

INDEPENDENT FACT-FINDING MISSION IN RELATION TO INTERHILL LOGGING

FINAL REPORT

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ABBREVIATIONS

BMF	Bruno Manser Foundation
EIA	Environmental Impact Assessment
ITTO	International Tropical Timber Organization
NCR	Native Customary Rights
NGO	Non-governmental Organization
NREB	Natural Resources and Environment Board

ACKNOWLEDGEMENTS

The consultant is grateful to Accor for providing the support and resources to undertake this Independent Fact-Finding Mission (hereinafter referred to as “the Mission”) and to Interhill for support in the field, general cooperation and hospitality provided throughout the Mission. The villagers in the Penan settlements of Long Pakan and Long Item, where visits were hosted, are also thanked as are the many people representing government, NGOs, academia and the legal sector who gave time to express their views on the issue of logging in Sarawak and the circumstances of the Penan.

1. Introduction

Interhill Enterprise is involved, through various subsidiary companies, in logging and in property developments. Logging is the company's traditional business. Property developments include housing estates in Kuching and Miri, a condominium in Kuala Lumpur and, most recently, Interhill Place in Kuching, which is scheduled to be opened in the near future and consists of a shopping complex and luxury hotel.

The group started operations in 1979 as Interhill Logging, hereafter referred to as Interhill, and diversified into property development. It is intended that the hotel in Kuching will be managed as the Pullman Hotel by Accor, the French hotel group.

In February 2007 Bruno Manser Foundation (BMF), a Non-governmental Organization (NGO) based in Switzerland, wrote to Accor about the relationship with Interhill and in September 2008 launched a public campaign alleging that the poor social and environmental standards of logging operations were having a serious impact on local Penan tribes residing within forest in the Middle Baram region of Sarawak being logged by Interhill. The campaign calls for the termination of Accor's business relationship with Interhill.

In response to allegations by BMF, Accor agreed with Interhill that an independent fact-finding mission relating to the logging operations would be conducted. The Mission had the objectives of determining:

- If allegations by BMF are true
- What actions on the part of Interhill would be a satisfactory response to the allegations
- Whether Interhill has the capacity and enthusiasm for taking any actions that may be recommended.

The Mission was undertaken from 21 June to 2 July 2009 by the author, an independent forestry consultant, with support to facilitate meetings, particularly those concerning social issues, Wong Meng Chuo of the Institute for Development of Alternative Living (IDEAL). During the Mission, issues were discussed with representatives of government agencies, academia, NGOs, Interhill and Penan villagers. A field visit to Interhill's logging area was undertaken and two nights were spent staying in the Penan settlements of Long Pakan and Long Item to obtain information from the Penan about their concerns and the impacts of Interhill's operations on their livelihood.

This report discusses the current situation, the allegations and the possible solutions to problems encountered.

2. Background and observations

2.1 The forest area

A Timber Licence (T/9089) permitting logging of an area of forest in the Middle Baram region of Sarawak was granted by the Sarawak Forestry Department to Damai Cove Resorts on 29 January 2002. The licence was valid for six years to 28 January 2008 and was subsequently extended to 28 January 2013. Rights to the licence were transferred under power of attorney on 8 April 2002 from Damai Cove Resorts to Interhill and Interhill now has sole responsibility for logging operations.

Licence T/9089 is located in Akah Bunah state-land forest and extends to 61,025 hectares, of which 46,495 hectares are classified as productive forest. About 13,000 hectares are used for shifting agriculture by local tribal Orang Ulu communities, including Kayan and Penan. The remainder is on excessively steep areas where ground based logging is not permitted and logs can only be extracted using helicopters. The forest has traditionally been used by Penan communities for hunting and gathering and to a lesser extent by the Kayan communities.

The area was previously logged under Timber Licence (T/0339) to Sara Resorts from 1989 to 2000 and logging operations were conducted by another company not related to Interhill. During this period 37,584 hectares were logged and over 2.2 million cubic metres of logs were extracted with the annual volume ranging from 561,401 cubic metres in 1990 to 59,218 cubic metres in 1989. The average volume extracted was nearly 60 cubic metres per hectare. During this period Interhill were involved in logging licence area T/0340, a smaller adjacent area to south.

Logging operations under Licence T/9089 commenced in the first annual coupe in late 2002. It is estimated that the average volume extracted is about 20 cubic metres per hectare.

The terrain is steep, heavily dissected by deep gullies and presents a considerable challenge to environmentally acceptable logging operations. However, the Sarawak Government permits logging in such areas and it also permits short cycle re-entry. With much of the area having already been logged twice in ten years the forest is inevitably suffering degradation. This is clearly indicated by the reduction in harvested volumes from 2.2 million cubic metres by the previous logging contractor during the 1990s at an average of 60 cubic metres per hectare

to the estimated 940,000 cubic meters that will eventually be harvested by Interhill at a rate of 20 cubic metres per hectare.

