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FRANCE

Basel, 22 December 2009

## **Interhill Action Plan**

Dear Ms. Volkringer,

I refer to our earlier communication with Ms H el ene Roques with reference to the cooperation between Accor and the Malaysian Interhill group in the Pullman Interhill hotel project in Kuching, Malaysia. On the occasion of our last meeting in Paris on 16 October 2009, Ms Roques asked the Bruno Manser Fund (BMF) for a comment on the Interhill action plan which was released by Interhill in October 2009.

The Bruno Manser Fund has meanwhile had the opportunity to meet a number of representatives from the Penan communities who are affected by Interhill's operations in the Damai Cove Resorts timber licence area (T/9089) in Sarawak's middle Baram region, as well as their legal counsel, Messrs. Baru Bian in Kuching. The Bruno Manser Fund has discussed the Interhill action plan with them and has mentioned Accor's request for a comment.

### *Legal action against Damai Cove Resorts Sdn Bhd. and Interhill as its contractor*

In general terms, the Penan are very grateful that Accor has taken up their grievances and has asked Interhill to comply with the law and with a number of clearly defined corporate responsibility measures. During the meetings, the Bruno Manser Fund has been informed on two new collective action lawsuits filed by the elected leaders of five Penan communities (Long Pakan, Long Lilim, Ba Abang, Long Item and Long Kawi) against Damai Cove Resorts at the High Court in Sabah and Sarawak at Miri in early December 2009. Damai Cove Resorts is one of several defendants in the case, with the Sarawak state government, two subsidiaries of Samling Global and another timber company being the other defendants. For your information, we enclose you a copy of the two statements of claim of these cases.

In their lawsuits, the Penan plaintiffs are demanding the nullification of the Damai Cove Resorts timber licence (T/9089), of which Interhill is operating as a contractor. The Penan plaintiffs are stating that the timber licence was issued without their consent as the rightful owners of the affected NCR (Natives Customary Rights) land and in violation of a number of legal and constitutional stipulations. According to the Penan plaintiffs, Interhill's logging operations on their native lands are based on a licence that has been issued in an "oppressive, arbitrary, illegal and unconstitutional" way.

The Penan plaintiffs are expressing that their sources of livelihood are seriously threatened by the logging activities on their lands and that they have suffered considerable loss and damage as an effect of logging. The damage includes "irreparable damage to vegetations, food, water, valuable medicines, wildlife and other forest produce" as well as the destruction of fruit trees and other essential trees, the deprivation of the plaintiffs source of earning, the destruction of graves as well as of historical and cultural sites "which are essential and imperative constituents of the cultural heritage of the Penans in the region."

#### *Legal basis of Interhill operations on Penan lands "null and void"*

As a result, the Penan are asking for a court declaration that the Damai Cove Resorts timber licence is "unlawful, improper, unconstitutional and therefore null and void" as well as for a prohibitory injunction restraining Interhill and its employees, servants and workers from trespassing, clearing, using or occupying the plaintiffs' land. Furthermore, the court is asked to issue a mandatory injunction against Interhill as a contractor "to cease operation and remove all structures and their equipments or machineries" from the plaintiffs' NCR land. Finally, the plaintiffs are also asking for compensation for the damage done by the defendants and their contractors to the Penan's land and livelihood.

While it is probably going to take years before the new collective action lawsuits will be tried, we can already conclude that the legal basis of Interhill's operations in the Penan's forests is insufficient, and, taking into account the latest Malaysian court decisions, it appears unlikely that the company will be able to continue cutting timber in the usual ways after a trial.

#### *Measures as proposed by the Interhill action plan*

The Bruno Manser Fund acknowledges and appreciates Accor's efforts to push Interhill towards a more responsible corporate behaviour by a clearly defined action plan with its 25 proposed actions. We see that the plan contains many measures which, under normal circumstances, would certainly improve the local communities' situation. Under the given circumstances, however, the insufficient legal basis of Interhill's operations and the non-compatibility of further logging with a sustainable development of the local communities have to be in the foreground.

The main weakness of the action plan is that it fails to address the fundamental issue, which is the lack of the Penan communities' free, prior and informed consent on Interhill's operations on their native lands. We also have to bear in mind the conclusions from the Hugh Blackett report that logging by Interhill in the already heavily logged-over Damai Coves Resorts concession is "very definitely not sustainable" and that, in many respects, Interhill has not been abiding by the Sarawak forestry laws.

#### *Conclusions and recommendations*

The Bruno Manser Fund believes that it is highly irresponsible for Interhill to continue logging in an area where, according to the Blackett report, "the forest is inevitably suffering degradation" and where "the future of the forest is already threatened" by the ongoing logging operations. If Interhill continues its operations, the company will endanger the very survival of the forest-dependant Penan culture in the middle Baram region.

