

FIVAS – The Norwegian Association for International Water Studies  
Kolstadgata 1, NO-0652 Oslo  
fivas@fivas.org

Oslo, 22 August

The Norwegian National Contact Point for  
the OECD Guidelines for Multinational Enterprises  
Oslo, Norway  
oecdncp@mfa.no

**Murum and Baram: Norconsult's non-compliance with the OECD Guidelines for  
Multinational Enterprises in connection with hydropower development in Malaysia –  
Complaint to the Norwegian NCP.**

Please find enclosed FIVAS's complaint to the Norwegian NCP. We appreciate your accommodating attitude so far and look forward to a constructive process.

Yours sincerely,

*Jonas Holmqvist (sign.)*

Jonas Holmqvist

Director, the Norwegian Association for International Water Studies

## Complaint to the Norwegian NCP

- **The complainant:**

FIVAS – The Norwegian Association for International Water Studies

Organisation number 971 276 266

Postal address: Kolstadgata 1, NO-0652 Oslo

Email: [fivas@fivas.org](mailto:fivas@fivas.org)

/ (+47) 93253397

[www.fivas.org](http://www.fivas.org)

Contact person

Director Jonas Holmqvist

Telephone number: (+47) 93253397

Email: [Jonas.holmqvist@fivas.org](mailto:Jonas.holmqvist@fivas.org)

- **Is the organisation filing the complaint on behalf of its own members/closely related parties or others?**

The complaint is filed on our own behalf and in consultation with the organisation Save Sarawak Rivers.

- **If the organisation is filing the complaint on behalf of others: How would you describe the organisation's mandate to represent the aggrieved party in this case?**

It is FIVAS's objective to prevent Norwegian enterprises from participating in hydropower projects that entail major adverse impacts. FIVAS is also engaged in ongoing dialogue with the Save Sarawak Rivers Network, an organisation founded by civil society and affected groups that works in relation to villages in the project areas.

- **Have you been in contact with the aggrieved party?**

Over time, FIVAS has been engaged in dialogue with the Swiss organisation Bruno Manser Fonds, which works in relation to the affected indigenous groups and the Save Sarawak Rivers Network (Save Rivers). FIVAS's primary contact with the affected parties is through the organisation Save Sarawak Rivers Network, which is based in Miri in the state of Sarawak. The Save Sarawak Rivers Network was established in late 2011 by civil society organisations and villages affected by hydropower development projects in Sarawak. It works closely with villages affected by the Murum and Baram developments. All the villages that are affected by the Murum development are home to the Penan people. The Penan people are among the poorest in Sarawak and have for decades fought against logging and other encroachments on their areas. The indigenous populations along the Baram River are more complex and consist of Kayan, Kenyah and Penan people. A total of 1,400 people have been forced to move as a consequence of the Murum Dam, while as many as 20,000 risk being displaced because of the construction of the Baram Dam. FIVAS went with Save Rivers to Sarawak in March 2014 and met

representatives of the villages. FIVAS met indigenous groups that organise protests against the construction of the Baram Dam and visited several villages in the affected area, where we spoke to both village leaders and members. FIVAS also visited indigenous groups that had been relocated in connection with the construction of the Murum Dam and spoke to the village leaders and members.

- **What is the organisation seeking to achieve with the complaint?**

First and foremost, we wish to improve conditions in the Murum and Baram projects so that the social and environmental consequences are reduced to a minimum, and we also want the project to respect indigenous rights and be carried out in accordance with best practice. In line with the OECD Guidelines, we want Norconsult (1) to carry out sufficient *human rights due diligence* reviews of the impact of the projects they are involved in. In parallel with this, we want Norconsult to improve its due diligence policy so that it is consistent with the OECD Guidelines. This also entails openness about the policy, for example about what requirements have been defined and what assessments have been made.

We also want Norconsult, either alone or together with other enterprises, to pursue an active role in dialogue with the client so as to (2) ensure that the project is in accordance with international guidelines and human rights.

If it proves impossible to improve the conditions for those affected by the project, so that human rights are respected and international guidelines complied with, we want Norconsult to withdraw from all projects relating to the developments and to encourage other Norwegian stakeholders to do the same.