Despite a clear reduction in productivity, which is a strong indication that harvesting is unsustainable, Interhill's General Manager speculated that a further licence might be granted to a logging company to conduct re-entry logging again after expiry of the current licence. Despite this, Interhill's management advised that Interhill currently has no specific plans to re-enter the area after the expiry of its current licence in 2013 and that any further licence is dependant on what decision may be taken by the Sarawak State Government. In some areas, not previously logged by the former contractor, this would be a second re-entry, but in others it could mean a third re-entry. Inevitably this will lead to further degradation, particularly as the only way that it might be possible to log the area economically is by taking out smaller dimension logs than currently permitted. For comparison, both Peninsular Malaysia and Indonesia, at least in theory, do not allow re-entry logging in less than 35 years.

The future of the forest is already threatened. It is suffering degradation and if further re-entry is permitted in the near future far more serious degradation can be expected. However, the area is classified as state-land forest and as such government policy permits conversion for development purposes from natural forest to other uses, normally either forestry or oil palm plantations. There is therefore no guarantee that this area will be retained as permanent forest, despite the fact that the topography of the area is unsuitable for either forestry or oil palm plantations, the development of which would result in the area being clear felled. If a third re-entry is allowed the probable result will be that the forest will be degraded to such an extent that it ceases to exist as a viable natural ecosystem. With the area almost certainly unsuitable for any kind of plantation development, it is possible that it will be abandoned as a derelict forest, which is a common result observable elsewhere in Sarawak. This however, would be the result of the government's approach to forestry and Interhill merely operates in this area as permitted within a system that does not always provide a guarantee of sustainability.

Accor enquired at an early stage in discussions concerning this Mission whether there was any possibility of Interhill's forest being certified to the internationally recognized standard of the Forest Stewardship Council. For two reasons this has to be considered impossible. Firstly, there is no long term tenure, which is a basic requirement and secondly, logging in natural forest on such short cycles is very definitely not sustainable as can be seen from the reduced harvest volumes being achieved by Interhill compared to the much higher volumes achieved ten years ago by the former logging contractor.

2.2 Allegations against Interhill

Allegations by BMF were submitted in a letter to Accor dated 17 February 2009 and were that Interhill:

- Is causing severe environmental degradation of the tropical forests in the Middle Baram region
- Has shown very little respect for the basic needs and the legitimate claims under native customary rights of the local communities
- Is causing *inter alia* the destruction of primeval forest, damage to local drinking water supplies, loss of biodiversity, soil erosion, landslides, siltation of the Patah and Akah rivers, destruction of graveyards and pollution of rivers with used engine oil and other waste
- Is hampering access by local communities to natural resources such as rattan, sago, poison dart trees and medicinal plants, making survival for local communities very difficult
- Is a cause of social problems within communities, and workers from timber companies operating in the Middle Baram region are responsible for alleged cases, now under investigation by the Royal Malaysia Police, of sexual abuse of Penan women and girls
- Deploys gangsters to intimidate the Penan when they protest against company activities
- Logged an area of forest reserved for use by the Penan despite promises that it would be preserved
- Uses the police to dismantle barricades aimed at preventing logging.

A letter written by the Penan on 7 April 2009 to Gilles Pélisson, Accor's Chief Executive Officer, reiterates many of the above problems and is signed by over 70 Penan claiming to be headmen and community representatives, although Interhill believes that the authenticity could not be properly established. It further alleges that timber harvested by Interhill is stolen from their land, is not sustainably harvested and advises that the Penan intend to file a court case against Interhill demanding recognition of customary rights.

In addition to allegations by both BMF and local NGOs articles published on the problems of the Penan include an article in "The Star" newspaper on 6 October 2008 alleging that Penan girls have been raped by logging company workers.

2.3 Responses by government

The local police from Marudi have conducted an investigation into the allegations of rape made in "The Star" newspaper. The two alleged victims implicated one worker employed by Interhill and another from a different logging company operating in an adjacent license area. Apparently, the victim allegedly involved with Interhill's worker is now living in a married state with the accused. The victim involved with the worker from the other company could not be located so there was insufficient evidence to proceed. Both victims were hosted and interviewed by an NGO group for at least nine days before they were flown by the NGOs to give statements at the Bukit Aman Police Headquarters in Kuala Lumpur. This eventually resulted in a counter allegation that the NGOs had taken the girls against their will and forced them to make false statements. A further counter claim by the Penan is that they have been threatened with violence from gangsters if they give damaging testimony.

