BRIEFING

Human rights impacts of the exit of Swedish investors from Buchanan Renewables Fuel in Liberia: an update

Swedwatch

Swedwatch is an independent not-for-profit organisation that conducts in-depth research on the impacts of businesses on human rights and the environment. The aim of the organisation is to contribute towards reduced poverty and sustainable social and environmental development through research, encouraging best practice, knowledge-sharing and dialogue. Swedwatch has six member organisations: Afrikagrupperna, the Church of Sweden, Diakonia, Fair Action, Solidarity Sweden-Latin America and the Swedish Society for Nature Conservation.

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Publisher: Alice Blondel
Published: 25th of May 2018
ISBN: 978-91-88141-22-4

This report has been financed by the Government of Sweden. Responsibility for the content lies entirely with the creator. The Government of Sweden does not necessarily share the expressed views and interpretations.

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Introduction

Six years have passed since the Swedish state-owned company Vattenfall and the Swedish Development Finance Institution (DFI) Swedfund divested from the renewable energy company Buchanan Renewables Fuels (BRF) in Liberia in May 2012.[1]

Buchanan Renewables Energy (BRE) started operating in Liberia in 2006 when the country was recovering from a devastating civil war. Its business plan was to produce biomass from old rubber trees, some of which were bought from local rubber farmers. The biomass would supply the capital of Monrovia with electricity from a power plant and the surplus biomass would be exported to Europe. BRE was the parent company of BRF and Buchanan Renewables Power (BRP) in Liberia. While BRP was set up to build and operate the biofuel plants, BRF was to harvest over-mature rubber trees and provide assistance in rejuvenating small rubber farms. The project was expected to create significant development effects.

Shortly after Vattenfall's and Swedfund's exit, BRF shut down its operations and terminated the contracts it had signed with 34 farmers in the Grand Bassa region and dismissed 600 workers. The project and its shutdown led to several human rights challenges for local communities, particularly for female charcoal producers, local rubber farmers and BRF employees. These impacts were partly described in the 2013 report *Cut and Run* by Swedwatch, SOMO and Green Advocates Liberia and in several reports by the American NGO Accountability Counsel.[2]

When the investors backed out and operations shut down, local communities were left to handle the associated impacts on their own. Despite numerous reports by local and international human rights groups, they have not been offered any remediation. This briefing paper builds on a visit by Swedwatch with the local NGO Green Advocates to the affected region in Grand Bassa in November 2017 which revealed that several human rights challenges related to BRF remain. Those interviewed by Swedwatch stated that they still struggle for their livelihoods as a result of the project and its shutdown.

The lack of exit strategies to protect human rights when financial institutions or other investors back out of large-scale projects in high-risk areas is far from unique. Land-related projects, whether within mining, agriculture or infrastructure, are often associated with significant human rights impacts for local communities. Human rights risks tend to increase during a project's shutdown if they are not properly identified and addressed at an early stage. In 2015, when the extensive Addax Bioenergy project stalled in neighbouring Sierra Leone, the investors (including Swedfund and the Dutch DFI FMO) also exited without adequately addressing the human rights impacts. The case was highlighted in Swedwatch's 2017 report *No Business, No Rights*.[3] This briefing paper aims to help ensure continued discussions are held on responsible exit strategies when land-related projects fail or stall, and to highlight the current lack of access to remedy for local communities, which are often left to carry the costs for such failures alone.

The withdrawal of the UN Mission in Liberia (UNMIL) in 2018 marks the beginning of a new era in the country's history. The private sector must contribute to development and sustainable peace in order to make this new phase successful and in order for the Sustainable Development Goals to be reached. Experiences from the BRF case show the importance of incorporating requirements on exit strategies into future guidelines for international investors.

Since the withdrawal of Vattenfall and Swedfund from BRF, expectations have increased that businesses in general, and state-owned enterprises in particular, will ensure respect for human rights at every stage of business operations. According to the 2015 Swedish National Action Plan on Business and Human Rights and Sweden's Ownership Policy and Guidelines for State-Owned Enterprises from 2017, state-owned companies should act as role models for sustainable business.[4]

Access to remedy for victims of business-related human rights abuses has been identified as a crucial, but often neglected, issue in the debate on business and human rights. There are many important lessons to be learned from the case of BRF, and it is therefore regrettable that Vattenfall and Swedfund, as state-owned entities, have not seized the opportunity to visit the severely impacted local communities in Liberia to assess the human rights impacts and possible ways of contributing to remedy.

