May 10, 2021

Dear Sirs,

Re: Complaint relating to the certification of the Ravenscourt FMU

Dear Mr. Kamaruzaman Mohamad  
Dear Mr. Yong Teng Koon  
Dear Mr. Tan Sri Dato' Seri Dr. Salleh Mohd Nor

We would like to submit an official complaint to the MTCC relating to the certification of the Ravenscourt Forest Management Unit (FMU) of Samling under the Malaysian Timber Certification Standard (MTCS).

1) Parties to the dispute:
   - Penan Communities within the Ravenscourt FMU - represented by KERUAN in this complaint
   - Samling
   - SIRIM
   - MTCC
   - PEFC

2) Basis and course of the dispute

On the 4th of June 2018, Samling was granted a certificate for sustainable forest management for natural forests for its Ravenscourt FMU. Penan communities from within the Ravenscourt FMU have raised major issues with the implementation of the Malaysian Timber Certification Scheme (MTCS), especially about the lack of consultation and free, prior and informed consent.

The issues raised by the affected communities show a clear breach of the provisions guaranteed under MTCS:

1. Lack of transparency

The Social Assessment of Sarawak Forestry Corporation for Ravenscourt, and the Environmental Impact Assessment (EIA) report on Ravenscourt approved by NREB 2 April 2009 are not available to the public or to local communities. Without relevant impact reports,
need to be shared with the communities. All of these documents are essential for the community to determine whether their headman fairly represented them, and will enable them to follow up and monitor the project.

2. Failure to obtain free, prior and informed consent

Samling has not properly or openly consulted communities within Ravenscourt FMU. Most of the Penan within Ravenscourt FMU are not even aware that they are within an MTCS certified area, let alone aware of the implications.

The Penan communities affected by the Ravenscourt FMU received letters for consultation for a re-evaluation of the Ravenscourt FMU in July 2020. The communities of Long Tevenga, Ba Peresek and Long Gita, however, had no idea up to that point that their territories were under an MTCS certificate. None of these communities have granted their free, prior and informed consent. Furthermore, it appears that Samling is not aware that the Penan village of Long Tevenga is within the Ravenscourt FMU. None of the reports by Samling or SIRIM mention the village.

At the core of the issue lies a lack of understanding by Samling about what free, prior and consent actually means. This can be exemplified by Samling’s press statement from July 7th 2020: “Thirdly, the allegation that the certification was awarded without the knowledge of local communities in the area is misleading. The Group had followed all due processes to obtain certification, which is naturally part and parcel of our operational plans towards ensuring the responsible management of forest resources. At the outset of operations, Samling had engaged with the local community leaders, who had been duly appointed by the Sarawak state government and registered with the District Office. These local community leaders were and remain fully supportive of Samling’s plans and operations. These local community leaders had full authority to represent and act for the communities.”

The focus on government appointed leaders in consultations stands in contrast to MTCC’s definition. MTCC defines free, prior and informed consent as: “A decision-making process that does not involve coercion/undue influence/manipulation (free), is made before activities are undertaken (prior), is founded upon a clear understanding (informed), and involves granting or withholding consent (saying ‘yes’ or ‘no’) to an activity, programme or policy.

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(consent). In the FPIC process, consent is to be understood based on the definition of the term "consensus".  

Engaging with a few select people from the community is not the same thing as consulting the community about what that community really wants. In Sarawak headmen are appointed and paid by the state rather than elected by the people, which results in pressure and incentives to agree with government approved projects such as logging.

3. Disregard of community dependence on forest resources

While the Social Impact Assessment (SIA) is not publicly available, the summary provided by Samling indicates either a lack of proper research or blatant falsehoods regarding community use of forest products. The summary significantly downplays the importance of the forest for the affected communities.

In the Public Summary for the Ravenscourt FMU, Samling claimed: “The social assessment (HCV5 and 6) undertaken by SFC clearly shows that the forest area of the FMU is not fundamental to meeting the basic needs of the local communities”. This is factually wrong. Within the Ravenscourt FMU and its close vicinity live some of the Penan groups that pursued their nomadic livelihoods until quite recently and today are only semi-settled, spending vast amounts of time in the forest hunting, fishing, and gathering.

4. Disregard of community initiatives for forest conservation

While Samling is certifying their timber extraction, many communities within the FMU have a different vision for their territories: they want to protect their forests for future generations, livelihoods and wildlife: The Penan communities within the Ravenscourt FMU are among the last Penan to have settled and still maintain semi-nomadic livelihoods. Their dependency on forest resources is therefore even higher than an average indigenous community in Sarawak, and they have been strong opponents against logging dating back to the 1980s. They have repeatedly set up blockades to stop logging activities in their forest. In 2018, the village of Long Tevenga even built a house across a logging road to prevent the logging trucks from entering their area to extract logs. These communities have repeatedly expressed that they want to protect their area from any logging activities, including sustainable logging, on numerous occasions, also with a letter dating from this year (Attachment B).