A special Task Force from police headquarters was formed to investigate the allegations and the Inspector General of Police has publicly stated that the investigation so far has not revealed any proof of rape and that the NGOs have not been cooperating or coming forward to give statements to further assist the investigations. However, it is understood that the Task Force is still functioning, is in the process of collecting more evidence and NGO representatives advised that they are fully intending to participate.

In view of the above, there is considerable uncertainty about the truth of the matter, but it is hoped that the further investigation to be conducted by the police in the near future, in collaboration with local NGO representatives, will resolve the matter.

In addition, a task force was commissioned by former Women, Family and Community Development Minister, Datuk Seri Dr Ng Yen Yen, in October 2008 to investigate claims that logging company employees were sexually abusing and raping young Penan girls and women. The task force's fact-finding mission was concluded in mid-November 2008, but so far, despite appeals in public and in parliament, the current Minister, Datuk Seri Shahrizat Abdul Jalil, has declined to make the report public, although it is available from the ministry on request.

As the police investigations are not yet complete and the ministerial report is yet to be publicly released the government response has yet to show any conclusive results. It would seem to be in the interest of Interhill that the matter is brought to a conclusion and any action taken that is deemed necessary as a result of the further investigation. As Interhill expects its employees to show respect for local communities it would enhance its credibility if it were able to do anything to encourage a satisfactory resolution to this matter.

2.4 Responses by Interhill

To address the allegations of sexual harassment, Interhill reported that upon being made aware of the matter an internal inquiry was immediately launched with the camp manager conducting an investigation of the conduct of the implicated worker. The alleged victim was interviewed by a female member of the company's senior management staff in the sole presence of a fellow female villager. According to the company, the investigation did not reveal any evidence of sexual abuse or rape.

The company also reported that it had assisted the special police Task Force from Bukit Aman and the task force commissioned by the Ministry of Women, Family and Community Development in their investigations, whereby unrestricted access was granted to its grounds and employees.

Subsequently Interhill has engaged the services of Paddy Schubert Consultants, a corporate communications company in Kuala Lumpur, and has engaged a Corporate Communications Manager.

To date a number of documents have been produced and include:

- A new website which makes a statement on Interhill's concern for corporate social responsibility and covers issues of environment, health and safety, human rights and employment, forestry and sustainable forest harvesting
- An internal CSR report, a document entitled *Our Promise to Our People*, outlining company initiatives supporting development for the Penan
- Transcripts of dialogues with three Penan men (Alah Beling, Yaya Unan and Satuk Lawai - respectively the headman of Long Kawi, the headman of Long Belok and the spokesperson of Long Kabing (Long Item) and brother of the headman), in which they support Interhill's operations, deny knowledge of the letter sent on 7 April 2009 to Gilles Pélisson, claim not to know Pada Jutang (the apparent author of the letter) and agree to sign statutory declarations to this effect, all witnessed by Zain Rocky, a Penan appointed as a Sarawak Administration Officer in Miri District
- Three statutory declarations to Wong Chung Heng, Commissioner of Oaths, by Alah Beling, Yaya Unan and Satuk Lawai confirming, in summary, that they have never seen the letter before, did not sign it and do not protest against the hotel project

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- A few notices posted at the logging camp advising company workers that alcohol consumption and gambling are forbidden and that respect must be shown to local Penan communities.

More tangible actions by Interhill, which will be discussed in Section 3, could rapidly improve the company's image, but the impact of these various documents without further action will not be great.

Firstly, the website shows creditable aspirations, but to make the aspirations a reality some action is required to improve social and environmental performance in the field to ensure that operations are conducted according to declared policy.

Secondly, *Our Promise to Our People* summarizes considerable contributions made towards local communities. Interhill has indicated that this document is meant to be a "living document" which will be updated regularly to incorporate further initiatives and action plans that will bring benefits to the local communities. At present the claims are not easy to verify and are disputed by the Penan. However, the Penan acknowledge that they receive substantial benefit from Interhill's presence, principally in improved road access and provision of transport. At Interhill's headquarters there are receipts showing what has been distributed to the Penan, but at the logging camp records of benefits distributed to individual villages are unsigned and do not provide satisfactory evidence of delivery. Interhill explained that in some cases the Penan are not requested to, or are sometimes reluctant to, sign receipts acknowledging delivery of goods that are regarded as "gifts" and as such do not require their signature, although this does not remove the uncertainty and hence reinforces the need for Interhill to maintain better records as demonstration of improved corporate governance and accountability. Though there was a summary of financial contributions made to the Penan over the years, there was no itemised breakdown of the benefits provided.