Background

In 2010, the Swedish state-owned company Vattenfall and the Swedish DFI Swedfund together acquired 30 percent of the shares of BRF. The investment represented part of Vattenfall's strategy to reduce its carbon dioxide emissions and secure access to larger quantities of biomass. The project was also funded by the U.S. DFI Overseas Private Investment Corporation (OPIC).[5]

Local stakeholders soon started to voice concerns regarding the human rights impacts on workers, rubber farmers and charcoal producers, which were described in the 2011 report *Burning Rubber* by the Dutch and Liberian NGOs SOMO and Green Advocates.[6] Following the publication of the report and the subsequent pressure on BRF, several positive changes occurred. BRF acknowledged the farmers' union, and farmers were able to have a more constructive dialogue with the company. These improvements came to a halt after Vattenfall and Swedfund unexpectedly withdrew from the project in May 2012.[7] Early 2012, Vattenfall together with the majority owner, concluded that large-scale export of biomass was not viable due to lack of enough volumes of economically viable redundant rubber trees. After that, BRF repaid its loan to OPIC and started winding down its operations in the country.[8] The contracts with the rubber farmers were terminated and the workers dismissed.

According to Vattenfall when interviewed by Swedwatch after the exit in 2013, the price of coal and biomass never reached the expected levels, which made it economically unviable to continue the project. Vattenfall stated that several options were discussed with BRF before the final decision to withdraw. Neither Vattenfall nor Swedfund wanted to comment on the content of those discussions, but claimed they had

According to local rubber farmers promises made by BRF were not kept. Six years after BRF's shutdown they are still struggling with the consequences.

the impression that BRF's activities would continue.[9] After sales, Vattenfall reported impairments of just over SEK 1.3 billion (approximately EUR 129 million). Swedfund was bought out by Vattenfall and did not record any losses in the deal.[10]

In 2013 Swedwatch published the report Cut and Run together with SOMO and Green Advocates. It concluded that despite being aware of the serious human rights challenges associated with the project, Vattenfall and Swedfund failed to establish an exit strategy and did not conduct human rights due diligence (HRDD) prior to their divestment, nor afterwards when informed of the negative impacts of their exit. In 2013, BRF was sold to a group of unnamed investors, but operations never resumed.[11] In discussions with Swedfund prior to the publication of Cut and Run in 2013, Swedfund described its investment in BRF as a long-term project and argued that it was not its decision to leave the project; as a co-investor it had to follow Vattenfall's decision. In interviews with Vattenfall and Swedfund, both emphasized that they were only minority owners and thus could not change anything because they did not have business control.[12] After Cut and Run, they conducted internal evaluations but did not visit any affected communities as recommended in the report and during a follow-up round table in April 2013.

OPIC also exited without adequately addressing the impacts or having an exit strategy in place. The U.S. organisation Accountability Counsel, in cooperation with the affected stakeholders, highlighted these impacts in a formal complaint to OPIC's Office of Accountability (OA).[13] Accountability Counsel has also produced a film about the case, illustrating the impacts on different groups of local stakeholders.[14] Liberian NGO Green Advocates, which has been in continuous dialogue with local communities, has issued several reports on the case.[15]

Following the formal complaint, OA conducted an investigation of the case in 2014. An overarching lesson from that review was "the need for OPIC to have robust screening, due diligence, risk mitigation, and monitoring systems in place and that these should be proportionate to the risks that could adversely affect the achievement of desired development outcomes". It also concluded that "where project-affected stakeholders are economically vulnerable, project shut down could mean not only foregone development benefits, but also the possibility that some (in this case smallholder farmers) could be left more vulnerable than they were before". Due to the lack of baseline information, OA considered it impossible to fully assess the impacts and the right to remedy for affected stakeholders.[16]

Current impacts

In November 2017, Swedwatch visited the BRF project area in Grand Bassa region and the Freeman reserve together with Green Advocates. Over two days, interviews were conducted with approximately 15 representatives of the different stakeholder groups impacted by the company's operations and shutdown. Human rights impacts described in the following sections refer to impacts related to the company BRF. Locally it is known by the name of the parent company BRE.

