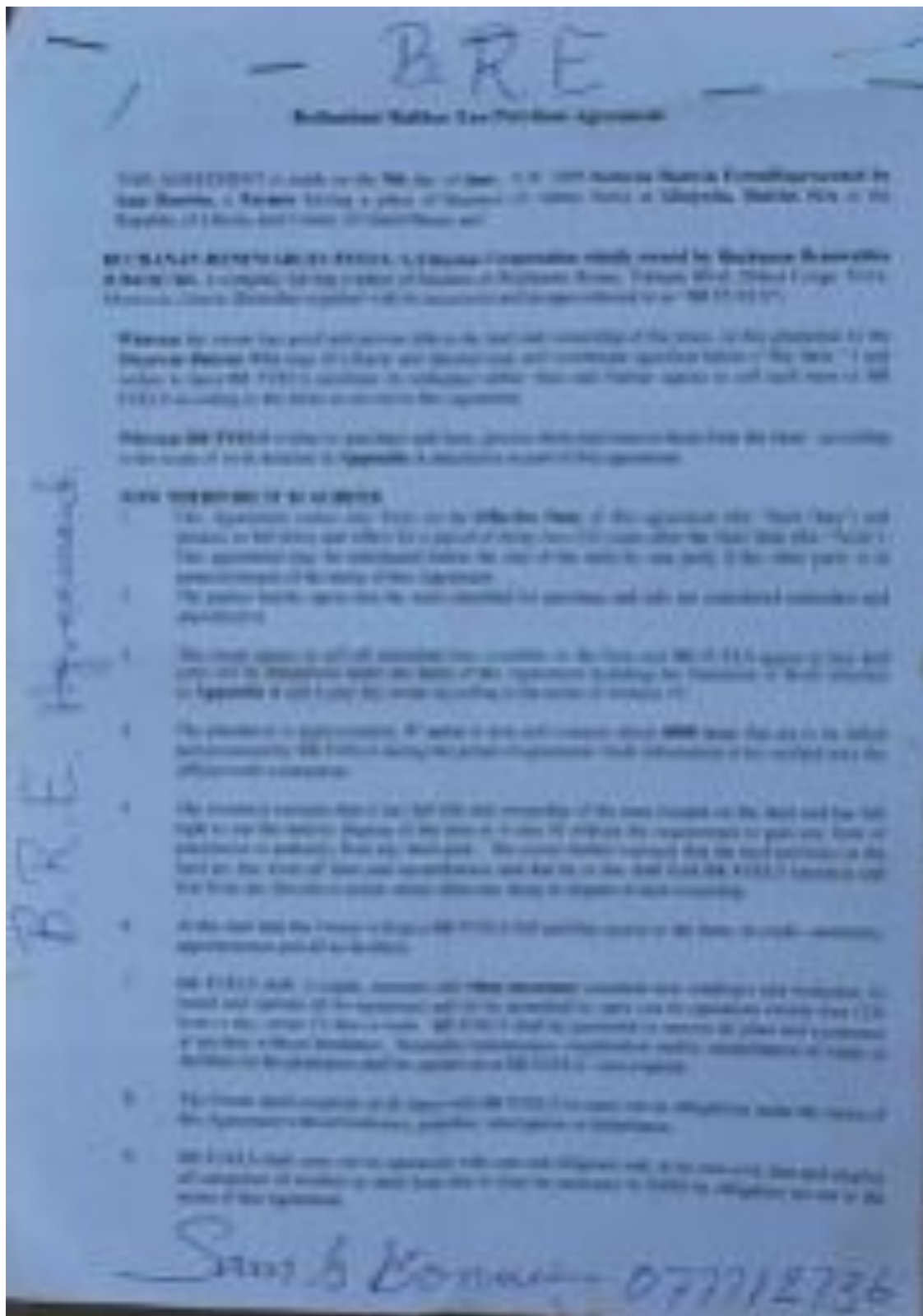


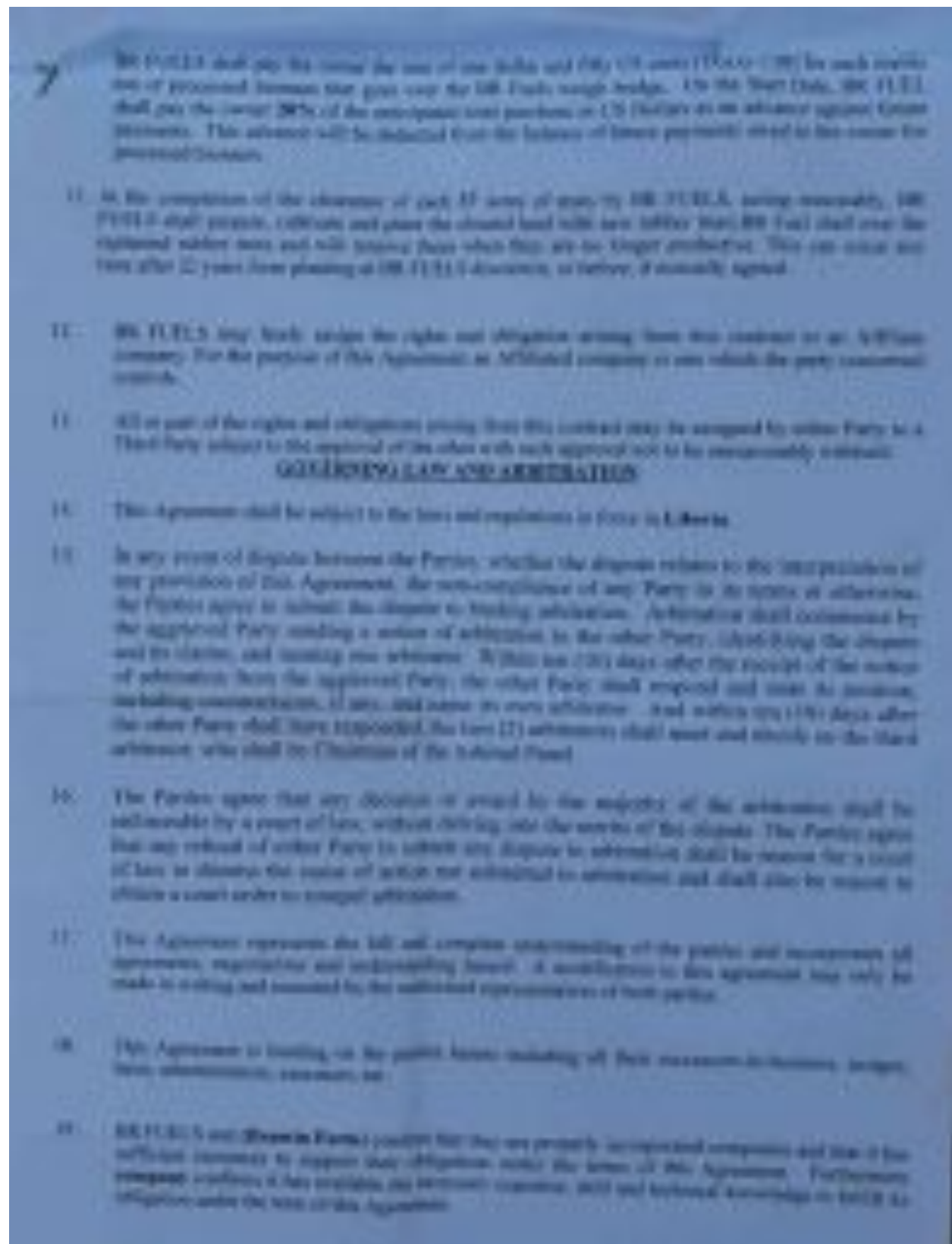






Exhibit 3: Bonwin Farm, Kangar and Gongar Farms, Frederick Bryant Farm and Nancy Lloyd Farm contracts







IN WITNESS WHEREOF, the parties have caused this Agreement to be signed and affixed their signatures and seals below:

In the presence of


For:


Sam Burren, Administrator

For and on behalf of Burren Farm


James Burren Co- Administrator
For and on behalf of Burren Farm


John G. Burren Co- Administrator
For and on behalf of Burren Farm


Nelson BBI
For and on behalf of BBI FULB





[illegible]



IN WITNESS WHEREOF the parties have signed this Agreement on the day
above written and affixed their signatures and seals below

In the presence of

JUL ISAAC LOGAN

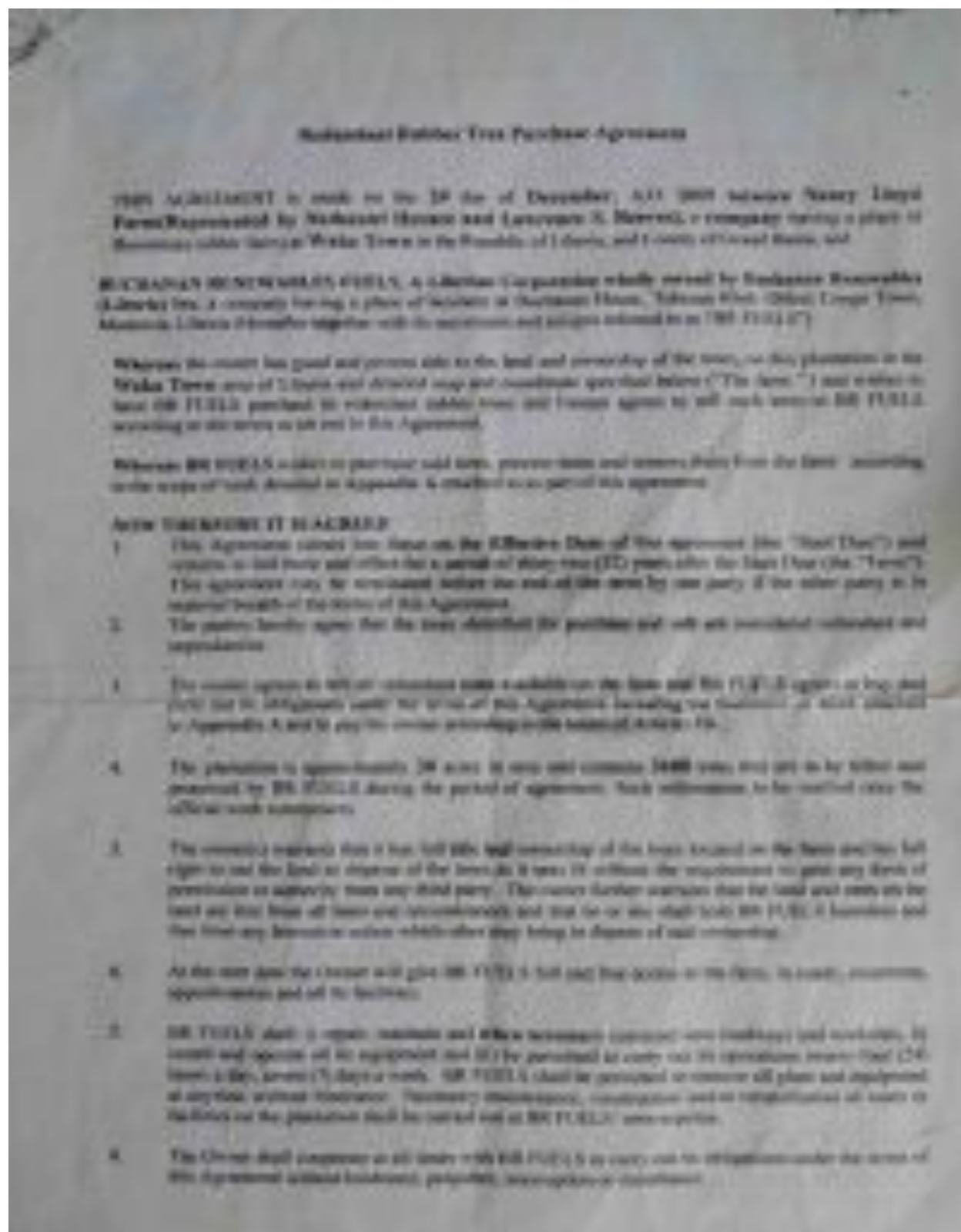
For:

Charles G. Bryant

Administrative-Frederick Bryant

Nelson Hill

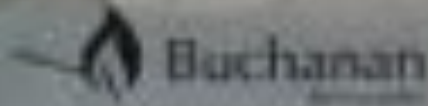
For and on behalf of BR FUELS



9. BILFILL shall carry out its agreements with you and otherwise act, as its agent, and shall employ all categories of workers as shall from time to time be necessary to carry its obligations set out in the terms of this Agreement.
 10. BILFILL shall pay the salary and wages of you during and after US army military service for each month of postponed business for you, over the 100 days through bridge. On the first day, BILFILL shall pay the agreed 30% of the postponed wage provided in US business as an advance against future payments. This advance will be deducted from the balance of future payments until it has reached the predetermined amount.
 11. In the completion of the closure of your 90 days of work by BILFILL, being, respectively, BILFILL shall prepare, collect and send the request and with you within 100 days. You shall send the requested salary and will receive them when they are no longer productive. This can occur 90 days after 77 years from closing of BILFILL's operations or before, if mutually agreed.
 12. BILFILL may study, design the rights and obligations arising from this contract to an affiliate company, for the purpose of this Agreement, an affiliate company is one which the party concerned controls.
 13. A change of the rights and obligations arising from this contract may be assigned to either Party to a third party without the approval of the other with such approval not to be unreasonably withheld.
- GOVERNING LAW AND JURISDICTION**
14. This Agreement shall be subject to the laws and regulations in force in Liberia.
 15. In any event of dispute between the Parties, whether the dispute relates to the interpretation of any provision of this Agreement, the non-compliance of any Party to its terms or otherwise, the Parties agree to submit the dispute to binding arbitration. Arbitration shall consist of the designated Party sending a notice of arbitration to the other Party, identifying the dispute and its nature, and stating the substance. Within ten (10) days after the receipt of the notice of arbitration from the aggrieved Party, the other Party shall respond and state its position including counterclaims, if any, and leave its own arbitration. And within ten (10) days after the other Party shall have responded, the two (2) arbitrators shall meet and decide on the other arbitrator, who shall be Chairman of the Arbitral Panel.
 16. The Parties agree that any decision or award by the majority of the arbitrators shall be enforceable by court of law, without delay being made in the merits of the dispute. The Parties agree that any refusal of either Party to submit the dispute to arbitration shall be treated as a refusal of law to dispute the cause of action and submitted to arbitration and shall also be treated as a refusal to accept arbitration.
 17. This Agreement represents the full and complete understanding of the parties and incorporation of all agreements, negotiations and understanding thereof. A modification to this Agreement may only be made in writing and signed by the authorized representatives of both parties.
 18. This Agreement is binding on the parties herein including all their successors, heirs, assigns, legal representatives, executors, etc.
 19. BILFILL and Phary Lloyd Farm (represented by Nathaniel Savage and Lawrence A. Karmah) confirm that they are properly incorporated companies and that it has sufficient resources to support their obligations under the terms of this Agreement. Furthermore, foregoing conditions it has retained the necessary expertise, skill and technical knowledge to fulfill its obligations under the terms of this Agreement.







Buchanan
International Human Rights Fund
1000 17th St NW
Suite 1000
Washington, DC 20036

Subject: International Human Rights Fund

Dear Mr. [Name]

I am writing to you regarding the International Human Rights Fund and the various issues that have arisen in the past several years.

The first issue that arose was the fact that the fund was not properly managed and the money was not being used for its intended purpose. This is a serious issue and one that must be addressed. The fund was established to provide financial support for human rights activities and to promote the rule of law. It is not acceptable for the fund's money to be used for anything other than these purposes.

The second issue that arose was the fact that the fund was not properly managed and the money was not being used for its intended purpose.

Finally, the fund was not properly managed and the money was not being used for its intended purpose. This is a serious issue and one that must be addressed. The fund was established to provide financial support for human rights activities and to promote the rule of law. It is not acceptable for the fund's money to be used for anything other than these purposes.

I am writing to you regarding the International Human Rights Fund and the various issues that have arisen in the past several years.

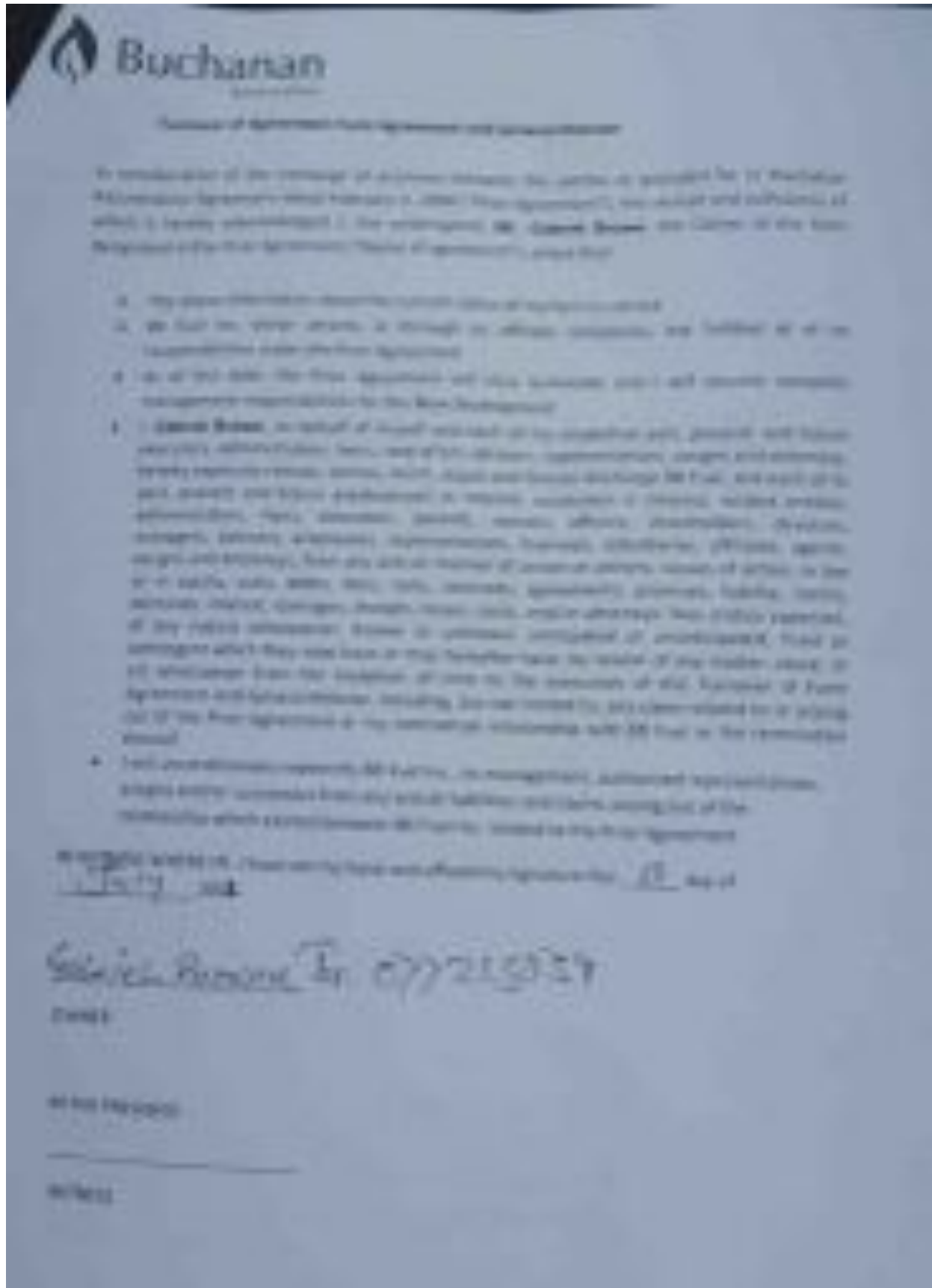
Financial statements and other relevant information:

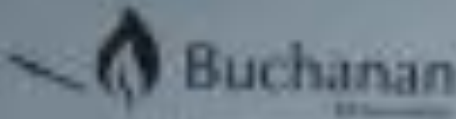
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From [Name]	[Amount]
From [Name]	[Amount]

Very truly yours,
[Signature]
[Name]
[Title]
[Address]

Nathaniel Hon
67721600
July 5, 2012







August 12, 2012

Dr. Sunil Kumar
Administrator
District Office
Mysore, Karnataka
Karnataka Government

Subject: Termination of contract

Dear Sir,

Since 1998 Buchanan's International has enjoyed the opportunity to partner with you in the management of your forest (Government) lands.

As you are aware that out of respect for your interests, we have ~~extended~~ our contractual relationship with regards to use for your forest. That is, in addition to clearing your forest and providing income to you in exchange for your self holder work, we also implement your forest in (Karnataka) and have been able to fund forest development projects. As a result of this work, which we believe you had a significant role, today you possess a development plan for a forest which has been managed, providing income to you for the last 14 years.

However, due to the changing (the environment) and other factors, a significant reduction in income is being received.

Unfortunately, Buchanan's International has a very difficult financial position, which means that it is unable to continue its work. We hereby request you to accept as complete the forest management of the Government of Karnataka (Karnataka) and Buchanan's International (the "Agreement") and to accept the forest and Buchanan's International (the "Forest") and to accept the forest and Buchanan's International (the "Forest") and to accept the forest and Buchanan's International (the "Forest").

Therefore, please see and confirm the information below showing the current status of your forest and the forest.

Forest information and status during last year

Item	Value
Forest area	1000000
Forest income	1000000
Forest cost	1000000
Forest profit	1000000
Forest loss	1000000
Forest gain	1000000
Forest total	1000000

Yours faithfully,

Sunil Kumar

CR

Buchanan's International Forests

Call 077112736
Aug 22-2012





[illegible]

Exhibit 6: MOU between NACUL and BR





8. It is agreed by the parties of this MOU that under the normal Course of the agreement the parties shall work independently.

9. It is agreed and understood by the parties that either party wishing to terminate this MOU shall give a one (1) month written notice to the other party during the termination or agreement term.

10. These terms and conditions of this MOU herein stipulated shall be binding on the parties, past, present, or future, as though they were specifically mentioned herein by name.

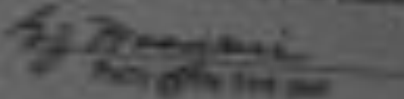
11. It is also agreed that the terms and conditions of this MOU shall be amended or changed by the parties when deemed necessary.

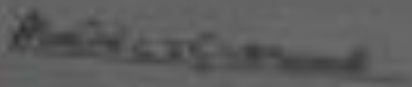
IN WITNESS WHEREOF THE PARTIES HERETO HAVE SET THEIR HANDS AND AFFIXED THEIR SIGNATURES AND OR CAPS THEIR AUTHORIZED REPRESENTATIVES TO SET THEIR HANDS AND AFFIX THEIR SIGNATURES ON THE DATES AND YEAR HEREIN ABOVE WRITTEN TO PREVAIL AND SHALL WHICHEVER, WHICHEVER AND WHICHEVER THESE PROVISIONS SHALL IT BE.

IN THE PRESENCE OF:



For The Account Counsel Team of U.S. State


Party of the first part

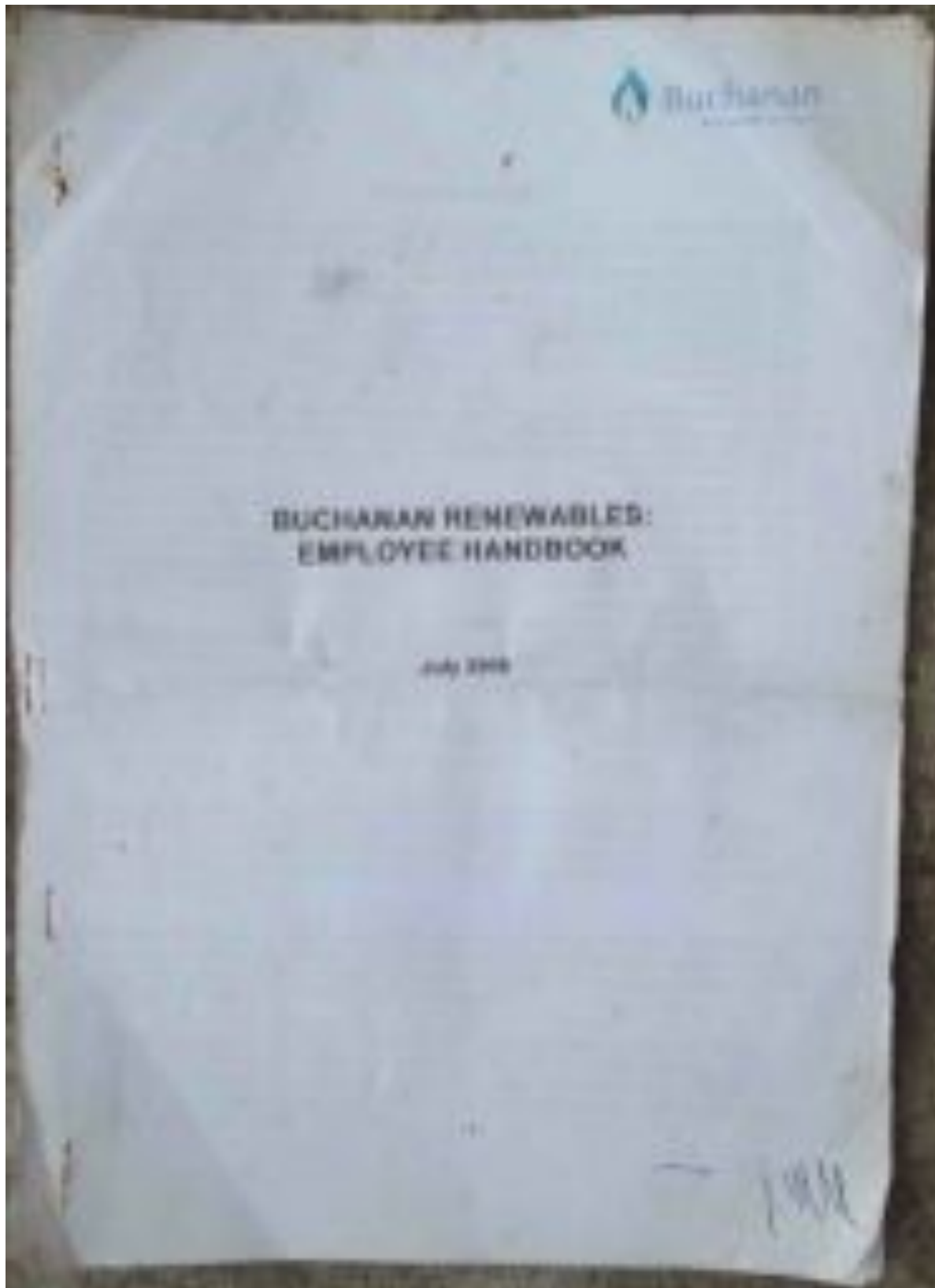



For William Kamukama Uganda


Party of the second part

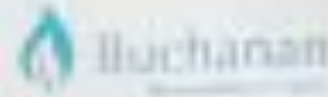
NOTE: These documents are signed & attested by

Exhibit 7: Employee Handbook (Jul. 2009)



 Buchanan <small>ACCOUNTABILITY COUNSEL</small>	
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1. BASIC TERMS AND CONDITIONS

1.1. Letter of Employment & Contract Date

a. Letter of Employment

- Employees receive a Letter of Employment and Terms of Reference that, together with this handbook, define the terms and conditions of their employment. By signing a Letter of Employment, an employee acknowledges that s/he understands it and that s/he will comply with all parts of the Employee Handbook and their implications.
- Senior managers are required to sign a separate Confidentiality and Non-solicitation Agreement.
- All employees have an obligation to ensure they understand the terms and conditions of their employment prior to signing their Letter of Employment. They may, at any time, request clarification from their Supervisor, Department Manager or the Human Resources Department. They also have the right to, at their own expense, consult a lawyer prior to signing their Letter of Employment.

b. Probation

- Every new employee will undergo a probationary period of three months.
- During the probationary period, either party may terminate the employment agreement without notice or bond.

c. Service and Place of Employment

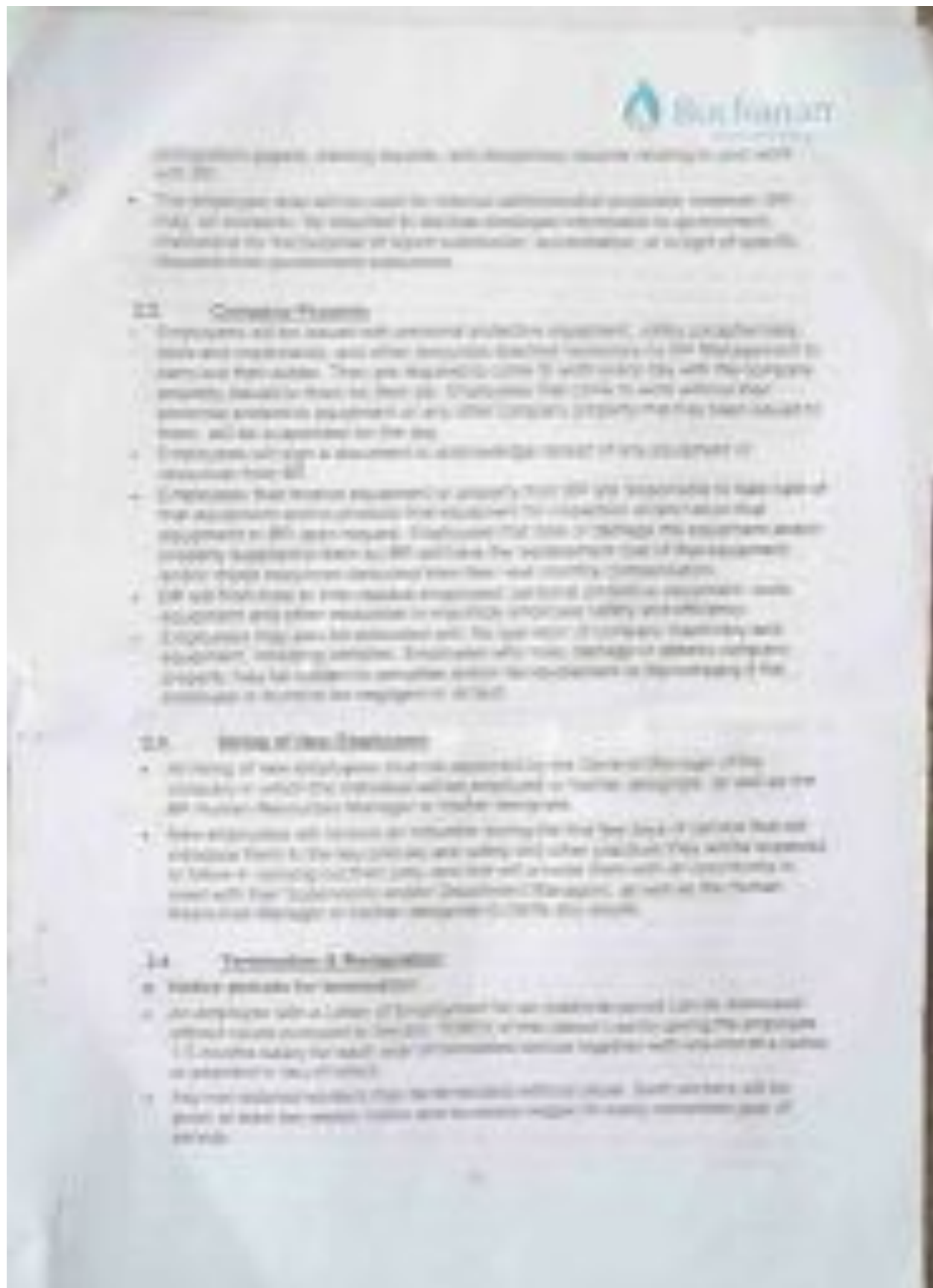
- Employees shall serve in the capacities prescribed in Letters of Employment and the employee handbook and may be:
- Transferred from time to time as required from one job title to another based on the need determined by HR Management.
- Employed that involves a transfer from one location to another based on good business and subject to the availability of vacancies at the desired location. Request must be submitted in writing to the HR Department. HR will consider and use all appropriate means to facilitate requests within one month of receiving them. Any request will be made solely at HR's discretion.
- In the case of long-term transfers initiated by HR, notice will be given to the employee in that form (30 days prior to the date of reporting at the new location unless in case of emergency).

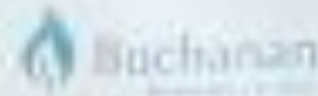
d. Service Limit

- The Company is committed to up to 40 years of the employee's continuous/total period of continuous service, or any part after twenty-two years of continuous service.
- Any employee's service may be extended beyond the age of 60 by mutual agreement with HR.
- HR will consider applications for voluntary retirement at the age of 60 (after ten years) of continuous service.

e. Employee Data

- HR maintains information on each employee in the Human Resources Department. Such information includes, but is not limited to, basic information such as name, employee number, contact information, addresses, contact names, and addresses.





4. An employee will be paid at their normal rate during any notice period, less any money owed to BSI by that employee.
5. BSI reserves the right to prevent any employee from returning to work or entering a work site after delivering notice of termination to that employee.
6. No notice will be given to employees being terminated for cause, such as for violating company provisions subject to their Letter of Employment, Terms of Indemnity, the terms of the Confidentiality and Non-compete Agreements they may be required to sign.
7. Employees may be dismissed without notice subject to payment only of remuneration due if the employee commits a serious breach of duty. Such Section 4(1) for actions considered to serious breaches of duty leading to immediate dismissal, as well as behavior leading to disciplinary action.
8. **Notice period for resignation**
9. Employees must notify Management in writing of their intention to resign two weeks in advance of the date of their resignation.
10. Senior Managers must notify Management in writing of their intention to resign two weeks in advance of the date of their resignation.
11. All employees will be paid at their normal rate during the notice period, less any money owed to BSI.
12. BSI reserves the right to prevent any employee from returning to work or entering the work site upon receipt of a letter of resignation.
13. **Returning company equipment and property**
14. Employees are required to return all BSI property upon termination and resignation. This includes but is not limited to vehicles, computers, cellular phones, memory sticks, lock, safety gear, uniforms, and company documents.
15. An employee's final payment will not be issued until all equipment has been returned and an appropriate release received.

3.6 Confidentiality

- Employees shall not, either during employment or at any time after their termination, for any reason, use or disclose in any person, company or other organization any confidential information. Confidential information means but is not limited to information relating to the relationship and agreements with the Company and its business partners, products, offers and business of the Company and its business partners, trade secrets and other technical information. It includes any non-public information that is of importance to the operation of the business and/or the safety and security of employees and business contacts.
- Employees shall use their best efforts to prevent acquisition or disclosure of confidential information.
- All Senior Managers are required to sign a Confidentiality and Non-compete Agreement.





Managers receive such approved costs through a monthly payment of charges submitted for reimbursement.

- All employees will be reimbursed with an immediate advance a full accounting of the use of funds, including official receipts for the full amount of the approved expenditures, to the Finance & Accounting Department. The Manager who has approved the expenditures and the Finance & Accounting Department must sign off on an expense report prior to reimbursement.
- If an employee incurs an advance for approved expenses and does not supply the Finance & Accounting Department with a full accounting of the use of funds, including official receipts for the full amount of the advance within the time period agreed between the employee and the Manager who advanced the advance, the full amount of the advance will be deducted from the employee's monthly compensation.
- a. Travel Expenses
 - All travel must be pre-approved in writing by the employee's Department Manager.
 - Employees required to travel outside of their normal office of work for more than six hours will be provided with a loan or per diem to cover the cost of a meal.
 - Employees required to travel outside of their normal points of work overnight and who are provided with meals and accommodations in hotels or per diem to cover the cost of meals, accommodations and any other incidentals.
 - All out-of-pocket expenses not in per diem for business travel that will be covered from time to time by HR Management.

2.2. Working Hours

a. Standard working hours

- HR's standard working hours are 40 hours of work performed within a week of the HR's working days (Monday to Saturday).
- Specific working hours may vary depending on an employee's line of work and the production schedule. Such exceptions must be approved first by the Company Manager, will define the specific hours of operation to further Department. Each employee's specific working hours will be defined by their Supervisor.
- Employees are entitled to a 30-minute unpaid break when working over 3 hours in a day.