Other statements in the document are of uncertain accuracy, particularly:

- It could not be verified whether Land Access Compensation Agreements made with the Penan at a meeting moderated by the Marudi District Officer are adhered to as, despite a request for records and minutes of meetings, consultations and agreements concerning native groups, no details were provided and all the Penan interviewed denied that Interhill's obligations were met, including payment of RM 2.00 per ton harvested. However, Interhill has advised that they have documentary proof and signed receipts in respect of such payments and has provided a few copies as evidence of delivery.
- A claim that no blockades have been forcibly removed is contradicted by "Rengah Sarawak" in an article of 5 July 2006 entitled *Interhill Logging and its history in logging in Sarawak – Blockade Dismantled* wherein it is reported that blockades were removed and a number of Penan arrested in March and April 2002, and that blockades were again removed on 5 July 2006 by Interhill and that local police authorities and General Operations Forces were deployed to search for the Penan responsible. However, Interhill reported that in 2006, the role of the local police had been to act as an objective mediator as a result of a deadlock in talks between the parties, and the subsequent negotiations were successful and led to the withdrawal of the blockade by the Penan. Interhill also reports that earlier blockades were against the operations of another timber company operating in an adjacent area, and that Interhill was affected only because the blockade was on a common road used by both companies.

The purpose of the transcripts of dialogues and the statutory declarations by Alah Beling, Yaya Unan and Satuk Lawai, none of whom were signatories to the letter of 7 April 2009, was reportedly an attempt to establish the authenticity of the letter because Interhill disputes whether some of the signatories are correctly identified as village headmen or are genuine and, in particular, advises that the headman of Long Kawi had expressed anger that one of the signatories had misrepresented himself as the Long Kawi headman. In effect the statutory declarations are accurate as the three men did not sign the letter, but over 70 people have signed the letter, and even if some are wrongly identified as headmen or are not genuine, any challenge to authenticity is unlikely to be useful. The claims by all three in the transcripts that they do not know Pada Jutang is contradicted by the latter who claims he knows them all and that they know him, which is definitely possible as strong bonds were evident between Penan from various villages attending the meeting at Long Item.

The notices posted at the camp are unlikely to have strong impact unless supported by strong disciplinary action in the event of any identified misconduct. While some of Interhill's staff are clearly very respectful and have excellent relationships with the Penan, notably Joseph Gau, there are claims by the Penan that they are badly treated by others and are frequently threatened that they will be attacked by gangsters if they try to oppose company employees or operations. While all communities interviewed said that no attacks by gangsters have ever occurred, they are worried by this threat, which has not been reported to the police as the Penan claim that they will not be listened to. Such a threat was allegedly issued as recently as Sunday 21 June 2009, when an Interhill employee was reportedly involved in a collision with a motorcyclist from Long Item. The rider was badly hurt, currently cannot walk or work and the motorcycle on which he is making loan payments is destroyed. Although the injured rider was taken by the employee to a clinic for treatment he is reported to have been told by the employee involved that there was to be no mention of the employee's involvement in the accident or a visit by gangsters would be arranged. If the accusations are true, some of Interhill's employees clearly do the company no credit.

2.5 Community land rights

Communities living in the area include the Kayan and the Penan. The former are more integrated into modern Malaysian society and depend largely on a settled life-style based on agriculture, fish farming and formal employment opportunities, including employment with Interhill. The Kayan still practise some hunting, but reported that the availability of both animals and fish has declined since logging commenced in the area.

The Penan, on the contrary, are much more dependent on the forest. Traditionally they are nomadic forest dwellers deriving a livelihood from hunting and gathering of forest produce, practices which continue to be of importance. In Middle Baram, there are no longer any Penan communities practising a nomadic life-style and they lead a more settled existence practising agriculture and fish farming alongside their traditional activities. Given the continuing importance of the forest it is their view that customary rights to land cover an area including their cultivated land, communal forest and territorial domain.

In Sarawak, land rights are principally governed by the 1958 Land Code, which recognizes Native Customary Rights (NCR). The law very clearly recognizes rights over cultivated land, but has not recognized land rights over the other land categories defined by indigenous groups, particularly forest. However, in recent judgements on two cases (Sarawak Government v Madehi Salleh and Sarawak Government v Nor Anak Nyawai) the Federal Court upheld the concept of NCR to be land including not only cultivated land (*temuda*), but also communal forest (*pulau*) and territorial domain (*pemakai menua* or *tana pengurip*). While legal opinion is divided on what the impact of these judgements might be on land rights, they would seem to strengthen the Penan viewpoint, although confirmation of this would only be possible if there was a court case and subsequent judgement.

