

bruno manser fonds  
socinstrasse 37  
ch-4051 basel

tel. +41 61 261 94 74  
fax +41 61 261 94 73  
info@bmf.ch  
www.bmf.ch



Senator The Hon Robert Carr  
Minister for Foreign Affairs  
PO Box 6100  
Senate, Parliament House  
Canberra ACT 2600  
Australia

Basel, Switzerland  
17th October 2012

Dear Minister,

We are writing to you to express our deep concern over Hydro Tasmania's involvement in several controversial dam projects in Sarawak, Malaysia, where the company is acting inconsistently with international human rights standards. As a state company owned by the Tasmanian government, Hydro Tasmania's performance is expected to meet international standards for corporate responsibility, as recognized by the Australian government at the United Nations and the OECD.

The undersigning organizations request that the Australian government conduct an immediate investigation into the role of Hydro Tasmania in Sarawak and suspend all Hydro Tasmania operations in Sarawak to ensure that the company does not contribute further to human rights violations.

### **Background on the human rights situation in Sarawak**

Human rights violations in Sarawak are well documented. Sarawak is a state in Malaysia that has been governed by the same leader, Chief Minister Tan Sri Abdul Taib Mahmud, for over 30 years. Corruption exists at the highest levels of state government, as Chief Minister Taib regularly provides development contracts to companies in which his family has a controlling stake. Around half of Sarawak's population is indigenous, and numerous Malaysian court judgments protect traditional lands. However, many of the judgments are disregarded by the Sarawak state government. The media in Sarawak is also largely owned and influenced by the government.

Sarawak's first high impact hydropower project, the 2,400 MW Bakun Dam, was completed in 2011. Over 10,000 people from indigenous communities were resettled for this project in the late 1990s. Over one decade later, many of these people are living in greater poverty than before. Resettled communities continue to raise concerns that unemployment is rampant, they received plots of farmland that are too small to sustain their families, and no consultation took place before or during the project. Many of these communities lived traditional lifestyles that were closely tied to the land and forest, and have struggled to retain their cultural identity and community ties after being evicted. In 2011, the Prime Minister of Malaysia acknowledged the poor performance of the Bakun resettlement during a site visit.

The government of Sarawak is now in the process of building at least 12 more large dams in the state's rainforests, which will flood hundreds of square kilometres of forest and farmland and displace tens of thousands of indigenous people. The implementing agency is Sarawak Energy Berhad, a Malaysian power supplier owned by the Sarawak government. Two Chinese state-owned companies – China Three Gorges Corporation and Sinohydro – are helping to construct the projects, and Hydro Tasmania is providing technical and management advisory services.

Evidence from the first two dams underway, the 944 MW Murum Dam and the 1,200 MW Baram Dam, demonstrate that the government of Sarawak is repeating the same mistakes of the Bakun Dam. The government and Sarawak Energy Berhad have not publicly disclosed their feasibility studies, social and environmental impact assessments, or resettlement action plans. Affected communities in the Murum and Baram areas complain about the advancement of the dams without consultation and consent of the people.

The Murum Dam is entering its final construction phase. Its impoundment is planned to start early next year. An estimated 1,500 indigenous people will soon be displaced and almost 250 square kilometres of land will be flooded. The Resettlement Action Plan which regulates the displacement has not been made public, but was leaked in September 2012 by *Sarawak Report*, an investigative website uncovering corruption in Sarawak. After the affected communities heard of the conditions of their resettlement, which were not previously disclosed to them, they set up a blockade in late September 2012 on the access road to the dam to stop the supply of material for the construction work. Many of the communities to be resettled are heavily dependent on the forests and river for their livelihoods. The resettlement plan reveals that the compensation offered to the affected communities is anything but fair: the monthly allowance will only be paid after resettlement, it falls below the poverty level and ends after four years. The new farmland promised to communities is already occupied by palm oil plantations, and the communities believe there will not be sufficient forest left to sustain their traditional livelihoods. No effective channels exist where communities can raise their grievances.