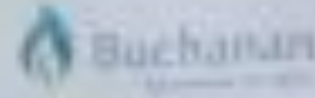
b. Punctuality

- Employees are expected to start to work on time as defined by their Supervisor. Disciplinary action will be taken against employees who are persistently late and who are unprepared to perform their duties when required.

c. Overtime payments

- Compensation for employees in management, senior staff and professional positions who are advised that they have been making more hours of work, for that reason, and according to the Labor Law, these employees are not entitled to compensation for overtime worked.
- Employees other than Managers, senior staff and professionals are, according to the Labor Law, entitled to compensation for overtime worked.





g. Sick leave

- Employees must notify their Supervisor if they cannot work due to illness. Notification must be given on the same day and every day an employee is sick. In the case of emergency illness, a designated family member must notify the Supervisor on the employee's behalf. Supervisors are required to notify the HR Department.
- Sick leave with pay will only be approved when a certificate signed by a registered medical practitioner is presented to and approved by HR Management.
- If HR approves sick leave with pay for an employee, that employee shall be entitled to sick leave with pay as follows:
 - Ten working days per year after the first, second and third years of continuous service.
 - Twelve working days per year after the fourth year of continuous service.
- The granting of sick leave is subject to the maximum period described above shall be at the discretion of HR.

h. Compassionate leave

- Employees are entitled to 3 days of paid compassionate leave for the death of an immediate family member (parent, sibling, spouse or child) or the mother-in-law.
- In order to take compassionate leave, employee must provide Management with (i) a letter indicating the name of the deceased person, the place of death and the date of death; (ii) either a death certificate from a registered doctor, a death certificate or (iii) a letter of request from the marriage ceremony and an official marriage certificate after the marriage ceremony.

i. Maternity leave

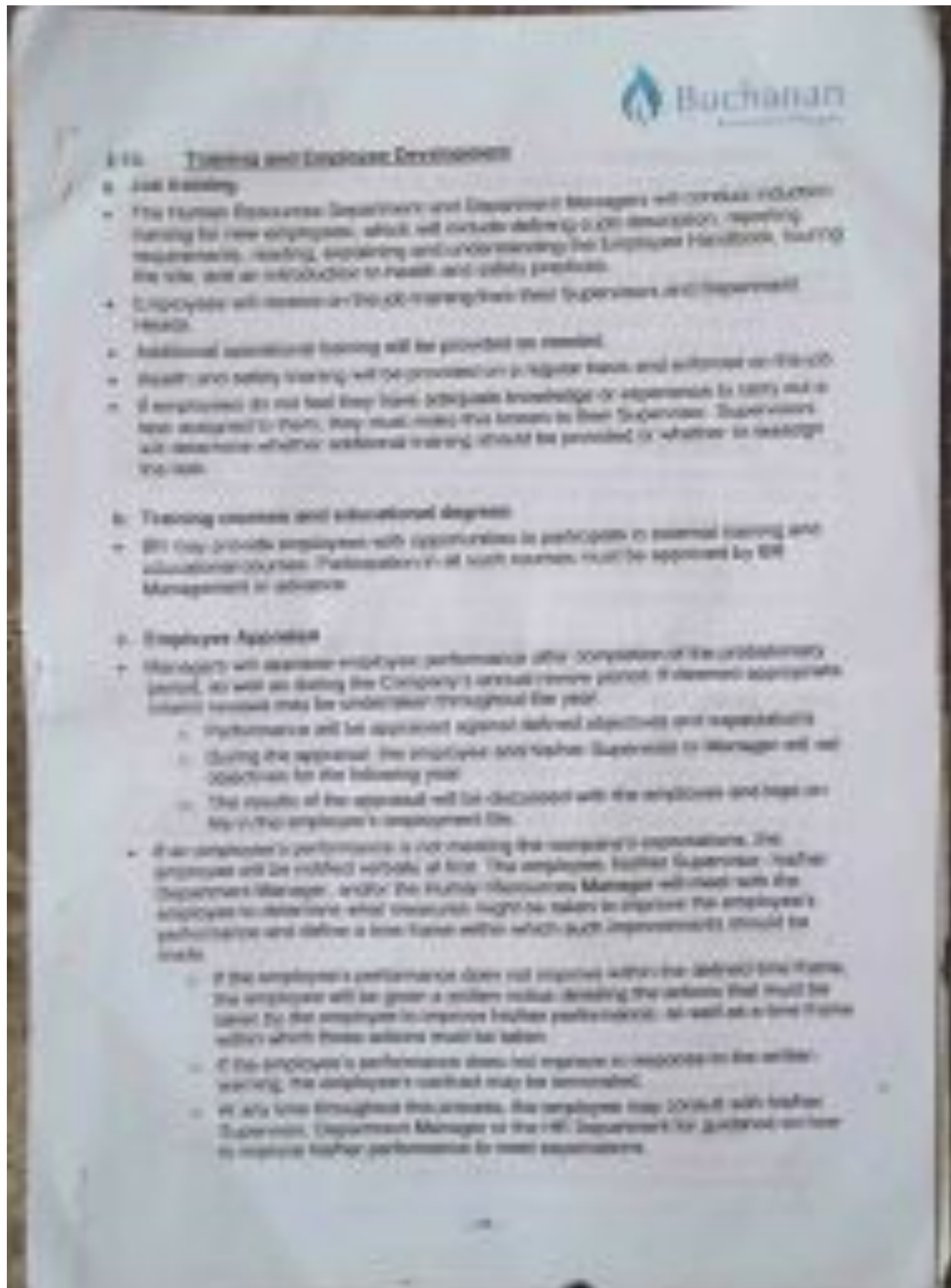
- A female employee who has completed her pregnancy shall be entitled to 3 months of maternity leave with full pay.

j. Leave of absence

- A voluntary, long-term leave of absence without pay may be granted to employees for educational or personal purposes at HR Management's discretion.

k. Unexcused absence

- Unexcused absence will not be tolerated and are subject to disciplinary action by HR. An employee who continues to have unexcused absence during working hours without written permission from his or her Supervisor.
- An employee who is absent from work without permission must report to his Supervisor immediately upon returning to work.
- An employee who is absent from work without permission for more than 10 consecutive working or more than 10 working days in the month period will be regarded as having voluntarily terminated their employment with HR.





2.11. Employee Benefits

Employees may be entitled to participate in plans, in any benefit program established by the Company.

- Benefits will be assigned equitably and will be commensurate with an employee's position and length of service, such as length of service.

In recognition of the fact of physical and social infrastructure available in various IIRs or its derivative stages, that have and may be subject to provide employees with:

- One hour or equivalent rest and relief period
- Other transportation and facilities, along with roads, where walking or public transportation are not options
- Emergency medical care for work-related injuries

2.12. Communication

- Information regarding Management decisions, changes in administrative policies and procedures, and changes in standard operating procedures will be disseminated via:
 - Staff meetings or briefings conducted by Supervisors and Managers
 - Circulars and memorandums
 - Employee bulletin boards—employees should check boards regularly
 - Email, where appropriate

3. Operational Policies and Procedures

3.11. Health, Safety and Security

a. Principles

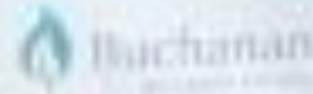
- IIR recognizes its responsibility for providing a safe and healthy working environment for all its employees and all persons in its premises using the health and safety policies.
- Employees are responsible for following the health and safety policies by taking reasonable care not to harm safety and ensuring their actions do not jeopardize the health and safety of others. Furthermore, each employee has a duty to ensure that the health and safety measures are implemented.

b. Health & Safety familiarization and practices

All employees have a duty to:

- Learn and know the health and safety rules and regulations, and a checklist to:
 - Use personal protective equipment where required
 - Report from removing parts from equipment, unless required by management personnel
 - Report incidents that have led to, or may lead to, injury or accidents
 - Tell the police of incidents causing or posing further jeopardy from happening
- Advise Supervisor or Management if they are unsure of the health and safety policies or if how to operate a specific machine.





- h. Be in possession of drugs or alcohol at the workplace.
- i. Consuming drugs or alcohol at the workplace.
- 4. **Offenses:** The rights reserved by the company shall not be abused.
- 5. Any violation of these rules will be subject to disciplinary action and is likely to result in immediate dismissal.

4. Theft or Damage

- 1. Theft of or damage to company property will not be tolerated. Cases of theft or damage will immediately be investigated internally and may be reported to the police, resulting in prosecution and termination upon conviction.
- 2. The company reserves the right to search any employee entering or leaving any of the company's facilities, any vehicle driven in which business may be transacted, and any other property thereof may have with facilities.
- 3. Any search will be conducted in the presence of a third person. If the employee being searched is female, any body search will be conducted by another female.
- 4. The company is not liable for employee belongings and property held at the workplace.

4.16. Gifts and Inducements

a. Giving gifts and inducements

- 1. The company is a strict policy of not paying Government officials or politicians for favors. Employees must not give inducements of any kind to government officials, courts, agencies, agents or any other business entity, as this could seriously compromise the company's position and integrity. Any violation of this policy will result in immediate termination of the employee's contract.

b. Accepting gifts and inducements

- 1. Employees must not accept gifts or inducements from courts, suppliers, agents or any other business entity. This could seriously compromise the company's position and integrity.

4.17. Discrimination, Harassment and Retaliation

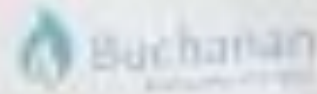
a. Equal Opportunity Employment

- 1. The company is committed to a culture of respect and tolerance and the company and its broader community. The company is committed to treating all employees and job applicants equitably, regardless of race, religion, sex, gender, disability, sexual orientation and marital status.
- 2. All employees, including both mid and senior-level employees, have a personal responsibility to ensure the company's equal opportunity policy and culture of respect are followed.

b. Discrimination

- 1. The company will take every effort to ensure that individuals are treated equitably. However, employees feel that they are the victim of discrimination, they are advised to contact their Department Manager. If the grievance is against the Department Manager, the employee should notify the Human Resources Manager or their supervisor.





1. DISCIPLINARY PROCEDURES

1.1. Disciplinary Procedures

The purpose of Disciplinary Procedures is to:

1. Identify and correct behavior
2. Minimize disciplinary action
3. Discourage

However, if a person is found to be in violation of the Code of Ethics, it may lead to immediate termination or dismissal.

1.2. Examples of Disciplinary Procedures

Examples:

- Any employee found in violation of the Code of Ethics, as well as the standards of performance, actions and behavior required of them. Employees should immediately notify their supervisor or the HR Department.
- Employees will receive a written reprimand if they are found to be in violation of the Code of Ethics.
- Employees will receive a written reprimand if they are found to be in violation of the Code of Ethics.

Managers must ensure that:

- Their employees are aware of the Code of Ethics, as well as the standards of performance, actions and behavior required of them.
- Any disciplinary action taken, written reprimand of the Code.
- Any disciplinary action is consistent with the Code of Ethics.
- The disciplinary action is consistent with the Code of Ethics.
- The disciplinary action is consistent with the Code of Ethics.
- The disciplinary action is consistent with the Code of Ethics.

Managers must ensure that:

- All disciplinary actions are consistent with the Code of Ethics, as well as the standards of performance, actions and behavior required of them.

1.3. Examples of Disciplinary Procedures

Examples of disciplinary actions include: written reprimand, suspension, and termination. The disciplinary action should be consistent with the Code of Ethics, as well as the standards of performance, actions and behavior required of them.

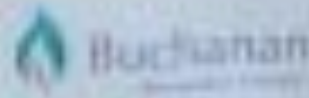
1.4. Examples of Disciplinary Procedures

Examples of disciplinary actions include: written reprimand, suspension, and termination. The disciplinary action should be consistent with the Code of Ethics, as well as the standards of performance, actions and behavior required of them.

1. Written reprimand

2. Suspension





B. Examples unsatisfactory conduct and misconduct

Behavior for which disciplinary action will be taken includes, but is not limited to:

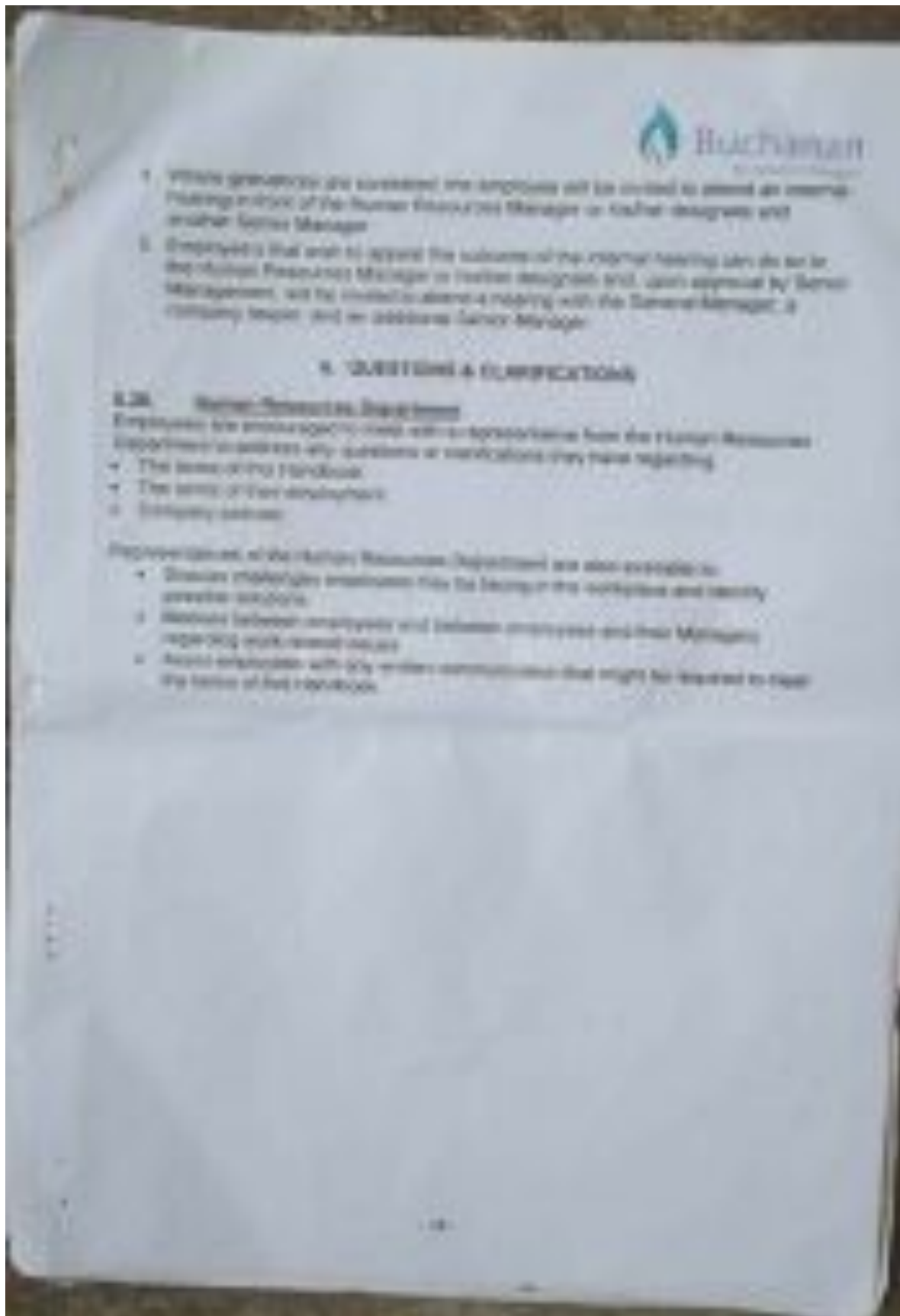
- a. Failure to abide by the general health and safety rules and procedures;
- b. Smoking in non-smoking areas;
- c. Use of cell phones for personal reasons during working hours outside of an employer's business;
- d. Consumption of alcohol on any company premises;
- e. Absenteeism and unplanned absences;
- f. Not being prepared for work;
- g. Sleeping on the job;
- h. Unacceptable conduct or output of work;
- i. Involvement in safety incidents of the job or other employees, shareholders or visiting vendors, customers or suppliers;
- j. Failure to devote the whole of your time, attention and abilities to company business and to affect during your working hours;
- k. Failure to carry out important instructions of fellow team members and procedures;
- l. Stolen, unauthorized use, negligent damage or loss of company property;
- m. Employees causing intentionally any damage to property or produce reasonably and;
- n. Use of company vehicles without authorization;
- o. Failure to report any accident while driving company vehicles, whether or not personal fault or without damage occurs;
- p. Failure to report potentially dangerous conditions or situations on the work site;
- q. Carrying unauthorized goods to passengers in any company vehicles or the use of company vehicles for personal use;
- r. Loss of phone number, e-mail or computer name from an essential part of your work.

C. GRIEVANCE PROCEDURE

C.19. Grievance Procedure

Where a formal grievance procedure is not required internally in accordance with an employee's contract and Department Manager, there may be times when that is not possible or appropriate. In such cases the grievance will be dealt with under the following formal procedure:

1. Employees submit their grievance or writing to their Department Manager or, particularly in cases where the Department is small, their Manager is the subject of the grievance, to the Human Resources Manager or another designated;
2. Department Manager are obliged to inform the Human Resources Manager or another designated in the formal grievance procedure;
3. The Human Resources Manager or another designated will remain responsible for investigating formal grievances and will work with the Department Manager or other relevant Managers in determining the appropriate action required.





 **Buchanan**

EMPLOYEE ACCEPTANCE OF STANDARD TERMS

I, Dan Vardick Director (Print Name)
have read and understand the terms and conditions of this Employee Agreement
for the employees of BP and hereby accept and agree that the terms and conditions
listed herein shall apply to me as an employee of BP.

Dated Feb 2014 at 2 pm 2014

Name Dan Vardick
Address 1175
City 2014

Witness Dan Vardick

Exhibit 8: Collective Bargaining Agreement





ARTICLE FIVE REMUNERATION

The Corporation and the State shall increase the annual wage of all public class members and fully paid leave salary effective October 1, 2010.

ARTICLE SIX SALARY INCREMENT

The Corporation shall increase the salary of all the members covered under the agreement per 1 Section 1001.1 as follows:

Monthly gross salary	Increment
\$ 1M - \$ 200	3%
\$ 201 and above	3%

ARTICLE SEVEN MEDICAL BENEFIT

1. The Corporation shall provide medical care at the Corporation's cost and dependency free of charge for such medical assistance to all employees.
2. Employees desiring medical care by the Corporation's Medical Board must be insured and are to be paid in accordance with the Labor Relations Law of Liberia.

ARTICLE EIGHT ACCIDENTAL DEATH

Whenever a member of the Corporation shall, in connection with the production or performance of the Corporation by which the member incurred the compensation shall be responsible for restriction, loss of health, compensation, arising and fully each month until he/she receives compensation for disability and death arising from occupational responsibilities shall be paid in accordance with the Labor Relations Law of Liberia.

ARTICLE NINE DEATH BENEFIT

Should an employee die while in the active service of the Corporation, the following gratified Death Benefit shall be paid to his beneficiaries named on the designated employment benefit upon presentation of evidence of his/her death from the Probate Court along with a death Certificate if death occurred in a medical facility, or a signed Letter of Attestation by Local Government Authority in the case that the death occurred.

At Death Benefit:

Twice of 30-day	Amount paid
Leave in years	1 month
1 day after 30-day to 1 year	100.00

4.1 Water Sampling and Pumping Apparatus

The Corporation that provides a guaranteed water supply and forest management to supply of domestic phytoplankton based on species of species as follows:

Years of Service	Amount (¢/hr)	Days
1 year or more	\$6.00	1 (range)
1 day after promotion to 1 year	\$6.00	1 (range)

a. *Assessment* is based on

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Members of the Union agree to pay Five United States Dollars (\$5.00) per head per month through year-end deduction by the Corporation every month as union dues. The union committee upon a written authorization of the General Secretary to the Corporation, shall collect same on behalf of the Union. The amount shall be paid by check and shall be used by the Secretary of each month.

SPITZ, J. L. 1986.
D-PROTEIN ACIDS

The Corporation agrees to give no other thing of value or gift either yearly or at a time for Christmas surmounting that of December third. This shall remain in implementation every year Christmas by the custom of the contract.

ARTICLE 1401C
 CONTRACTS FOR SUPPLIES

The agreement is for two (2) years duration. It shall run from the 1st day of October, 2012 to 30th day including October 1st 2014. Parties agree to start negotiating for a new agreement on the 15th July, 2014. The parties agreed that if negotiations for the new agreement are not completed, all provisions of this Agreement shall remain in full force and effect until the new agreement is agreed.

ARTICLE THIRTYTHREE
SCHOOL LEAVE

Courts and juries agree that sexual abuse shall be given its weight and emphasis. If the respondent who is subject to them is accompanied with status, provided that past abuse shall be given equal emphasis as in the beginning of the custody period.

ARTICLE 10. VOLUNTARY
ASSOCIATION LEASE

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ARTICLE SIXTEEN GENERAL HOURS OF WORK

1. The standard working hours are 40 hours per week for a standard working week of ten (10) working days unless otherwise advised by the Corporation.
2. Employees required to work more than the Corporation standard of 40 hours per week will be informed as such by their Supervisors and paid at the overtime rate for any hours worked over 40 hours per week. Overtime rate is time and one-half of the stipulated normal rate.
3. When the Corporation requires an employee to work on a Statutory Public Holiday or Days of Rest, normal gratifications stipulated with Union Labor Law.
4. The scheduling of working hours is the discretion of the Corporation and may be subject to change to meet production requirements.
5. The scheduled number of work hours shall include both (11:00 hour) paid rest period. Any additional rest time granted during the day shall be unpaid and shall not be considered as part of an employee's working hours.
6. Travel time to and from work shall be considered as working time.
7. Anytime working in excess of the stipulated rate will be paid overtime for that day without pay. An employee working in excess of the stipulated rate for more than 10 consecutive days within a six-month period shall be deemed to have exhausted vacation entitlement. This rule applies after the company's notification to end work with a notice.

ARTICLE SEVENTEEN TRANSPORTATION

The Corporation shall provide transport (except under this agreement) with transportation from various jobs up country to work stations of a monthly transportation allowance of \$20.00 to \$30.00 (Twenty to thirty dollars) depending on distance and \$10.00 (Ten dollars) United States Dollars for other areas of duty station as determined by the Corporation.

When the Corporation requires an employee to work at a location other than their normal work station, the Corporation shall provide transportation or reimburse reasonable travel expenses. An employee required to travel by air shall be reimbursed by Management in order for reimbursement.

ARTICLE EIGHTEEN SAFETY EQUIPMENT

The Corporation shall provide relevant safety equipment to employees involved under this Agreement depending on the nature of their job. Some safety equipment is issued, it will be mandatory for employees to wear that safety equipment at all times when on

July. Safety equipment including eye gear, shall be issued only privately and on an individual basis as determined by the Corporation as discussed in the following paragraphs:

1. Employees that do not wear the Corporation issued safety equipment required for their specific jobs will not be allowed to work and shall be charged an absent status because for the day.
2. If an employee loses further safety equipment, including eye gear, within a month from date of issue, replacement will be 100% of the cost of the new equipment through payroll deduction. If an employee loses further safety equipment including eye gear, between 3 and 12 months from the time it was issued, after that pay 50% of the cost of new equipment.
3. Safety equipment that needs to be replaced within a year due to reasonable wear and tear caused during the employee's normal course of work, as determined by the Corporation, will only be replaced by the Corporation upon presentation to the Corporation of the damaged or worn equipment. Failure to present such safety equipment will be considered a loss and will be treated under paragraph 2 of this Article.

ARTICLE EIGHTEEN SUSPENSE

Suspense is the fact of action or management, it may be caused by an action of employee or defined any emergency matter. Since it is necessary type of employment upon making issue of doing any action, the corporation should notify the union, already the union and the corporation shall discuss and find solution to the issue. When the action is necessary, the corporation shall be advised to come to an agreement. The firm shall call upon further placed at the union qualification that, and the leadership in the union of the corporation shall be forced to be affected when there is a total breach of the corporation.

ARTICLE NINETEEN DISCIPLINE

There will be a maximum of two (2) suspensions, as decided by the union members. One suspension shall be placed upon suspension. The Corporation and the Union agree that the worker suspension shall be placed to spend one day per week on higher basis and responsibilities as suspension. The other four suspensions shall be placed to spend 1 day per month on suspension basis and responsibilities, all suspensions shall be fully paid within twenty days. When a suspension make the problem to any seriously, notice shall occur to further suspend problem to the suspension.

ARTICLE TWENTY COMPENSATION

The analysis of the Corporation shall be given four weeks of compensation issue with pay alternative death amount to the family of the employee. The family members referred to in this agreement shall be as follows: wife, husband, father, mother as they are listed as dependents of the employee's No. 41 Human Resources Department.

your friend 0886335746

**ARTICLE TWENTY-ONE
INDUSTRIAL ACCIDENT**

No long as the Labor Protection Law of Liberia never industrial accident whatsoever shall occur. No two employees.

**ARTICLE TWENTY-TWO
DISCIPLINARY JUDGE**

Provision period of two employees shall be in keeping with the labor laws of Liberia.

**ARTICLE TWENTY-THREE
SALARY ADVANCE**

The Corporation agrees to give each worker salary advance once a year unless (deducted) by the management from the month pay without advance not liquidated.

**ARTICLE TWENTY-FOUR
LEAVE OF ABSENCE FOR TRAINING EDUCATION**

The Corporation agrees to grant the employee a leave of absence for a maximum of three (3) month educational leave with full pay when needed to pursue a schooling by the Union. Worker paid for related expenses.

**ARTICLE TWENTY-FIVE
GROUP INSURANCE**

1. Management pays group health insurance through its company, the Government of Liberia.
2. The group shall identify a group insurance program for the employees of the Corporation under the Agreement. The cost of the insurance shall not be the sole responsibility of the individual employees. The Corporation agrees to make monthly group insurance group deductions for the employees covered under this Agreement and transfer the deduction to the designated insurance company, subject to written approvals with deductions from each employee's compensation with Section 107.1.10 of the Labor Union Law.
3. The group insurance policy may include the payment of all expenses, including employee's medical, and also to be determined by the Union and insurance company.