According to the MTCS, the communities have control over their customary land through free, prior and informed consent. Without free, prior and informed consent to delegate the

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forest management to Samling, community decisions regarding land management must be respected.

5. Flaws in the complaint mechanism

The complaint mechanism is flawed and overly complicated, not just for communities but also for supportive NGOs. The communities have tried to voice their complaints to SIRIM, but are still waiting for them to acknowledge their concerns. Please find the letter to SIRIM attached.

On the MTCC website, the information on how to file complaints is very hard to find. We only received the respective links to file complaints from PEFC in November 2020 after the meeting between PEFC, MTCC, SAVE Rivers, Keruan, Bruno Manser Fund, The Borneo Project and community representatives on the 30th of October 2020.

3) Timeliness requirements

The timeframe of 20 days to submit an official complaint seems designed to purposefully make it difficult to submit a complaint. It is not a realistic timeframe for communities for the following reasons:

1. the lack of transparency and awareness of the complaint mechanisms
2. communication barriers in rural communities travel restrictions under COVID19
3. the complexity of the complaint mechanism: if communities are first meant to complain to Samling and then SIRIM, it is impossible to also complain to MTCC within 20 days.

4) Suggested solutions

These suggestions are based on the report Keruan and other organisations handed in to the PEFC on the 16th of October 2020 (see attached):

- Distribution of key decision making documents
  - Release full EIAs and SIAs for all FMUs to communities and civil society organisations
  - Release minutes of meetings and agreements between Samling/SIRIM and communities
  - Distribute hard copies of all completed maps and agreements to all communities

- Ensuring consent is free, prior and informed
  - Require proper consultations with communities where as many community members as is practicable understand what is being proposed and may ask questions
  - Require queries from communities be answered in full and in a timely fashion, prior to any certificate being issued
  - Require consultations not be with the headmen only, but in the villages as well as in nearby town
Ensure Samling staff and management understand that proper free, prior and informed consent is pre-condition for certification, not a box to check, or a formality to be satisfied after the fact

- Require a seminar on the meaning of free, prior and informed consent given by experts for the staff of logging companies, MTCC, Sarawak Forest Department, and SIRIM, organized jointly with local NGOs

- Recognition of forest resources as critical to indigenous livelihoods, health and wellbeing
  - Publication and distribution of SIAs so that communities can counter falsehoods
  - Opportunity for direct input into SIAs from affected communities and civil society
  - Revision of SIAs based on academic literature available on the respective ethnic groups
  - Revision of SIAs based on on-the-ground research by experts and trained personnel

- Upholding indigenous-led forest conservation initiatives
  - Adhere to the communities’ guaranteed right to control forest management unless decided otherwise through free, prior and informed consent: if communities do not agree with logging in their area, the respective area must be exempt from the FMU
  - Samling must consult communities on their forest conservation projects, mark them on their maps, and exempt them from any logging activities

- Create a transparent complaints system
  - Provide proper section on complaint mechanism on MTCC, Samling and SIRIM websites, explaining the procedure and providing contacts
  - Explain complaint mechanism to villagers during consultations and provide contacts
  - Ensure those responsible for handling complaints understand and are compliant with the agreed procedures
  - Ensure those responsible for handling complaints are responsive, providing thorough and timely feedback when concerns are raised. Publish contact details for the next person in the chain to whom complaints should be directed, in the event that a contact person is unresponsive

Please do not hesitate to contact us for any further information. We are looking forward to your response.

Yours sincerely,

[Signature]

Komeok Joe
CEO of KERUAN
Yours Sincerely,

Komeok Koe
CEO of KERUAN

The headmen of the Penan Community

Upper Limbang,

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KERUAN
P.O. Box 23,98000
Pejabat Post Miri,
Sarawak
Email: selungo@gmail.com

Attachments:
Attachment A: Community letters regarding Ravenscourt FMU
Attachment B: Complaints from the ground regarding the implementation of the Malaysian Timber Certification Scheme (MTCS) in Sarawak, Malaysia, 16/10/2020

Copied to:

1. Datu Hamden Bin Haji Mohammad,
   Director of Forest Department Sarawak, Pengarah Hutan Sarawak, VU6, Forest Department Sarawak Headquarters, Level 15, East Wing, Bangunan Baitul Makmur II, Medan Raya, Petra Jaya, 93050 Kuching, Sarawak, hamden@sarawak.gov.my

2. Peter Latham, Chairman of PEFC, ICC Building C, Route de Pré-Bois 20, Case Postale 1862, 1215 Geneva 15, Switzerland, info@pefc.org

The headmen of Penan Community Upper Limbang Sarawak, photo taken at Long Adang