As a consequence, we are asking Interhill to cease its operations on the disputed Penan lands in the

Middle Baram region and to remove its machinery and equipment from all areas in which the company lacks the free, prior and informed consent of the local communities. This step by Interhill should be publicly announced, both at the community level as on Interhill's website. In a next step, fair compensation for the damage done to the Penan's lands and livelihoods will have to be negotiated, either at court or in an out-of-court settlement.

We expect Accor to support our reasonable demand for Interhill to cease its operations in an unlawfully issued timber licence and to respect the Penan's native customary rights. This of course means that Interhill's corporate social responsibility measures will have to go much further than the measures proposed in the current Interhill action plan.

The Bruno Manser Fund is confident that Accor, as a corporate citizen of high repute and as an important business partner of Interhill, will assist its Malaysian partner in adapting to this new situation which will doubtlessly entail a fundamental reorientation of Interhill's strategies and policies.

We would like to thank Accor group for its important and valuable role as a facilitator between the marginalized Penan communities, the Bruno Manser Fund and Interhill, and we are confident that the future process of dialogue will continue to be fruitful, if challenging for all involved partners. Our goal in this process is to let the hitherto extremely marginalized Penan communities participate in a development process that will bring them a long-term benefit and reconcile their social, environmental and economic concerns in a truly sustainable development.

Yours faithfully,



BRUNO MANSER FUND  
Dr. Lukas Straumann  
Director

Annex:

- Two Statements of claim of Penan collective action lawsuits against Damai Coves Resorts and others

Copy to:

- Messrs. Baru Bian, Kuching

## ***Community report on the current situation within the Interhill operations area***

The Penan have asked the Bruno Manser Fund to update Accor on the situation in the different villages affected by Interhill's operations:

### **Long Item**

Interhill is still cutting timber on the community lands, whereby it is polluting the community's water supply. The community has not received any support whatsoever from Interhill. The villagers have a transport problem as they lack cash and as the logging company vehicles refuse to provide them transport.

### **Long Lilim**

Interhill is still working on the community lands. The community had a meeting with Interhill on 6 November 2009 during which the Penan complained about Interhill's logging on their native lands. After the meeting, the Penan confiscated three chainsaws from Interhill and refused to bring them back when asked to do so by company officials. Later on, company workers went to talk to some of the young people in the village, threatening them that they would beat them up next time they meet them in Miri, Marudi or other places outside the village. In the end, the company employees succeeded in getting back the chainsaws from the young people, after having paid them 800 Malaysian Ringgits.

The community also reports that the Interhill manager invited two village leaders to his office at the Ba Kabeng timber camp in order to bribe them. Instead, six of them went to see him. He offered them 800 Malaysian Ringgits to close their eyes on Interhill's operations plus a compensation of 3 Ringgits per ton of timber taken out of the area. According to the Penan, the company manager, whose name is "Choo" or "Chew", told them: "If you take this offer, you will be happy."

The village has a transport problem. In case of emergency, the villagers depend entirely on the logging companies to provide them transport.

### **Long Pakan**

The headman has been looked for by logging company officials and the police. They blame him to be responsible for having started off the news reports on the sexual abuse of Penan girls and women by logging company workers (NB: He was quoted on the issue in a report by The Star in October 2008). There is currently no logging by Interhill in the area as the company has not encroached onto the community lands since 2008.

### **Ba Abang**

Interhill encroached on 8 November 2009 into the community forest. The headman went to see the company, and later on the company manager came to the village. When the headman showed the timber camp manager a map of the community's lands and asked him to stop logging in the area, the company manager replied that the government had asked Interhill to log the area.

During the meeting with Interhill, there was also an Iban man present (who appears to be a company employee). He had built three houses on the Penan lands without permission from the Penan. One of the Penan farmers has paddy fields near the Iban's house. When the Penan farmer went to see his paddy field, he was challenged by the Iban for a fight. The Penan was scared and only dared to come back to his farm in company of around 20 other Penan. When the Penan arrived,

the Interhill foreman and "bodyguards" were also there. They asked the Penan why they had come. The Penan replied that they came back because of the Iban's threats against them. The Penan told the Interhill foreman that they would erect a blockade in case he agreed with the Iban and asked Interhill to bring these workers out of the area. The Interhill manager agreed and the next day, the company moved out of the area, along with three bulldozers.

The village has great difficulties with its water supply. The roof of the longhouse is in a very bad state. As the village has been blacklisted by the government for failing to accept logging on its lands, all development project requests by the village are routinely declined. Many of the villagers even do not have identity cards (ICs). The Penan are saying this is a deliberate policy which aims at punishing them for their resistance against logging.

(BMF, 21 December 2009)