Impacts on local rubber farmers

At the time of Vattenfall's and Swedfund's withdrawal, BRF had signed contracts with 34 local rubber farmers in Grand Bassa.[17] According to the contracts, BRF would help farmers plant and maintain new rubber trees in exchange for the right to cut down their older trees to produce wood chips to be used as biomass. The support from BRF was supposed to counteract the negative effects of the destruction of existing plantations and ensure long-term rubber production for the farmers. This support would be provided for seven years – the time it takes for new rubber trees to become productive.[18]
When BRF shut down, these promises were never fulfilled according to the local rubber farmers. As a result, the farmers who lacked the manpower and financial capacity to maintain the rubber plantations on their own were faced with severe economic difficulties that forced many to leave the area in search of jobs elsewhere.

When Swedwatch visited the area in November 2017, the farmers were still facing severe hardships following BRF's shutdown. Several asserted that they were plunged

BRF's operations increased competition over firewood at the Freeman reserve (pictured here), which led to local charcoal producers cutting down trees in the natural forest.

into poverty and had difficulty securing food for their families. They expressed anger and despair over not having been consulted or offered any compensation.

"Since Buchanan Renewables came my life has collapsed. There is no way for me to sustain my family now after they destroyed our farm. My children are not even going to school", said Marthaline Gongar, a female farm owner and single mother.

Maminah Carr works for the Liberian civil society organisation Natural Resource Women Platform that was created in 2010 to give marginalised women a say in decision-making processes concerning the use of natural resources. She has witnessed the impacts of BRF on the female rubber farmers.

"The women are the most impacted. The income from these rubber farms was what they used to pay for the children's clothes and school fees. Buchanan Renewables came, cut down the trees and left them to rot and now they cannot live of their farms anymore", she said.

Another local farmer, Sam Bowin, sold some of his trees to BRF but decided to keep a part of his rubber plantation for himself. Today the part that was not sold contains well-kept and productive rubber trees, while the other part is overgrown and of no use. Unfortunately, the productive trees have been insufficient to sustain the family, so Sam Bowin was forced to move to the nearby city of Buchanan in search for work.

"I had to leave. They promised so much but what did they do for us? Nothing".

/ Sam Bowin

The drop in commodity prices has negatively impacted the rubber sector in Liberia, which has further exacerbated the dire situation of local rubber farmers.

FACT

Situation of human rights defenders

Despite the Government of Liberia's progress in establishing the rule of law and generally improving the human rights situation since the end of the civil war, the current situation of human rights defenders in Liberia is critical. Environmental defenders such as Green Advocates are particularly exposed. Alfred Brownell, its Founder and Lead Campaigner, is currently hiding in exile due to a series of threats against him and his family.

"Liberia's laws and constitution ensure that rural communities have a right to be consulted on development initiatives that affect their lands and livelihoods, yet human rights defenders reporting on issues related to land-rights and business operations are increasingly exposed to threats and attacks by police and sometimes security personnel", he said when interviewed by Swedwatch after the field visit.

Impacts on former employees

According to former employees interviewed by Swedwatch in November 2017, working conditions at BRF were poor, and workers were not paid the stipulated amounts. Several former employees stated to Swedwatch that it was only when they gained access to their contracts several years into their employment that they were made aware of what their salary was supposed to be – in some cases workers were paid half the stipulated amounts. Several workers also recounted that they suffered severe injuries when old rubber trees were cut down and fell on them due to poor equipment and lack of training. Swedwatch met with two workers who were left disabled and unable to work after receiving such injuries.

Aderlyn D. Bernard, formerly employed by BRF, stated to Swedwatch that she was seriously injured when a rubber tree fell on her and broke her hand and foot. Her job was to record the number of trees felled, but she received no safety training prior to being sent into the field. After the accident, the company only paid limited compensation to her, and part of the necessary surgery was never conducted. According to Aderlyn D. Bernard, she had been promised financial help to pay for the treatment, but due to the company's shutdown these promises were never fulfilled and she was unable to pay for it herself, which has left her disabled.

"Now I am not able to do anything so we have to survive only through my husband. It is almost impossible for me to find a job that I can handle now."