After the Murum Dam is completed, the Sarawak government intends to begin construction on the Baram Dam, which will displace 20,000 people. In the past year, hundreds of affected people have been actively protesting against the dam. They are organized under the Baram Protection Action Committee and also represented by the SAVE Rivers Network, a network of indigenous leaders that is working to build awareness of the dams' harmful impacts on local communities all over Sarawak. They have challenged the government and Sarawak Energy with a petition, letters, protests in the towns of Kuching, Miri, Marudi, the village of Long San located in the Baram area and even at the Baram Dam site. Despite these efforts, the Sarawak government has not responded to their concerns.

In August 2012, Australia's SBS's Dateline television program aired an investigative story called "The Last Frontier." This story was one of the first times that an international media source had reported on the on-going rights violations taking place around the Sarawak dams. The report also highlighted the involvement of Hydro Tasmania in the on-going construction of the dams. Soon after, Hydro Tasmania filed a complaint with the SBS ombudsman, and SBS issued an apology saying that "the totality of the report was inaccurate and misleading", and that "the statements made about the role of Hydro Tasmania are not accurate".

## **Role of Hydro Tasmania**

For several years, Hydro Tasmania has closely worked with Sarawak Energy Berhad. Sarawak Energy hired Hydro Tasmania's subsidiary Entura to do an overall assessment of expanding the capacity of the Batang Ai dam (built in the 1980s) in 2009 and a review of the Bakun dam in 2010. Furthermore, Entura conducted the feasibility studies on proposed dams such as Belaga, Pelagus and Metjawah between 2008 and 2009 and even discovered another potential dam site. Entura also advised repeatedly on matters concerning the Murum Dam.

According to the 2010 Annual Report of Sarawak Energy, the two companies were on the way to establishing a formal partnership agreement in 2010. The partnership agreement is meant to allow for a knowledge and skill transfer including secondment of staff from Hydro Tasmania to Sarawak Energy, consulting services and "a number of co-development agreements for specific hydropower projects". Sarawak Energy itself acknowledges in its 2010 Annual Report that these skills are "essential" for the realization of the dams and not yet available in Sarawak. In this context, Hydro Tasmania seconded nine employees to Sarawak Energy in 2010. Another 20 to 30 are expected to be seconded over time under the partnership agreement.

One of the seconded employees is Mr. Andrew Pattle, who was Project Director for the Murum Dam until 2011 and has recently been appointed as Senior Project Manager for the next two proposed dams, the Baram and Baleh. Among other tasks, Mr. Pattle is charged with "gaining environmental approvals and community acceptance of the project." In Hydro Tasmania's 2011 annual report, Mr. Pattle was quoted saying that "safety and environmental compliance are not given much importance" in Sarawak.

Mr. Miles Smith has also been transferred from Hydro Tasmania to Sarawak Energy where he functions as Vice President and Head of Planning & Strategy. Mr. Nick Wright, formerly Senior Advisor to Tasmania's Energy Minister, now holds a position at Sarawak Energy as Vice President who is responsible for Corporate Social Responsibility. In his position, he is also responsible for resettlement issues, sustainability and community consultation. Consequently, Hydro Tasmania presumably shares responsibility for shortcomings concerning the issues currently raised by the blockade against the Murum Dam. Through these secondments, Hydro Tasmania has provided technical and management advice in the development of the Murum and Baram Dams and is likely to continue playing a role in future projects.

## **Applicable international human rights standards**

Although the lead developer of the dams is Sarawak Energy Berhad, Hydro Tasmania has played a critical role in advancing construction of the dams that are leading to human rights violations in Sarawak. Evidence suggests that Hydro Tasmania may also be involved in decisions that are leading directly to human rights violations of Sarawak's indigenous peoples.