As evidence of land claims, Official Circular No. 12 of 1939 directed District Officers and the Land and Survey Department to record communal land boundaries of native groups. Details are kept in a Register of Land Boundaries now held at the District Office in Marudi. One of the communities visited was able to produce a map of its territorial domain that is apparently included in this register. As such, evidence is available which could support at least one community's claim to land rights over the area being harvested by Interhill.

Regardless of the legal position and the fact that land subject to NCR is not shown on maps incorporated in the Timber Licence (T/9089) granted to Interhill, it is stated in the licence that:

It is the licensee's responsibility to acquaint himself with the boundaries of any such lands falling within his licence area.

It is therefore incumbent on Interhill to make advance enquiries to establish where logging may actually be permitted. The information in Interhill's document *Our Promise to Our People* that Land Access Compensation Agreements were negotiated with the Penan at a meeting moderated by the Marudi District Officer provide an indication that Interhill accepts that the Penan do indeed have some form of rights over the forest and have addressed the issue. According to the company, the communities are generally compensated for any land encroached to an extent that goes beyond the Sarawak Government's interpretation of NCR and comes closer to meeting the Federal Court's interpretation. In contradiction, communities visited said that Interhill's logging operations encroached areas that they consider to be theirs and that neither operations nor compensation were in compliance with agreements as understood by the Penan. Without a detailed examination of agreements and establishment of the on-ground reality it is not possible to conclude to what extent agreements are complied with or not.

It is also worth noting that the Malaysian Government is a signatory to the United Nations Declaration on the Rights of Indigenous Peoples adopted on 13 September 2007. While this is not a legally binding instrument under international law, according to a United Nations press release, it does *represent the dynamic development of international legal norms and it reflects the commitment of the member states to move in certain directions*. Importantly, Article 26 states in paragraph 1 that:

Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

This provides a clear indication that the Malaysian Government accepts and supports in principle the rights of the Penan people to their traditional lands and resources. As such it would be expected that Interhill are obliged to respect land claims by the Penan, but at present clear evidence is not available to verify whether or not land claims are fairly acknowledged.

2.6 Environmental issues

It has already been stated in Section 2.1 that logging is having an adverse impact on future sustainability and that the area in which Interhill are operating is extremely steep and dissected. In the circumstances poorly executed logging operations will seriously affect the environmental integrity of the forest. Recognizing this risk, the Sarawak Government, under the Natural Resources and Environment Ordinance (1993) and the Natural Resources and Environment Ordinance, Prescribed Activities (1994) (Amended 2004) requires that an Environmental Impact Assessment (EIA) is conducted in advance of re-entry logging and stipulates measures to be taken to mitigate the possibility of environmental degradation.

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Before logging can commence companies must submit an EIA, prepared by a registered environmental consultant, to the Natural Resources and Environment Board (NREB). After the NREB has reviewed the EIA it may issue an EIA Report Approval, wherein terms and conditions state what measures are to be taken by a logging company to mitigate adverse impacts. It is a legal requirement that logging companies comply with these terms and conditions. In theory, NREB will conduct inspections of all concessions to ensure compliance and advised that all licence areas are visited once or twice annually. However, it is suspected that inspections are rarely conducted, and not at this intensity, due to lack of manpower.

Because NREB inspections do not appear to be routinely conducted and are perhaps only very cursory, the pressure to comply with legally required terms and conditions is not great. The EIA Report Approval for Timber Licence (T/9089) lists 72 specific terms and conditions to be observed, but field observations indicate that the level of compliance could be improved. Many of the requirements are of fundamental importance and this is an area in which more attention would considerably enhance Interhill's reputation.

Without listing all 72 terms conditions some of the more important ones are as follows:

- The licensee is required to ensure that all faunal and floral species protected by law are undisturbed by logging operations (Clause 1c)
- All engineering and environmental guidelines are to be adhered to in constructing roads, log landings and skid trails (Clause 3b)
- Reduced impact logging practices are to be adopted (Clause 3c)
- No soil is to be pushed into waterways or stream buffer zones (Clause 3f)
- Earth barriers are to be constructed across skid trails at the lowest end of steep sections to prevent erosion and movement of earth into streams (Clause 3g)
- Skidding logs across any stream is forbidden (Clause 3i)
- Water catchments for camp and community water supplies are to be marked and excluded from logging (Clause 4e)
- Water quality of all streams are to be maintained at Class IIB of the National Water Quality Standard (Clause 4h), which presumably means a low level of suspended silt
- Proper garbage bins are to be located at strategic locations in the camp and workers quarters (Clause 5a)
- Workers are to be advised to wear safety helmets, footwear and gloves (Clause 6c)
- Local people are to be consulted whenever necessary and grievances are to be handled tactfully and efficiently to avoid land use and land rights disputes (Clause 8a)
- A liaison committee comprising relevant authorities, licensee, contractors and local communities is to be formed to serve as a forum for consultation and dispute resolution (Clause 8c).

