



Gerena Community Rights Action Committee (GCRAC)  
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THE BORNEO  
PROJECT

**bruno  
manser  
fonds**  
for the peoples of the rainforest

**Siti Syaliza Mustapha**

Chief Executive Officer

Malaysian Timber Certification Council

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50450 Kuala Lumpur, Malaysia

Miri, May 2022

**Re: Call for action to revise MTCS' complaints procedure and to protect stakeholders against illegitimate lawsuits**

Dear Ms. Siti Syaliza

We are turning to you to stress the important role of and need for action by the Malaysian Timber Certification Council (MTCC) as custodian of the Malaysian Timber Certification Scheme (MTCS) with regards to the lawsuit of Samling against SAVE Rivers, as well as the serious concerns of communities within the Gerena FMU and Ravenscourt FMU. The Chairman of the Dispute Resolution Committee (DRC), Tan Sri Dato' Seri Dr Salleh Mohd Nor has himself acknowledged the seriousness of the complaints and expressed that these "complaints had serious ramifications for the reputation of the MTCS."

The lawsuit against SAVE Rivers is a worrying precedent that might inspire other companies certified under MTCS to undermine the MTCS processes and credibility. As we have learned about and dealt with the issues at hand, we have also realized that the complaints procedure under MTCS is flawed and in need of corrective action. As the custodian of MTCS, MTCC is the only party in the system who can fix these flaws in order to maintain the scheme's credibility. MTCC has repeatedly stressed that it takes this case seriously and that the case is not closed, but the lawsuit is effectively stalling all proceedings. The way MTCC is

currently handling the complaints is likely to damage its reputation, and MTCC is at risk of losing international accreditation over this significant conflict.

We are aware that according to the standard, the Certification Body - in this case SIRIM QAS Sdn Bhd - is responsible for “issuing, suspending and withdrawing the certificates for forest management and/or chain of custody” (MTCS 2020, 3.6). According to the standard, MTCC cannot issue, suspend or withdraw any certificates. However, there is a serious lack of transparency with regards to the financial process between the auditor and the client. Our understanding is that in Sarawak, the Certification Body is potentially paid by their clients to do the auditing.<sup>1</sup> If this is true, SIRIM would have financial interests in granting certificates to Samling in order to not harm their business relationship. This would create an egregious conflict of interest.

According to the Dispute Resolution Procedure (MTCS GD 3003:2021), the appointed Dispute Resolution Committee dealing with disputes and complaints addressed to MTCC (involving or not involving MTCC) is independent. However, it can only suggest solutions, it has no power to suspend or withdraw certificates granted by the certification body. The system has no means to address larger issues such as a lawsuit initiated by one of the parties against another.

We note that the PEFC Conformity Assessment by consultant firm Form International BV explicitly did not review the complaints and dispute resolution procedures (Form 2021, 3.9), but meant for this to be reviewed by the Technical Unit of PEFC Council. Our understanding is that this is still pending.

With regards to the specific concerns that we have raised about Samling’s lack of proper and fair consultation under MTCS (which we have communicated before), we have experienced that Samling has not been responsive and willing to engage in a dialogue. While SIRIM has generally acknowledged the shortcomings and pointed out Samling’s substandard performance with regards to consultations and FPIC, they have issued the certificate and subsequently have not had the motivation to suspend or withdraw the certificate based on the complaints.

While the Dispute Resolution Committee has duly deliberated our complaints, the lawsuit Samling filed against SAVE Rivers has interrupted and effectively stopped the dispute resolution process. We quote Tan Sri Dato’ Dr. Salleh Mohd. Nor, Chairman MTCC Dispute Resolution Committee:

“I wish to highlight that certification is an on-going process that seeks to bring about continuous improvement in the implementation of sustainable forest management, which is a challenging but an important endeavor that requires the participation of all concerned parties to ensure that all aspects of sustainability including the needs and rights of concerned and affected stakeholders are respected. In this regard, I humbly seek your patience, and with your participation, to allow the due process and

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<sup>1</sup> The system in Sarawak lacks transparency. There are no public documents available explaining how the payment works. From what we know, Samling pays SIRIM directly in Sarawak. This is another issue that should be reformed: transparency on financial flows and dependencies.

improvements to take place as required under the scope of certification. We look forward to the outcome of the upcoming re-certification audit by SIRIM” (Letter by Tan Sri Dato’ Dr. Salleh Mohd. Nor, Chairman MTCC Dispute Resolution Committee to Komeok Joe, August 2021).