**ARTICLE TWENTY-SIX
TRAINING**

The Corporation agrees to set up temporary camps for all the employees in operation outside Buchanan and Barrow. If no accommodation is available overnight allowance \$100.00 shall be.

ARTICLE TWENTY-SEVEN DISCIPLINARY ACTION

An employee may be discharged immediately at the duty for serious offenses when proven through the disciplinary action procedure. Offenses to which this discipline procedure applies shall include but are not limited to:

- a. Sleeping on the job
- b. Smoking in restricted areas, intoxication or lighting on the job
- c. Unauthorized use or theft of company property
- d. Continued absence of more than an accumulative day or more than 30 days cumulative absence in any 12 months
- e. Unauthorized disclosure of another individual's payroll master card
- f. Purposely damaging the company

ARTICLE TWENTY-EIGHT DISCIPLINARY ACTION

Disciplinary measures will be taken in accordance with the goals of the policy of this corporation. The following measures shall not include or alter stated conditions, such as stated in a contract or duty.

- a. When an employee has failed to observe further with other and position or correction or has committed any act of misconduct or negligence of the duty, he/she shall be given a written warning.
- b. The first warning shall contain a statement of the corporation which sets forth briefly the reasons for the corporation's dissatisfaction with the employee and be signed by the immediate supervisor of the employee. The immediate supervisor of the employee will explain the contents of the letter to the employee.
- c. If the employee fails to improve and continues to act without regard to the supervisor's demands and instructions with respect to the corporation's rules and regulations, thereby failing to meet the corporation's demands, he/she will be given a second warning letter, which will be signed as such and will be signed by the manager or supervisor of the department in which the employee has been assigned. The second warning may include a statement of up to five (5) days without pay, depending on the severity of the violation.
- d. If the employee fails to improve further, he/she shall be given a third warning, he/she will be suspended for a period of not less than three (3) days and not more than ten (10) days without pay, or further discipline will be determined.
- e. The employee has the right to request a union representative to be present when the action is taken, and suspension will not be explained to the employee. The employee will be required to sign all written documents related to suspension and suspension, whether or not he/she agrees with the company. He/she can challenge the contents of a later rule through the grievance procedure. The union will have the right to act upon it if all documents related to suspension and suspension of a specific case.

ARTICLE TWENTY-NINE DISCIPLINARY ACTION

This Corporation and the labor agree to provide a culture of respect and tolerance and commit to a policy of non-discrimination on the basis of race, color, sex, religion, political



to other species, infection or blood-borne viruses, death or other damage such as injury, illness, disability, loss, health damage, emotional or mental distress or financial loss, except when justified by actions related to scientific work or legal requirements and Operation of basic equipment or operation of test cases.

ARTICLE TWENTY CHILD LABOR AND TRAINING PROVISIONS

The Corporation and the Union take the view that it is their very primary obligation to voluntarily to prevent child labor in the Corporation's operations and its activities and monitor any situation that may be identified for the purpose of this Agreement and when the law defined in accordance with the International Labor Organization's Minimum Age Convention and for laws in place.

ARTICLE TWENTY ONE SICK

The Corporation shall provide such coverage with one (1) day pay if the employee has (2) months.

ARTICLE TWENTY TWO SICK AND SALARY PROVISION

The Corporation shall make salary and wage payments into each employee's bank account for the Friday nearest to the last day of the month in which payment is being made.

ARTICLE TWENTY THREE HEALTH AND SAFETY COMMITTEE

A Health and Safety Committee composed of six (6) representatives, three (3) from the Management and three (3) from the Union shall be established within 30 days after the signing of this Agreement. The Health and Safety Committee shall meet quarterly to assess the health and safety of the employees of the Corporation and make recommendations to the Corporation. The Corporation will provide support for every function of the Health & Safety Committee.

ARTICLE TWENTY FOUR EXCLUSIVE

An employee who has completed higher professional school cannot be employed in any other position within the Corporation.

An employee who becomes disabled from work due to illness of any nature will be entitled to receive medical and dental care for the duration of the illness. The Corporation will provide medical and dental care for the duration of the illness.

ARTICLE THIRTY-FIVE TERMINATION

1. Senior Person rights of the Corporation's employees covered under the Agreement shall be regulated in accordance with the Senior List of items in the National Social Security and Pension Corporation Pension Scheme, which shall be applicable at the time an employee is dismissed. Persons 55-64 (64-69) persons are to be referred at least four months in advance.
2. Persons, which does not be paid only to the Pension and production of nuclear classification card. Pension type and no maintenance.
3. No pension payments will be made to minors.
4. Persons in need of advanced pension are considered to be non-employees of the Corporation.
5. Upon retirement, the Corporation shall make a lump sum payment to an employee that was officially released by the Corporation after being in during the time of nuclear service. The payment is to cover the consolidation of nuclear pension offered to further future plans of retirement and which made as follows:
 - a) the former employees 55-64 (64-69) from the retirement date 1,000,000
 - b) the former employees over 64 (69) from the retirement date 1,000,000
6. When the employee is dismissed without cause, which retirement shall be offered in the situation for at least 10 years.

All employees who receive no further cash payment, and it is to say within the office request of the Corporation, which is subject to the payment.

ARTICLE THIRTY-SIX TRANSFER OF EMPLOYEE

All employees may request to transfer to another position on the basis of qualifications, training, experience and capability. The employee who has been transferred shall be compensated a salary in salary that is necessary to meet the new position pay grade.

ARTICLE THIRTY-SEVEN EMPLOYEE'S SAVING

The Corporation shall provide a pension distribution card to all employees. Should an employee lose nuclear classification card within a two-year period, the replacement cost of 1,000.00 will be borne by the employee. If an employee's classification card cannot be replaced due to irreparable wear and tear, the Corporation will cover the cost of replacement of the card plus a copy of nuclear card.



**ARTICLE TWENTY-SEVEN
SICK LEAVES/VACATION**

The Corporation agrees that all employees within the company shall have access to sick leaving rules. When there is no sick rule on site available, employees shall be provided with portable rule, rule shall be replaced if damaged. Job is responsible when and how.

**ARTICLE TWENTY EIGHT
HOURS AND HOURS FOR OPERATIONAL SITE**

The Corporation agrees to provide policies, standard operating procedures and rules for employees of the Corporation to be observed in addition to the CMA procedures in public operations, health and safety and disciplinary action throughout the Corporation. The Union agrees to abide by the Corporation's policies with regard to health, safety and security rules on the Corporation's work place, and to assist in enforcing the Corporation's policies, standard operating procedures and rules amongst the employees covered under the Agreement.

**ARTICLE TWENTY NINE
OVERTIME/AVAILABILITY**

The Corporation agrees to provide overtime allowance for employees when working outside of the normal duty location and/or not accommodated in overtime. The overtime allowance shall be 15% of 20.00 Twenty United States Dollars.

**ARTICLE THIRTY ONE
JOB CLASSIFICATION**

The Corporation shall provide management communication with job Classification/Description for each employee in the job. The Agreement, if an employee is hired on the job through a hiring program of the Corporation to perform a higher paid job, the employee will have to be notified in writing by the Corporation that if the job Classification prior to hiring higher rules approved according to the job Classification.

**ARTICLE THIRTY TWO
JOINT CONSULTATIVE COMMITTEE**

The Corporation and the Union agree to set up a Joint Consultative Committee. The committee shall be empowered to discuss and discuss of interest to both workers and management, including ways and means of improving productivity and workplace safety, as well as to discuss and discuss matters to the Union and the Corporation to work together effectively. It shall meet once monthly. Chairmanship shall be rotational and shall last for six months. Sessions held by the committee shall be held by consensus. The Committee shall be made up of six (6) members, three (3) from the Union and three (3) from the Corporation.

ARTICLE FOUR GRIEVANCE PROCEDURE

Employees covered under this Agreement shall follow the grievance procedure set forth below:

1. Employee and Shop Steward file the grievance to the employer's direct Supervisor or Line Manager. Employees may wish to meet directly with their Supervisor/Line Managers.
2. If the grievance is not satisfactorily addressed through the Supervisor/Line Managers, the employee and the Shop Steward file the grievance to the HR Department. Employees may wish to meet directly with the HR Department.
3. If the grievance cannot be addressed by the HR Department within 15 days, the employee shall submit a written complaint to the Grievance Committee. The complaint must be signed by the employee and may be submitted through the Shop Steward at the HR Department. Once submitted, the grievance shall be immediately discussed to all members of the Grievance Committee.
4. The Grievance Committee shall be composed of six (6) members, three (3) from Union and three (3) from the Corporation and shall meet once per month or as it is needed. Each Year (2) Grievance Committee members from the Union and two (2) Grievance Committee members from the Corporation shall form a quorum.
5. If the Grievance Committee cannot address the grievance, it shall be referred to the Conciliation Committee.
6. If the Conciliation Committee cannot address the grievance, it shall be referred to the Ministry of Labor.

ARTICLE FIVE AMENDMENTS

This Agreement represents the best agreement between the parties hereto and any correction, modification or other amendment thereto must be in writing and signed by the authorized representatives from both parties.

Either party shall have the right to request for revocation of any provision in this agreement, provided that the requested revoking within sixty (60) days period for such revocation in that article.



ACCOUNTABILITY COUNSEL
MEMORANDUM

On the subject of the Education Secretary, Department of Education, and the Secretary of the Department of Education, the following is a summary of the findings of the Accountability Counsel:

FOR THE COMMISSIONER	FOR THE SECRETARY
 _____ Commissioner	 _____ Secretary
 _____ Secretary of the Department of Education	 _____ Secretary of the Department of Education
 _____ Secretary of the Department of Education	 _____ Secretary of the Department of Education

APPROVED TO:



Secretary of the Department of Education



Secretary of the Department of Education

Exhibit 9: Revised Employee Handbook (Feb. 2011)
(incomplete copy)



	
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2. BASIC TERMS AND CONDITIONS

2.1. Letter of Employment & Business Days

- Employees receive a Letter of Employment and Terms of Employment that, together with the Handbook, define the terms and conditions of their employment. By signing a Letter of Employment, an employee acknowledges that they understand these terms and conditions, including all parts of the Employee Handbook and their implications.
- Some managers and other staff may request to sign a separate Confidentiality and Non-solicitation Agreement.
- Any other relevant information, also in the Handbook or Employment/Working and Related Documents available in the Human Resources Self-Service.
- An employee has an obligation to ensure they understand the terms and conditions of their employment prior to signing their Letter of Employment. They have at any time received information from their Supervisor, Department Managers or the Human Resources Department. They also have the right to, at their own request, consult a lawyer prior to signing their Letter of Employment.

- Probation
- Every new employee is required to serve a probationary period of three months.
- During the probationary period, either party may terminate the employment relationship without notice or costs.

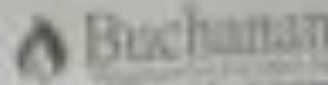
2.2. Location and Place of Employment

- Employees shall work at the location indicated in their Letter of Employment and shall be liable to any transfer and require.
- Employees may, from time to time be transferred from one post to another based on the need determined by Management.
- Employees may receive a transfer from one location to another based on good reasoning and subject to the approval of Management at the relevant location. Requests should be submitted in writing to the HR Department. The company will consider and use all reasonable means to attempt to resolve such and needs of receiving team. Any transfer will be made with Management's permission.
- In the case of long-term transfer related to Management, notice will be served to the employee at least 30 days prior to the date of reporting at the new location. Please follow all the rules for employees in case of emergency.
- The payment of relocation allowance has been discontinued for voluntary or re-assignment. However, management will assess the situation from time to time for possible future re-consideration.

2.3. Service Limit

- The compulsory retirement age is 60 years if the employee has completed fifteen (15) years of continuous service, or any age after twenty-five (25) years of continuous service.
- An employee's service may be extended beyond the age of sixty (60), by mutual agreement with the company.





- Business Manager or higher manager having a successful business/management and family career.
- New employees will receive an induction during the first two days of service that will involve them in the new projects and safety and other programs they will be expected to follow in carrying out their jobs, and that will provide them with an opportunity to meet with their Supervisor and/or Department Managers, as well as the Human Resources Manager or other manager in each area.
 - For other detailed information, refer to the document on Employment and Safety Procedures.