/ Aderlyn D. Bernard

Impacts on charcoal producers and the natural forest

BRF's operations and shutdown also had significant impacts on local producers of charcoal. Charcoal is the main source of energy in Liberia and an important source of livelihood for many people. Apart from the rubber trees bought from small-scale farmers in Grand Bassa, BRF also harvested woodchips from old rubber trees on the Firestone plantation in the Freeman reserve in Margibi County.[19] When BRF bought the old rubber trees that were traditionally used to produce charcoal, competition for firewood in the area increased. Consequently, local charcoal producers lost an important source of income, and many felt forced to source wood from the threatened natural forest in the area. Liberia is a global biodiversity hotspot and contains around 43 percent of West Africa's remaining rainforest. Large parts of the forest were illegally deforested during the civil wars, the most recent of which ended in 2003.[20]

Impacts on the charcoal sector were brought to BRFs attention by the National Charcoal Union of Liberia (NACUL). After growing criticism of BRF, the company approached NACUL and offered to pay for the construction of its office. The company also agreed to finance a NACUL programme to plant fast-growing trees for the charcoal producers affected by the lack of rubber trees. Since BRF shut down, that support was never realised, according to NACUL which stated that impacts on the natural forest remain.

Richard T.A. Dorbor, president of the National Charcoal Union of Liberia (NACUL), was interviewed by Swedwatch in November 2017 and described the situation:

"Buchanan Renewables' operations increased competition for charcoal and made many charcoal producers move to the natural forest in search of wood. How to get them out of there is our major concern right now".

/ Richard T.A. Dorbor

Sexual exploitation of female charcoal producers

When interviewed by Swedwatch in November 2017 several female charcoal producers claimed that male employees of BRF forced them to have sex in exchange for firewood. Several children were born out of such abuse. According to charcoal producer Sarah Monopolah, she was forced to have sex with an employee in order to get permission to collect wood. Since her livelihood depended on her production of charcoal, she felt she had no other option.

"If we didn't have sex with them we wouldn't get sticks to burn since Buchanan Renewables said the sticks belonged to them. After some time I got pregnant and had a miscarriage that nearly killed me. I was taken to the hospital but never got any help from him".

/ Sarah Monopolah

The sexual abuse of female charcoal producers has also been reported by Accountability Counsel.[21]

FACT

Vattenfall and Swedfund

Vattenfall AB, is fully owned by the Swedish state, and its headquarters are located in Sweden. Vattenfall has operations in all parts of the energy value chain, from sourcing to sales. According to its website, it strives to become a leader in developing environmentally sustainable energy production (including biomass, hydro, natural gas, nuclear, wind, coal and solar energy).[22]

Swedfund is Sweden's DFI for investments in poor countries and fully owned by the Swedish state. Swedfund's mission is to reduce poverty through sustainable business, primarily in sub-Saharan Africa. In 2016 its investment portfolio amounted to approximately 4 billion SEK (428 million EUR), making it one of the smallest DFIs in Europe. Swedfund invests primarily in three sectors – renewable energy, manufacturing and service – but also in financial institutions and funds. Its overall goal is to contribute to poverty eradication through sustainable businesses.[23]

According to Sweden's National Action Plan on Business and Human Rights, state-owned enterprises such as Vattenfall and Swedfund are expected to follow the UN Guiding Principles on Business and Human Rights (UNGPs).[24] According to the Government's State Ownership Policy, state-owned companies are also expected to set a good example, which means they must seek to comply with international guidelines such as the UN Global Compact, the UNGPs, and the OECD Guidelines for Multinational Enterprises. They must also be transparent and report in accordance with the Global Reporting Initiative.[25]

While the National Action Plan and the current State Ownership Policy were adopted in 2015 and 2016, respectively, other guidelines such as the UNGPs, the OECD Guidelines and Global Compact were already in force at the time of Vattenfall's and Swedfund's exit from BRF, although the principle of HRDD was still new to many companies.

Tapping of rubber trees. According to local communities they lost an important source of income when their rubber trees were cut down by BRF. The promised support to plant and maintain new trees did not materialise due to the shutdown of the project.