The above are only some of the required conditions, but field observation indicated that full compliance was not being achieved and in some cases compliance was minimal or absent. To achieve environmental credibility, or social credibility with respect to the last two conditions, Interhill's operational practices should be reviewed and serious attention given to improving performance in instances where shortcomings are identified.

2.7 Social issues

There is no doubt that Penan and other communities derive considerable benefit from Interhill's presence, principally as a result of improved road access, the provision of transport and employment opportunities.

Interhill employs over 250 people from the various local communities, namely the Kayan, Iban, Kenyah and Penan. According to records provided by the company, about 82% of employees are natives of the surrounding communities. The records show that 69 Penan are employed and, at 27% of the total workforce, this is the largest number of employees from any of the local tribes. Despite this, the Penan communities visited by the consultant denied that any of their villagers are employees of the company. However, this assertion is strongly contradicted by the evidence of employment records provided by Interhill.

In addition, Interhill reports, with some evidence, that it provides communities with a number of items and services free of charge, which include:

- Generator sets
- Generator fuel
- Building materials (logs, cement and zinc roofing sheets)

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- Allowances to headmen and other members of community committees
- Musical instruments and air conditioners for churches
- Ground levelling
- Water pipes
- Land rental
- Christmas presents
- Complimentary transport to serve the special needs of the villagers, especially in cases of emergency.

Records maintained by Interhill of items, services and finance given to individual communities are documented in *Our Promise to Our People*. Unfortunately, there are no records of any formal agreements with communities and so it is impossible for an outside party to know whether the quantities of items, services and finance comply with any existing agreements. In discussions between the consultant and Penan communities receipt of some benefits was acknowledged, but there was unanimous disagreement with the figures quoted in *Our Promise to Our People*.

The only document seen that gave any indication that formal agreements are established was a letter from Interhill dated 7 August 2002 to the Penan Communities at Sungai Apoh, Akah and Patah. This was apparently an agreement arrived at in response to a blockade erected by these communities. The agreement is deficient as it lacks clarity, particularly in referring only to zinc and plywood sheets without any indication of the quantities to be supplied. Whether linked to this agreement or another, one community reported that they had been supplied with only 30 zinc sheets, while it had been agreed that 60 sheets would be supplied.

Records of items, services and finance given to communities were seen at the logging camp, but there were no signatures on any of the records to verify who, or even whether anyone, had taken possession. The lack of effective record keeping makes it difficult for Interhill to substantiate claims of benefits provided, and, true or not, the Penan consistently claimed that Interhill did not meet its obligations. There is a clear need to improve the accounting practices linked to benefit distribution.

Apart from disagreements over whether or not agreed benefits are being fully provided, the Penan have a number of issues with Interhill's harvesting operations, which include:

- Harvested and abandoned logs, which were observed at two sites in the Long Pakan territorial area and viewed by the Penan as a completely wasteful practice, although the company reports that logs were abandoned because the Penan subsequently prohibited the company from extracting these logs.
- Harvesting of the entire territorial area at Long Pakan despite the Penan claiming that they made an agreement permitting harvesting of only 50% of the area, in recognition of transport and other assistance provided by Interhill. This is denied by the company and highlights the need for clear maps and written agreements so that conflicting claims can be eradicated.
- Harvesting of fruit trees such as durian and wild mango and harvesting of the Ipoh tree (*Antiaris toxicaria*) from which they obtain the poison they need for hunting in the traditional manner with a blow pipe and poisoned darts.
- No information provided of how many tons of logs are being harvested from a community's area and therefore no knowledge of how much compensation is to be paid on the basis of the agreed amount of RM 2.00 per ton, although Interhill advises that payments are made and in advance despite an obligation to pay only at the end of the financial year.
- Non-payment of compensation, with only one community reporting that they had actually received anything and then only receiving half of the RM 20,000 that Interhill had told them they were due, the balance being provided in the form of musical instruments for the church. In response Interhill were able to provide some evidence that payments totaling RM 44,000 were made as recently as December 2008 and early 2009 to headmen in Long Kabing and Long Tebangan.

Tensions and concerns could be significantly reduced if Interhill liaised effectively in advance of logging with individual communities to secure agreement on where logging can take place and which tree species can be harvested so ensuring that impacts on Penan livelihood opportunities are minimized. The company, on the contrary, reported that this is in fact being done. However, lack of documentary evidence makes it difficult for this claim to be substantiated. An acknowledged hurdle is that only a handful of Penan are literate.