14. Termination & Resignation

- a. Notice periods for termination
- An employee with a letter of Employment for an indefinite period can be dismissed without cause pursuant to Section 14(2)(2) of the Labour Law by giving the employee 15 working days for each year of completed service together with one month's notice of payment in lieu of notice.
- Any unexpired contract may be terminated without notice. Such workers will be given at least two weeks notice and no worker except for every completed year of service.
- All employees will be paid at least one month's salary during 90-day notice period. Such 90-day period may be waived.
- Management also reserves the right to dismiss any employee upon returning to work or entering a new job after having been given a letter of termination. Any such employee shall be provided the necessary information (by HR) about the final compensation.
- An employee will be given a certificate being provided for record, such as by visiting the terms and conditions outlined in their letter of Employment, Terms of Reference, the copy of the Handbook, and/or any Confidentiality and Non-solicitation Agreements they may be required to sign.
- Employees may be dismissed without notice subject to payment only if terminated due to the employee commits a serious breach of duty. See Section 4.17 for actions considered as serious breaches of duty including, but not limited to, misconduct, dishonesty, as well as behavior leading to discipline action.
- b. Notice period for resignation
- Employees must notify Management in writing of their intention to resign two weeks in advance of the date of their resignation.
- Senior Managers must notify Management in writing of their intention to resign two weeks in advance of the date of their resignation. All employees will be paid at their normal rate during the notice period and any money owed the company.
- At Management's discretion in consideration of other factors the required notice period for an employee's resignation may be waived. In this case, the company may reserve the right to pay off any employee who submits notice of resignation and such employee may thereafter be prohibited from rejoining or work on entering the work site.





6. **Compensation**

- Compensation will be reviewed on an annual basis. In consultation with an employee's direct supervisor, senior management reserves the right to adjust an employee's performance against further relevant decisions and terms of reference.
- Compensation may be increased based on management's assessment of performance.
- Compensation should not be expected on an annual basis.
- Total compensation may be increased or, in the case of poorly based pay, potentially decreased, at the discretion of Management and subject to an employee's and the company's overall performance.

7. **Advances**

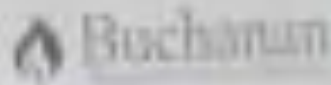
- Employees are entitled to one (1) salary advance per calendar year. The advance cannot be more than one half of one month's compensation and will be deducted from the employee's pay at the end of the month during which the advance is taken.
- Request for advances must be submitted in writing to the HR Department and may take up to one week to process.
- No additional advances will be considered.

8. **Leave**

- In general, leave will not be granted to employees. However, in exceptional circumstances and only for compassionate reasons, Management may consider granting leave short-term leave of no more than 15 hours an employee's monthly compensation and back pay is paid at the end of the month.
- No claim between employees are to be made at the workplace.

9. **Expenses**

- Employees will be provided with the tools and equipment essential necessary to carry out their duties. Thus, they should not incur additional costs in the course of doing business and should not expect to be reimbursed for any additional costs.
- Where an employee does incur costs in the course of doing business, management may, at its discretion and with prior written approval from a Manager authorized to make financial decisions, cover such approved costs through advance payment or reimbursement to the employee.
- No expenses will be reimbursed until an employee submits a full accounting of the use of funds, including official receipts for the full amount of the pre-approved expenditure, to the Finance & Accounting Department. The Manager who pre-approved the expenditure and the Finance & Accounting Department must sign off on an expense report prior to reimbursement.
- If an employee receives an advance for planned expenses and does not notify the Finance & Accounting Department with a full accounting of the use of funds, including official receipts for the full amount of the advance within the time period agreed between the employee and the Manager who authorized the advance, the full amount of the advance will be deducted from the employee's monthly compensation.



• Field Experiment

- [illegible]

18 **WYOMING**

4. standard economic theory

- **Standard working hours**
- The standard working hours are 40 hours of work performed within a week of six (6) working days (Monday to Saturday).
- Normal working hours is 8:00 a.m. to 5:00 p.m. (Monday to Friday with 1 hour lunch), and 8:00 a.m. to 12:00 noon on Saturdays. However, working hours for some categories of employees may vary depending on their line of work, and the production schedule. It is the responsibility of the Department Manager, with approval from the Company Manager, to define the specific hours of operation for each department. Each employee's specific working hours will be defined by his/her Supervisor.
- Employees are entitled to a 30 minute paid lunch break when working over 5 hours in a day.

12. *Physiculus*

- Employees are required to report to duty at the time defined above. However, for shift agriculture and other categories of workers, such employees shall report to work based on schedules defined by their Supervisors. Violators will be subject to verbal warning followed by a written warning. Disciplinary action will be taken against employees who are persistently late and/or who are unprepared to perform their duties when required.

E. Quercus pyramidalis

- Compensation for employees in management, senior staff and professional positions, taken into account the fact that their jobs may require extra hours of work. For this reason, and according to the Labor Law, these employees are not entitled to compensation for overtime worked.
- Employees other than Managers, senior staff and professionals are, according to the Labor Law, entitled to compensation for overtime worked.
- An employee's eligibility to compensation for overtime will be defined in his/her Letter of Employment.
- Compensation for overtime will only be paid to an employee if that overtime was pre-authorized in writing by his/her Department Manager and the Operations Manager or his/her designee.
- Payment for approved overtime will be included in an employee's monthly payment, as per his/her Letter of Employment.



1.6. Labor Expenses & Allowance

a. Working Holiday

Public holidays recognized by the government are listed under the Public Holiday Act of Japan, including:

New Year's Day	January 1
Second New Year's Day	February 11
Greenery Day	2nd Wednesday in May
Constitution Day	March 29
Emperor's Birthday	2nd Thursday in April
Child's Day	May 5
Independence Day	July 15
Flag Day	August 14
Thanksgiving Day	1st Thursday in November
Japan's National Day	November 23
Christmas Day	December 25

As well as those declared by the Government of Japan, there is also 12th of April as the National of County Cooperative (Nishio, Choshi).

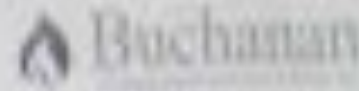
b. Annual leave

- Each employee's annual leave will be stipulated in their Terms of Employment.
- In general, the number of annual leave days will be 10 working days (20 days) for management and 15 working days (30 days) for staff. The number of annual leave days will be 10 working days (20 days) for staff who have worked for 10 months or more.
- An employee must submit their annual leave request to their Supervisor at the beginning of each calendar year. Management Managers will coordinate the process and submit to HR for approval. HR will then issue leave forms for processing and approval before any employee takes their leave.
- Annual leave should be taken in periods of one or more weeks.
- Employees who wish to continue working during their scheduled annual leave (due to high production demands or absolute staff need) will request HR, and HR employees will subsequently receive a written permission from Management.
- Annual leave will not be carried over from year to year. However, management will review certain conditions which may require consideration of a leave-by-leave basis. Such may be caused by circumstances beyond the employee's control and will be deemed as an exception (e.g. Christmas and New Year holidays, etc.).

c. Sick leave

- Employees must notify their Supervisor if they cannot work due to illness for several consecutive days. Notification must be given on the same day and every day an employee is sick. In the case of absence from a designated family member (spouse or dependent) must notify the Supervisor on the employee's behalf. Supervisors are required to notify the HR Department for their action.
- Sick leave with pay will only be approved when a certificate signed by a registered medical practitioner is provided to and approved by HR Management.





2.96 Training and Employee Development

a. Job training

- The Human Resources Department and Department Managers will conduct induction training for new employees, which will include defining a job description, reporting requirements, reading, reviewing and understanding the Employee Handbook, touring the site, and an introduction to health and safety practices.
- Employees will receive on the job training from their Supervisors and Department Heads.
- Additional on-the-job training will be provided as needed.
- Health and safety training will be provided on a regular basis and reflected on the job.
- If employees do not feel they have adequate knowledge or experience to carry out a task assigned to them, they must make this known to their Supervisor. Supervisors will determine whether additional training should be provided or whether to reassign the task.

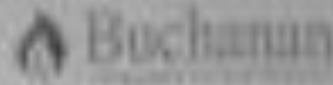
b. Training courses and educational degrees

- Employees may be provided with opportunities to participate in external training and educational courses. Participation in all such courses must be approved by management in advance.

2. Employee Appraisal

- Managers will appraise employee performance after completion of the probationary period, as well as during the Company's annual review period. If deemed appropriate, interim reviews may be undertaken throughout the year.
 - Performance will be appraised against defined objectives and expectations.
 - During the appraisal, the employee and his/her Supervisor or Manager will set objectives for the following year.
 - The results of the appraisal will be discussed with the employee and factored into the employee's employment file.
- If an employee's performance is not meeting the company's expectations, the employee will be notified verbally at first. The employee, his/her Supervisor, his/her Department Manager, and/or the Human Resources Manager will meet with the employee to determine what measures might be taken to improve the employee's performance and define a new time frame within which such improvements should be made.
 - If the employee's performance does not improve within the defined time frame, the employee will be given a written notice detailing the actions that must be taken by the employee to improve his/her performance, as well as a time frame within which those actions must be taken.
 - If the employee's performance does not improve in response to the written warning, the employee's employment may be terminated.
 - At any time throughout this process, the employee may consult with his/her Supervisor, Department Manager or the HR Department for guidance on how to improve his/her performance to meet expectations.





1. No action agreement will be made or signed.
2. Requests to amend or retract previous statements are considered to be non-compliance of the Corporation.
3. Upon completion of company and media related case prepared by the Corporation that was officially resolved by the media, any further action during the time of further scrutiny. This document will have the transcription of media and any other related to further issues pages of treatment and get to meet in future.
4. For former employees (R) - follow-up with the company - 100% full
5. For former employees (R) - follow-up with the company - 100% full

As employees are currently in media, any other case, they will be kept without the official record of the Corporation. All other employees for the statement.

1.11 - Communication

- Information regarding Management decisions, changes in administrative policies and procedures, and changes in important operating practices will be disseminated via:
 - Staff meetings or meetings conducted by Supervisors and Managers
 - Circulars and memorandums
 - Employee Bulletin Boards - employees should check boards regularly
 - Email where appropriate

1. OPERATING PRINCIPLES AND GUIDELINES

1.01 Health, Safety and Security

a. Principles

- TMI Corporation is responsible for providing a safe and healthy working environment for all its employees and will enforce a zero tolerance policy for health and safety violations.
- Employees are responsible for following the company's health and safety practices by taking reasonable care for their own safety and ensuring their actions do not jeopardize the health and safety of others. Furthermore, each employee has a duty to ensure that the health and safety measures are implemented.

b. Health & Safety Institutionalization and practices

All employees have a duty to:

- Learn and follow the health and safety rules and regulations, and in particular to:
 - Use personal protective equipment when required
 - Report any missing guards from equipment, which required for maintenance personnel
 - Report incidents that have occurred, or may lead to injury or accidents
 - Find the cause of accidents and help to prevent further accidents from happening
- Ask their Supervisors or Management if they are unsure of the health and safety practices or if they're unsure in a specific situation.





Use of Drugs and Alcohol

- The use of alcohol and/or drugs will not be tolerated
- No employees in customer shop
- Report or try to report to work when under the influence of drugs or alcohol
- No possession of drugs or alcohol in the workplace
- Customer drugs or alcohol in the workplace
- Staff reserves the right to stop any suspect drug and alcohol use.
- Any violation of these rules will be subject to disciplinary action and is likely to result in immediate dismissal

Mail or Delivery

- Mail or delivery to company property will not be accepted. Cases of mail or delivery will immediately be investigated internally by the security and may be reported to the police resulting in suspension and termination upon conviction
- Staff reserves the right to search any employee entering or leaving any of the company's facilities, any vehicle in or on which people may be traveling, and any other property which may have such further
- Any search will be conducted in the presence of a third person. If the employee being searched is female, any body search will be conducted by another female.
- Staff is not liable for employee belongings and property held at the workplace

1.14 Gifts and Inducements

a. Giving gifts and inducements

- Staff follows a strict policy of not paying Government officials or journalists for favors. Employees must not give inducements of any kind to government officials, clients, suppliers, agents or any other business contact. As this could seriously compromise the company's position and integrity. Any violation of this policy will result in immediate suspension of the employee's contract

b. Accepting gifts and inducements

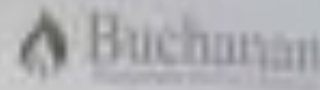
- Employees must not accept gifts or inducements from clients, suppliers, agents or any other business contact. This could seriously compromise the company's position and integrity

1.15 Discrimination, Harassment and Retaliation

a. Equal Opportunity Employment

- B&B aims to promote a culture of respect and tolerance within the company and in the broader community. We are committed to treating all employees and job applicants equitably regardless of race, religion, sex, gender, disability, sexual orientation and marital status
- All employees, including full-time and part-time employees, have a personal responsibility to know the company's equal opportunity policy and culture of respect are followed





4.11. Guidelines for the Disciplinary Procedure

Employees

- All employees have an obligation to ensure they are aware of the terms of their employment, as well as the standards of performance, actions and behavioral measures of same. Employees should address any questions to their managers or to the HR Department.
- Employees will receive a verbal or written explanation of the reason for any disciplinary action taken.
- Employees have the right to have a fellow employee accompany them throughout the disciplinary procedure.