The recently adopted UN Guiding Principles on Business and Human Rights outline international standards on how companies are expected to act when faced with potential human rights violations. All major governments – including Australia – have endorsed the Guiding Principles. They have also been integrated into the OECD Guidelines for Multinational Enterprises, which are endorsed by Australia as well. These Guiding Principles state that companies have a responsibility to respect human rights in all of their business operations, regardless of whether they provide consulting services or lead the implementation of projects. According to the Guiding Principles, companies are expected to conduct due diligence to make sure that they do not contribute to human rights violations. Consequently, a

company shares the responsibility for rights violations committed by a business partner.

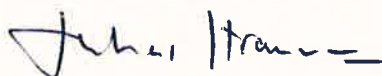
In the case of Hydro Tasmania, there is no indication that the company conducted sufficient due diligence checks before entering into a business relationship with the Sarawak government. On August 22, CEO Roy Adair admitted to ABC Radio Australia that the company had not done anti-corruption auditing before agreeing to work with Sarawak Energy Berhad. There was also no indication of any human rights due diligence as outlined under the UN Guiding Principles. The extent of Hydro Tasmania's due diligence was that "we have checked that Sarawak Energy Berhad is a member of the International Hydropower Association and following the [IHA's] protocol on sustainability."

Heightened due diligence is particularly necessary in Sarawak, given several high risk factors: (1) well established documentation of corruption at the highest levels of the Sarawak government, (2) the presence of indigenous peoples in the project area, who are entitled to provide their free, prior and informed consent to projects affecting them under the UN Declaration on the Rights of Indigenous Peoples, (3) evidence that Malaysian court judgments ruling in favour of indigenous land rights have not been implemented by the Sarawak government, (4) findings by the Malaysian Human Rights Commission in 2009 of serious human rights concerns in development of the Murum Dam, (5) unresolved legacy issues around the Bakun Dam resettlement, (6) lack of community consultation and public disclosure of key project documents for the Murum and Baram Dams, such as the environmental and social impact assessment, (7) the absence of effective channels for affected communities to raise grievances.

Hydro Tasmania is neglecting its responsibility in the on-going human rights violations in Sarawak. We, therefore, urge the Australian government to conduct an investigation into the role of Hydro Tasmania in Sarawak. Together, we ask Australia to suspend all Hydro Tasmania activities in Sarawak to ensure that the company does not contribute further to human rights violations, and to ensure that the operations of Australian companies abroad meet the highest international standards.

Please do not hesitate to contact us for more information about this matter. We are awaiting the results of your investigation and information about the measures you are taking. We have also contacted the Premier of Tasmania about this matter.

Yours sincerely,



Dr. Lukas Straumann  
Executive Director  
Bruno Manser Fund  
Basel, Switzerland

**bruno  
manser  
fonds**

for the peoples of the rainforest

Kirk Herbertson  
Southeast Asia Policy Coordinator  
International Rivers  
Berkeley, CA, USA



**INTERNATIONAL  
RIVERS**  
people • water • life

Brihannala Morgan  
Executive Director  
The Borneo Project  
Oakland, CA, USA



**The Borneo Project**

Lars Løvold  
Director  
Rainforest Foundation Norway  
Oslo, Norway



**Regnskogfondet**

RAINFOREST FOUNDATION NORWAY

John Seed OAM  
Rainforest Information Centre  
Nimbin, Australia



rainforest  
information  
centre

Jenny Weber  
Huon Valley Environment Centre  
Huonville, Tasmania



Miranda Gibson  
The Observer Tree  
Still Wild Still Threatened  
Tasmania



Akira Harada  
Director  
Japan Tropical Forest Action Network (JATAN)  
Tokyo, Japan



Rainforest Action Network  
San Francisco, USA



Saskia Ozinga  
Campaigns Coordinator  
FERN  
Brussels, Belgium



Reinhard Behrend  
Rettet den Regenwald e. V. / Rainforest Rescue  
Hamburg, Germany



Franz Fluch  
Gesellschaft für bedrohte Völker  
Wien, Austria