How can referring the case back to SIRIM solve the issues at hand? Samling is suing SAVE Rivers for defamation for voicing out legitimate community concerns. This lawsuit grossly violates MTCS/PEFC’s commitment to dialogue, yet this lawsuit is not part of SIRIM’s re-audit. Strictly speaking, this lawsuit is outside of SIRIM’s mandate to audit Samling’s behavior and operations on the ground. Such a lawsuit is not anticipated under MTCS, and consequently no procedures exist for any body involved in the certification system to take the necessary action.

Furthermore, we are allowing for the due process to take place as requested by the MTCC, but Samling is not: Samling refused to provide comments on our raised complaint in the framework of the Dispute Resolution Procedure. Indeed, Samling seems to be using the lawsuit to delay the complaints process. As this process deals with the legality of timber, Samling is able to use pending litigation to avoid accountability regarding whether their operations meet the requirements of MTCC. You request our patience, however Samling has stopped any dialogue, yet continues selling the timber under the scheme. The legal case can take years. If MTCC must wait for the court to decide, MTCC must suspend the certificate for Samling in the meantime. Moreover, if the judge rules in favor of SAVE Rivers, who will compensate the communities for their timber sold improperly under MTCS over years? This sets a worrying precedent: inspired by Samling’s lawsuit against SAVE Rivers, any certified company may in the future bring forward a lawsuit against a well-intentioned complainant, the lawsuit will silence local opposition and delay the complaints process, and the MTCS certified party will remain safe and secured from being held accountable.

We also refer to the Dutch Timber Procurement Policy that clearly demands that “in case of a conflict of significant dimension, the FMU will not be certified” (Dutch Procurement Criteria for Timber 2014, C2.5). We, the signatory of this letter, consider this case as a significant conflict. In 2020, the Netherlands were the highest importing country with 71,839.22 m3 or 28% of the total export volume under the MTCS (MTCC Annual Report 2020, 25).

According to the MTCS standard, MTCC holds the “overall responsibility to develop, govern and administer the MTCS” (MTCS 2020, 3.3). These current issues clearly show the need for immediate action by MTCC to solve the current conflict, and indicate that the complaints mechanism under MTCS needs to be further developed in order to uphold the scheme’s credibility. There is a great need for an independent complaints procedure. It is imperative for MTCC to accept accountability for the crucial certification decisions that are being made under its purview. The MTCS standard must be adjusted in a way that allows MTCC, as the custodian of MTCS, to disassociate itself from a company that grossly violates the core principles of the certification scheme. While we want to give you time to improve through continuing to learn and evolve, this evolution cannot happen at the expense of the affected communities. They need to see a concrete improvement in a timely manner.

The signatories of this letter went through all the formal procedures as required by the certification scheme and our concerns were confirmed to be legitimated by the DRC, SIRIM

and PEFC. On the ground, however, nothing has improved - on the contrary, Samling's lawsuit has effectively stopped the conflict resolution process and silenced the affected communities and supporting CSO. Why should communities engage with any stakeholders under MTCS in the future, if it leads nowhere? If communities invest considerable time in following the official complaints procedure, what can they actually achieve? Despite the communities' engagement, Samling can still sell its timber as sustainable with the MTCS and PEFC label on the global market while suppressing any form of dialogue and silencing the communities and supporting organizations.

MTCC must take responsibility for its own scheme and it must reserve the right to overrule an accredited certification body's decision. We request MTCC to:

- 1) reform its complaint mechanism to include an independent verifier of complaints, implement safeguards against SLAPPs and retaliating companies, ensure that MTCC has the power to suspend and withdraw certificates if necessary through an independent review, and overrule controversial decisions of any certification body.
- 2) develop a tangible plan to prevent escalation in the courts and marketplace as a preliminary step to address these discrepancies, and take responsibility in this specific case.

We are looking forward to your response and are willing and open to explain our position or discuss any issues at any time.

Yours sincerely,



Peter Kallang  
SAVE Rivers



Boyce Ngau  
GCRAC



Komeok Joe  
KERUAN



Annina Aeberli  
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Jettie Word  
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Copies to:

- Datuk Hamden Haji Mohammad, Director, Forest Department Sarawak
- YB Datuk Hajah Zuraida binti Kamaruddin, Minister of Plantation Industries and Commodities
- Tan Sri Othman Bin Hashim, Chairman, SUHAKAM
- Nur Fadhilah Muhammad, CEO, SIRIM
- Peter Latham, Chairman, PEFC, Geneva