Managers must ensure that:

- That employees are aware of the terms of their employment, as well as the standards of performance, actions and behavioral measures of same.
- Any disciplinary action follows careful investigation of the facts.
- Any disciplinary action is undertaken in a fair and consistent manner.
- The Human Resources Manager or his/her designate is informed when formal disciplinary action is taken in the form of a verbal or written warning, a suspension or a dismissal.
- Verbal warnings, dismissals and Resignations are signed off by the Department Manager and the Human Resources Manager or his/her designate.

Warnings

- All written warnings will be held in an employee's personnel file and will be considered valid for 12 months following the date of the warning.

4.12. Examples of Misconduct

Specific actions and offenses that lead to disciplinary action will vary depending on the nature of the employee's work; however, some basic examples of misconduct are outlined below to act as guidance.

a. Examples of serious breaches of duty

Behavior which may lead to immediate dismissal includes, but is not limited to:

- a. Gross negligence or misconduct.
- b. Serious offenses against the obligations under an employee's contract.
- c. Lack of skill or efficiency which prevent an employee from fulfilling his/her duties.
- d. Improbable amount of absenteeism behavior.
- e. Misrepresentation of identity, nationality, background or skills.
- f. Criminal misconduct or immoral behavior, excessive acts of unlawful discrimination or serious acts of harassment.
- g. Work related intoxication.
- h. Chronic lateness, absconding with time or possessions.
- i. Sleeping on the job.
- j. Dishonesty or intemperance while at work, especially while operating equipment or while acting on behalf of the company.





Exhibit 10: Letter from Joel Strickland







- (c) **Scope of Investigation**
1. The scope of the investigation

- (d) **Findings**

- The findings of the investigation are as follows: [illegible text]

Based on the findings of the investigation, the Accountability Counsel has concluded that [illegible text]


[illegible text]
[illegible text]



[illegible text]
[illegible text]

Exhibit 12: Detailed Account of Attempts to Resolve Problems Caused by Buchanan Renewables

A. Past Attempts

All three groups of Complainants made multiple attempts to resolve many of the above issues during the period of BR's operations in Liberia, without achieving significant or lasting improvements.

1. Farmers from Grand Bassa County

Smallholder farmers have made numerous attempts to resolve their disputes with BR, both on the ground and through the efforts of national and international advocacy groups. After farmers in Grand Bassa County organized themselves into the BRE Affected Farmers Union in June 2011, they began regular meetings with both BR and FarmBuilders, with the goal of resolving the problems described in this Complaint. Simultaneous advocacy by SOMO and Green Advocates International on behalf of these farmers, which involved documenting problems, engaging with BR and ultimately publishing findings regarding BR's abuses in a report called *Burning Rubber*,⁴⁵⁴ was also aimed at resolving these issues. As a result of these efforts, some problems were addressed and, for a time, BR began to do more maintenance on the smallholders' farms. All such efforts abruptly came to a halt, however, when BR decided to unilaterally terminate contracts with farmers in mid to late 2012. Since that time, and as described in more detail above, farmers have had little to no contact with BR and the problems continue.

2. Charcoalers

NACUL began engaging with BR on behalf of charcoal producers in 2007. The MOU signed between NACUL and BR documented the Union's attempts to avoid or mitigate any impacts of BR's operations on charcoal producers. Such attempts were largely unsuccessful, however, because the MOU was never implemented. Additionally, charcoal producers from Freeman Reserve attempted to resolve disputes both through NACUL and by raising issues with field managers and someone in BR's public relations department.⁴⁵⁵ Finally, SOMO and Green Advocates International's advocacy efforts were also aimed at resolving the issues faced by these charcoalers,⁴⁵⁶ but were largely unsuccessful in that regard.

⁴⁵⁴ See *Burning Rubber*, *supra* note 20.

⁴⁵⁵ Interviews with charcoal producers, *supra* note 163.

⁴⁵⁶ See *Burning Rubber*, *supra* note 20.



3. Workers

Individual workers made various attempts to resolve their problems by requesting training, adequate protective gear, and clean water, among other things, and by complaining to their supervisors about abusive situations. Some workers, however, reported that they had to bribe supervisors in order to get them to act on complaints and that complaints sometimes led to retribution. Collectively, workers attempted to resolve problems with BR through the negotiation of the CBA. However, many workers were dissatisfied with the results of the final CBA, and its provisions were not fully implemented.

B. Recent Attempts

Since early 2013, an international coalition of groups have made additional attempts to engage with relevant stakeholders in order to address problems faced by the farmers, charcoalers and workers negatively impacted by BR's activities and abrupt departure from Liberia.

1. Attempts to Engage OPIC

In early February 2013, Accountability Counsel emailed OPIC's President and CEO in an attempt to set up a phone call to discuss urgent action that OPIC could take to stop acute harm related to the OPIC-supported activities of Buchanan Renewables.⁴⁵⁷ Accountability Counsel repeatedly followed up for over a month, without receiving a substantive response.

Eventually, OPIC's Chief of Staff responded, stating that OPIC had brought the concerns raised in Accountability Counsel's email to the attention of the U.S. Embassy in Monrovia, but that OPIC no longer had a contractual relationship with BR.⁴⁵⁸ He also mentioned that OPIC had engaged with BR to ensure that severance packages and other issues related to the retrenchment process aligned with international standards and Performance Standard 2, but failed to address any of the livelihood concerns that Accountability Counsel had raised regarding smallholder farmers and charcoalers.

No one from OPIC expressed any interest in following up on the case until November 2013, when OPIC's Chief of Staff met with Accountability Counsel, following a meeting between Accountability Counsel and the Director of OPIC's Office of Accountability. At that time, OPIC expressed an interest in privately exploring remedy for harm caused by the project. In an effort to work collaboratively with OPIC, Accountability Counsel submitted a proposal for a process moving forward and also provided OPIC with a draft of this Complaint. However, after two months and numerous attempts by Accountability Counsel to engage with OPIC on behalf

⁴⁵⁷ Email from Natalie Bridgeman Fields to Elizabeth Littlefield (Feb. 8, 2013) (on file with Accountability Counsel).

⁴⁵⁸ Email from John Morton to Alfred Brownell, Francis Collee, Natalie Bridgman Fields and Sarah Singh (Mar. 11, 2013) (on file with Accountability Counsel).

on Complainants, this private dialogue did not result in any commitment from OPIC to engage in a process for discussing remedy.

2. Meeting with U.S. Embassy in Monrovia

Following up on the suggestion of OPIC's Chief of Staff, Accountability Counsel met with U.S. Embassy staff in Monrovia on April 8, 2013. After hearing a description of the problems with BR and the harm caused, the Embassy official said that the complaint was not surprising given Liberia's difficult business environment and offered to review the Complaint when it was completed.

3. Attempts to Engage FarmBuilders

In mid-February 2013, Accountability Counsel reached out to Brian Caouette, former President of FarmBuilders, in an attempt to discuss complaints with him and find out who in Liberia might be able to provide livelihood assistance to smallholder farmers who were struggling as a result of BR's and FarmBuilder's project. Mr. Caouette called claims that farmers were struggling as a result of the project "absurd" and "drivel," refusing to engage in a conversation.⁴⁵⁹

4. Publication of *Cut and Run*

In mid-March 2013, SOMO, Swedwatch and Green Advocates International published *Cut and Run*,⁴⁶⁰ an update to the 2011 report *Burning Rubber*. Like the first report, *Cut and Run* documented BR's continuing impacts on smallholder farmers in Grand Bassa County and charcoalers from Freeman Reserve. Like the earlier report, *Cut and Run* was circulated to stakeholders, including BR, for review prior to its publication. *Cut and Run* has been used in advocacy aimed at addressing the problems faced by farmers and charcoalers as a result of BR's activities in Liberia, but has not led to any concrete changes on the ground.

5. Attempts to Engage the McCall MacBain Foundation

Also in mid-March 2013, Accountability Counsel began trying to get in touch with the McCall MacBain Foundation,⁴⁶¹ in the hopes of engaging about how to remedy the harm related to BR's activities in Liberia. In response to these efforts, Accountability Counsel received a

⁴⁵⁹ Communications between Natalie Bridgeman Fields and Brian Caouette (Feb. 11-14, 2013) (on file with Accountability Counsel).

⁴⁶⁰ See *Cut and Run*, *supra* note 52.

⁴⁶¹ The BR Employee Handbook identified the McCall MacBain Foundation as an affiliate of BR's majority owner, Pamoja Capital, and indicated that the Foundation was investing a portion of BR's profits in health, education and other projects in Liberia. Exhibit 7, Employee Handbook at § 1; Exhibit 9, Revised Employee Handbook at § 1.



letter in early April from the Chairman of the McCall MacBain Foundation,⁴⁶² as well as a letter from Don Durand of Buchanan Renewables.⁴⁶³ Both letters asserted that BR's impact on Liberia had been largely beneficial and denied that BR had caused the type or degree of harm documented in this Complaint. Accountability Counsel responded by reiterating the goal of engaging in productive dialogue aimed at remedying harm to the Liberians impacted by BR's operations in—and subsequent exit from—Liberia.⁴⁶⁴ The Foundation Chairman responded, saying that he saw no benefit to continued conversation or dialogue, as the letter from Don Durand had included all relevant facts.⁴⁶⁵

After further attempts to get in touch with John McCall MacBain directly, he agreed to speak with Accountability Counsel.⁴⁶⁶ In early June 2013, Accountability Counsel had a phone conversation with John McCall MacBain to describe some of the harm related to his investment in Buchanan Renewables. He expressed a tentative willingness to consider remedying the harm, but then failed to respond to Accountability Counsel's repeated attempts over the next several months to follow up.

6. BR's Communications with Farmers

In late March 2013, BR sent three mid-level employees to talk to some of the farmers. Although BR knew the farmers' economic condition when they terminated the agreements, the BR employees acted as if they had not been aware of the farmers' struggles. They said that the farmers should have come to them for help. Because the farmers felt that BR had previously lied to them and coerced them into signing agreements, the farmers told the BR representatives that they would only meet with them in the presence of Green Advocates International. To date, BR has not attempted to set up such a meeting.

7. BR's Communications with NACUL

After the publication of *Cut and Run*, a BR Public Relations Officer named Momolu Varney called George Weaymie, President of NACUL, and asked for a meeting. NACUL and Mr. Varney met twice, once in late March and another time in April 2013, to discuss the *Cut and Run* report and Accountability Counsel's work in Liberia. Mr. Varney was particularly interested in the source behind allegations in *Cut and Run* that BR employees had charged charcoalers for wood left behind on the Firestone plantation.⁴⁶⁷ NACUL replied that numerous charcoalers had

⁴⁶² Letter from the Honourable Donald J. Johnston to Natalie Bridgeman Fields (Apr. 2, 2013) (on file with Accountability Counsel).

⁴⁶³ Letter from Don Durand to Natalie Bridgeman Fields (Mar. 31, 2013) (on file with Accountability Counsel).

⁴⁶⁴ Email from Natalie Bridgeman Fields to the Honourable Donald J. Johnston (Apr. 4, 2013) (on file with Accountability Counsel).

⁴⁶⁵ Email from the Honourable Donald J. Johnston to Natalie Bridgeman Fields (Apr. 7, 2013) (on file with Accountability Counsel).

⁴⁶⁶ Email from John McCall MacBain to Sarah Singh (Jun. 3, 2013) (on file with Accountability Counsel).

⁴⁶⁷ Interviews with George Z. Weaymie and Richard T. A. Dorbor, *supra* note 145.

made these complaints.⁴⁶⁸ Mr. Varney informed NACUL that BR had been working on a deal to sell its operations to a company called Gulf Renewables, which would not export the woodchips, but would instead use them to fuel a domestic power plant in Liberia.⁴⁶⁹ Mr. Varney added that BR still had employees “on the ground” in Liberia and might remain in Liberia until June 2013.⁴⁷⁰ Mr. Varney did not address mitigation, livelihood support, or remedy for charcoalers harmed by BR employees.

⁴⁶⁸ *Id.*

⁴⁶⁹ *Id.*

⁴⁷⁰ *Id.*



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