Improved management of relationships would require that proper maps of the area were available, but the only maps at the camp were two very old and faded large scale maps stuck on the office wall. As well as providing maps, Interhill should also ensure that logging teams are properly supervised and fully aware of any agreed conditions with respect to species and locations. At present logging teams are minimally supervised and the Penan communities interviewed claimed that the first time they knew logging operations were going to commence in their area was when surveying teams, or even logging units arrived, which would not comply with

NREB requirements discussed in Section 2.6. To the contrary, Interhill reports that village headmen or representatives are always approached in advance of planned operations.

One issue raised by the Penan against the company is hard to support and involves road accidents. In two incidents people died and in another three people were injured while travelling in Interhill vehicles. The Penan felt that Interhill should pay compensation, but as insurance is probably unavailable for people travelling in the back of pick-up trucks any insistence on compensation would strongly deter Interhill from allowing travel by non-company employees in company transport, thus withdrawing one of the most important benefits that the Penan receive. However, the insurance question should be checked and if coverage cannot be provided the terms under which transport is provided should be clearly stated in agreements with communities.

A further concern about the social benefits provided by the company is that there is no inherent long term development advantage. When Interhill eventually completes logging and presumably withdraws from the concession area, the Penan will be deprived of the current benefits received and are unlikely to have achieved much to elevate themselves from their current status, described by the Marudi District Officer as being among Malaysia's hard-core poor. While Interhill will justifiably consider this as a socio-economic issue which it cannot be expected to resolve and is something that can only be handled by government, benefits are being provided and could perhaps be channelled in a way that achieves lasting sustainable development and improves livelihood opportunities for the Penan.

On a positive to note, the Penan advised the consultant that Interhill operates in a more agreeable manner than either its predecessor or companies operating in neighbouring timber concessions. Also, Interhill is currently working together with the Sarawak Tipun Penan Development Association on the STPDA-Interhill Scholarship/Grant 2009 with the aim of sponsoring Penan students to undertake further studies or skills training in order to provide them with a better chance for their future.

Interestingly, Interhill arranged a meeting with Paul Chai who manages a grant provided by the ITTO that is intended to deliver real development to Penan communities. He claims considerable success through a programme of intensive communication, confidence building and support to specific community projects that have long term sustainable benefit. He does not believe that their hardship will be alleviated by simply handing out cash. This project could perhaps serve as a useful example if Interhill wishes to play a more proactive role in development.

3. Conclusions and recommendations

A good relationship between Interhill and the Penan, based on negotiated agreements that are fair and fully complied with, will benefit both parties. It is therefore recommended that Interhill takes further action to improve its social and environmental performance as a response to the allegations by BMF, some of which either have some substance or the information required to disprove them is lacking.

One unsupportable allegation is that Penan villages in the area have been attacked by gangsters. Although it is claimed that this threat has been made by some of Interhill's employees the Penan advised the consultant that no actual attack had ever taken place.

No conclusion is drawn on the allegation of sexual harassment as the joint investigation by the police and NGOs is pending, but is anyway an allegation against one Interhill employee rather than the company itself.

There is a lack of solid evidence to demonstrate whether the legitimate claims of the Penan communities are met or not, and what are the legitimate claims is unknown as no agreements were put down in writing. The Penan claim that benefits are not paid in accordance with expectations, whereas Interhill claims that obligations are fulfilled and have records showing that delivery of benefits has been made in some form to the headmen of the communities over the years.

In the current circumstances, no benefit is likely to be gained by trying to determine further whether allegations by BMF can be substantiated or not and, instead, all parties could be better served by Interhill making a statement to the effect that the company welcomes the independent Mission, will seriously consider its findings, recognizes that in some areas operations could be improved and that the company is committed to change. Public release of such a statement along with the Mission Report would be a highly transparent action that delivers a strong message that Interhill is giving the allegations serious attention.

It would be beneficial to review all material that Interhill makes publicly available, particularly the website, and also *Our Promise to Our People* if this is to be circulated in any way. The information must be verifiable and supported by records if it is to be believed by BMF and other potential critics. It should usefully refer to actions being taken and progress being made to introduce change.

Any action that can be taken to secure public release of the ministerial report into allegations of sexual harassment would be to Interhill's advantage, as would any efforts that can be made to facilitate the joint investigation by police and NGOs. In this respect, the consultant has been informed by Interhill that they will be writing to the Minister concerned to secure a copy so enabling the company to decide if it is necessary to review the earlier findings of its internal inquiry into the matter.

INDEPENDENT FACT-FINDING MISSION IN RELATION TO INTERHILL LOGGING

In addition it is recommended that Interhill rapidly introduces further measures to address social and environmental problems as outlined in Sections 3.1 and 3.2 and commits to a programme of reform that gives full support to social and environmental experts.