Human rights due diligence and access to remedy

Human rights due diligence (HRDD) refers to the process a business must have in place to identify and address potential and actual human rights impacts caused or contributed to by its operations. HRDD is a central part of the UNGPs and has been incorporated into various other international guidelines such as the OECD Guidelines for Multinational Enterprises.[26] According to the UNGPs, state-owned or state-controlled businesses should take additional steps to protect against human rights abuses, and the state should require such companies to conduct HRDD where appropriate, for example in contexts that pose a significant risk to human rights such as conflict-affected areas.[27]

The UNGPs state that HRDD should be an on-going process, and that businesses must recognise that human rights risks may change over time as the enterprise's operations and operating context evolve. Any decision that could have a negative impact on human rights (such as decisions to exit/divest from a company) should first be subject to a human rights risk assessment as part of a business's due diligence.[28]

Addressing human rights impacts involves taking adequate measures to prevent, mitigate and – when appropriate – remediate the impacts. What is considered an appropriate action varies depending on whether the business causes or contributes to the impact, or whether the impact is linked to its operations, products, services or business relationships. For the former, the business should provide for, or cooperate, in remediation; for the latter, a business is not responsible for providing remediation but can play a role in doing so.[29]

According to the UNGPs, both states and businesses have a role to play in realising access to remedy for persons adversely impacted by business activities. Remedy may include apologies, restitution, rehabilitation, financial or non-financial compensation, and/or punitive sanctions. It may also include prevention of harm through injunctions or guarantees of non-repetition. Businesses should also have processes in place to enable the remediation of any impacts they have caused or contributed to.[30]

Vattenfall's and Swedfund's responses

After Swedwatch's visit to BRF's project area in November 2017, both Vattenfall and Swedfund were contacted by Swedwatch regarding the findings. Vattenfall reported in writing that no further steps had been taken to investigate the case of BRF since the 2013 report *Cut and Run* and referred to its official response to that report.[31] Vattenfall has stated to Swedwatch that it is not considering doing a post-divestment evaluation of the local impacts. According to Vattenfall, it took the decision at the time of the divestment, that the most responsible way to handle the exit was to take over the loan burden from BRF to increase the chances for the company to restructure and continue operations with new goals. Furthermore, Vattenfall has earlier stated that itinvested several million SEK in Liberia, including through the CSR-program that was built up in 2011 before Vattenfall's and Swedfund's exit. On a general level, Vattenfall has improved its policies and processes for human rights due diligence since the last report.[32]

Swedwatch met with Swedfund in February 2018 to discuss the findings. At this meeting Swedfund stated that no further steps had been taken to analyse the human rights impacts of its exit from BRF. According to Swedfund and its integrated annual report, HRDD processes have been generally strengthened, including in regard to exits. Swedfund has also reported that it now conducts enhanced HRDD in areas defined as high risk. However, it is still unclear how Swedfund would implement any remediation of impacts caused by its investments and Swedfund has identified that its remediation processes need to be strengthened.[33]

Analysis and conclusions

The case of BRF in Liberia offers many lessons to help make future investments in fragile contexts more sustainable, fair and respectful of human rights. Similar examples of projects that have stalled or failed, leaving local communities to deal with the consequences themselves, can be found in many countries in Africa and elsewhere. The findings of this briefing reinforce the two main conclusions from Swedwatch's 2017 report *No Business, No Rights*:

• In land-related projects, the human rights impacts on local communities tend to increase in the event of an unexpected project shutdown, exacerbating the failure to address earlier impacts and creating new hardships related to the shutdown.

• Without human rights baselines and exit strategies in place and financed at an initial stage, local communities face a high risk of having to cope with such impacts alone after a project shutdown, and have very limited access to remedy.

The BRF case also demonstrates the importance of conducting HRDD, both before and shortly after an exit. As time passes, in this case six years, it becomes increasingly difficult to clearly connect causes and effects of negative impacts but this should not be used as an excuse to not offer remedy. Both Vattenfall and Swedfund were made aware of the adverse impacts felt by local communities following their decision to divest and yet neither Vattenfall nor Swedfund chose to return to Liberia to explore possible ways of contributing to remedy measures. It can be argued that Vattenfall contributed while Swedfund was linked to the adverse human rights impacts, according to the definitions in the UNGPs.[34]

The shutdown of the project after Vattenfall's and Swedfund's exit caused new adverse impacts and contributed to earlier impacts not being addressed. It should be in the interest of all involved parties to cooperate to ensure remedy is provided to local communities still struggling as the result of BRF's operations and shutdown. Exit strategies to protect local communities in the event of unexpected shutdowns should be included in the resource allocation at the inception of any future projects and be allocated a fair amount from the investment capital as a form of insurance for local communities.