In future Interhill should accept an independent monitoring visit to evaluate progress of reforms by an independent organization acceptable to BMF.

3.1 Social improvement

Interhill should visit the ITTO project managed by Paul Chai to learn and receive advice on how to deliver development assistance effectively to the Penan. This project is now working with 64 Penan communities and claims considerable success in delivering real benefit to the Penan through *inter alia* school projects, development of fishponds, agricultural training, establishment of mini-hydro power schemes and assistance to provide identity cards, which many Penan do not have and so are excluded from accessing many public services provided by government. Two of the school projects, Ba Kelalan and Ulu Labai primary schools, were awarded first and second places in the Commonwealth Best Practices Award scheme. It would seem that there may be useful lessons to learn from this project, particularly concerning Paul's assertion that companies often have the wrong people talking to the Penan and a limited understanding of what constitutes a successful approach, which requires continuous on-ground presence of suitable experts.

Interhill should employ a social expert and it may be possible that the ITTO project can recommend a suitable candidate. The tasks of a social expert should be to:

- Develop and improve relationships with the Penan through extensive dialogue that permits free, prior and informed consent in advance of any company activities that may have an impact on the Penan
- Engage with NGOs to establish what support and advice they might be able to give
- Review and improve benefit accounting procedures so that claims by Interhill can be easily verified, possibly by computerizing records and providing the Penan with random code generators (similar to those supplied by some banks to allow access to internet banking) that can be used instead of thumbprints or signatures to confirm receipt of benefits
- Review any existing agreements and provide clear documentation on what is agreed, particularly on where logging can take place, what trees will not be logged and what compensation will be paid
- Draft and negotiate agreements where none exist
- Review in detail what compensation has been paid in the past and, where justified, prepare recommendations on additional compensation that might be paid to communities living in forest that has already been logged
- Design and develop a programme delivering sustainable support, training and education to the Penan, taking into consideration needs identified and requested by the Penan themselves
- Establish an effective liaison committee to ensure that all relevant parties fully understand what activities are planned and how negative impacts will be mitigated, and to ensure that fair procedures are observed to resolve any conflict.

3.2 Environmental improvement

Interhill needs to demonstrate that it will meet its legal obligations under the environmental legislation listed in Section 2.6. This will involve improvements in current logging practices to ensure proper planning, execution, and supervision with particular emphasis being given to environmental impacts. It will require that the company appoints a professional forester or environmental expert to oversee change and improvement. The appropriate expert should:

- Review current practices to identify specific changes required to ensure that Interhill is meeting its legal obligations
- Develop standard operating procedures covering harvest planning, forest surveying, engineering works, erosion control, implementation of low impact logging, supervision of engineering and harvesting activities, the introduction of safety measures and management of waste
- Instigate a training programme to ensure that all workers and supervisory staff are conversant with required procedures and are able to operate in a manner, which properly recognizes environmental obligations and mitigates the negative impacts.

It has to be accepted that there may be cost issues associated with these reforms and that it might be necessary that harvest levels and profitability will be reduced. Logging teams which are paid at present

according to tons harvested may suffer as a consequence and it will require firm action by Interhill to ensure that change is effective. The advantage will be that if Interhill can develop a fully credible logging operation criticism will be diverted and so will allow the harmonious continuation of the relationship between Accor and Interhill.

3.3 Capacity for change

Interhill appears to accept that change might be required. The final meeting to present the Mission results was held in a positive atmosphere and there was no substantial contradiction of the findings.

At present, Interhill has limited experience or capacity to manage effective change and improvement, particularly with respect to environmental and social issues. The company's current operations and expertise are focused on the engineering aspects of forestry encompassing road building and extraction. Expertise in environmental and social issues should be improved and this capacity may be developed through recruitment of people with specific expertise in these areas, as discussed above. Such recruits must be given the company's full support to introduce change, which might be unpopular with existing staff focused almost exclusively on production. Engagement with NGOs and, possibly, consultancy support could help to develop the capacity required to achieve results fully credible to its critics.

It is acknowledged that the task of establishing improved relationships with the Penan will be difficult, but if Interhill can demonstrate that they are taking appropriate action it may be possible that the NGOs can provide useful support. However, if BMF do not feel that real improvement is happening within a reasonable period, it is almost certain that the campaign will continue, but it is the consultant's opinion that BMF would accept change and improvement in preference to termination of the relationship between Accor and Interhill and that BMF could be one of the NGOs providing practical support to achieve this objective.

From the consultant's interaction with Interhill, it appears that the company is willing to accept the challenge of improving interaction with the Penan and other community groups and taking action to adopt improved forestry practices that meet the highest environmental and social standards.