In Liberia, the withdrawal in 2018 of the UNMIL will require private sector involvement to facilitate development and sustainable peace. An open, transparent and inclusive dialogue with civil society is needed to ensure that businesses in Liberia operate with respect for human rights and the environment.

Land rights are a contentious issue in Liberia, not least in relation to business activities. Human rights defenders reporting on such issues are increasingly exposed to threats and attacks, including Green Advocates. The high risks of human rights violations and the negative human rights impacts associated with land-related investments need to be carefully handled to ensure that these projects do not become a burden for local communities but instead drive the inclusive growth and prosperity that the country has long been waiting for.

Liberia is a post-conflict country with a heightened risk of severe human rights impacts related to business activities which makes it critical for business operating there to conduct adequate human rights due diligence in line with the UNGPs.
For HRDD to be meaningful and effective in fragile contexts such as Liberia, it needs to include an exit strategy with a plan for how to protect local communities in the event of an unexpected stall or shutdown of operations. The case of BRF clearly shows that when this is not done properly at the initial stage, local communities lack the required safety net and the access to remedy to which they are entitled. This, in turn, increases their vulnerability and the likelihood that conflicts will occur. If affected communities are left with the negative social and environmental impacts but without the promised development outcomes, it can contribute to instability in the region. It must not be forgotten that conflict over natural resources was one of the root causes behind the civil wars in the region.

Recommendations

To the Government of Liberia

• Ensure businesses play a positive role in peace building and the country's development. Make responsible business conduct a cornerstone of peace-building efforts and national development plans, including through developing a National Action Plan on Business and Human Rights through broad consultation with civil society and other stakeholders, following internationally recognised criteria. The plan should emphasise land-related investments and local community dialogue and consultation.

• Explore ways to promote and establish platforms for dialogue between different stakeholders such as companies, investors, affected communities and civil society. Ensure that human rights defenders can carry out their work without fear of retaliation.

• Require all businesses pursuing land-related projects in high-risk sectors such as mining, forestry, large-scale agriculture and infrastructure to conduct HRDD in line with the UNGPs. Develop sustainability guidelines for investors in Liberia with clear requirements on how to identify and address human rights and environmental concerns. Require businesses to develop responsible exit strategies and human rights baselines at the initial stage of projects, particularly in land-related projects.

• Identify adequate ways to protect local communities from negative impacts when land-related projects fail or stall. Measures to mitigate negative impacts on local communities in case of a project shutdown should be planned, and financing secured, at the initial stage of a project. Responsibility to provide remedy to local communities and restore the land to its former condition in case of a project shutdown or change in ownership should be made clear from the beginning and put into contracts with new investors.

To Vattenfall and Swedfund

• Revisit Liberia and conduct an extensive assesment of the adverse human rights impacts of the BRF project and shutdown, together with other involved parties. The assessment should include meaningful consultations with the affected communities, in line with the principles regarding HRDD in the UNGPs.

• Take an active role in remediating the negative impacts caused by the BRF project and its shutdown. Explore how remedy can be more efficient through joint efforts with other involved stakeholders such as the Government of Liberia, civil society actors and the other investors. Ensure that appropriate processes to enable remediation are in place.

To the Government of Sweden

• Ensure that companies conduct human rights due diligence for their operations, value chains and investments, especially in countries and sectors where there is a high risk of human rights violations.

To companies and investors with land-related projects in high-risk areas

• Conduct HRDD in line with the UNGPs.

• Ensure that a human rights baseline and exit strategy are planned and financed at the initial stage of a project to make sure local communities are protected in the event of a project stall or shutdown. Clarify responsibilities in case of an unexpected project shutdown in dialogue with the host state.

• Ensure that clear processes are in place within the company to enable remedy to be provided when appropriate.

Endnotes

1 Vattenfall exercised their contractual right to purchase Swedfund's shares and then sold the shares back to the majority owner Buchanan Renewables B.V. Swedfund's investment was done through a Swedish holding company in which Vattenfall was the majority shareholder.

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8 OPIC disbursed a total of $62 million to Buchanan Renewables Fuel and did not disburse to Buchanan Renewables Power.

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25 Government of Sweden, The State's Ownership Policy and Guidelines for State-owned Enterprises, 2017.

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