## About the company

Norconsult,

Office address: Vestfjordgaten 4, NO-1338 Sandvika / Postal address: P.O. Box 626, NO-1303 Sandvika

Norconsult's subsidiary in Malaysia:

NorPower Sdn Bhd  
Lot 7702, 2nd Floor, Jalan Pending,  
93450 Kuching, Sarawak, Malaysia  
Tel: +60 82331600  
Fax: +60 82349600

- **Why is this company of relevance to the Norwegian NCP?**

The complaint concerns the company's practice in its work on *human rights due diligence* and transparency in relation to this. Norconsult's head office is the subject of the complaint, and therefore the Norwegian NCP is the correct entity to consider the complaint.

## About the complaint

- **Describe the practice warranting criticism in as concrete and detailed a manner as possible, including information about where the alleged violations took place, and any developments.**

Through its contracts with Sarawak Energy, Norconsult contributes to the construction of several hydropower plants in the state of Sarawak in Malaysia. The projects violate established international practice and indigenous rights. Norconsult does not provide information about what assessments they have carried out in relation to the projects, and the company has apparently not engaged in dialogue with its contracting partner Sarawak Energy in order to minimise the adverse impacts of the development projects. Norconsult has stated on its website that it has contracts with Sarawak Energy relating to several development projects. The contracts are stated to concern Completion Management System and Pre-engineering phase. The information about the contracts no longer seems to be available on Norconsult's website.<sup>i</sup>

FIVAS files a complaint against Norconsult because no information has been provided about what assessments have been made of human rights impacts in connection with due diligence. We consider this a violation of the guidelines on transparency. A lack of transparency also means that the performance of due diligence reviews may be inadequate, which would be a violation of the General Policies Chapter II, and the chapter on human rights, Chapter IV. We also believe that the projects that Norconsult is involved in violate international conventions and that Norconsult is responsible for the consequences of such violations even though Norconsult does not directly cause them, as is described in the General Policies, points 12 and 13, and in the section on human rights, point 3. In a letter of 13 May 2014, Norconsult states that it has carried out an integrity due diligence review of its contracting partners, but it makes no reference to due diligence in relation to the development projects or an assessment of adverse human rights impacts.

The development projects are part of the SCORE development plan. The programme has been the subject of criticism, but we do not consider the programme to be of direct relevance to the complaint.

### **Violation of indigenous rights and internationally recognised guidelines**

The construction of the Murum Dam violated indigenous peoples' right to self-determination for their own land, and free, prior and informed consent (FPIC) in the consultations on the development. Indigenous peoples' right to meaningful consultations and FPIC is based on ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). FPIC is also reflected in international best practice through the IFC Performance Standards.<sup>1</sup> The developer, Sarawak Energy Berhad, claims compliance with UNDRIP, the Equator Principles and the IFC Performance Standards.<sup>ii</sup> The Human Rights Commission of Malaysia, Suhakam, pointed out already in 2009 that the process did not meet the expectations of free, prior and informed consent.<sup>iii</sup> Suhakam sent a representative to the area in June this year to investigate complaints from the Penan population.<sup>iv</sup>

Several villages that were displaced by the Murum project deny having given their consent to move. Criticism has also been levelled against the way consultations were carried out. The consultations that were carried out were not non-coercive and the villages were not given free access to information, as is stated in the principles for FPIC. The project's Environmental Impact Assessment (EIA) and Social Impact Assessment (SIA) were not disclosed to the affected groups, nor were they presented with a preliminary resettlement plan. The project also violated a number of rights described in UNDRIP and in guidelines set out in the IFC Performance Standards. Among other things, EIAs and SIAs were not carried out or published before construction start-up, as is required. More information about the Murum development and consequences for the affected parties is available in the Bruno Manser Fonds report 'Sold down the river' from 2012 and Suhakam's report from 2009.

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<sup>1</sup> The term FPIC was first used in the 2012 review of the IFC PS; in the 2006 version, the formulation 'good faith negotiations' was used.

In connection with our visit, village leaders who protested against the Baram development told us that consultants had come to their villages and asked the locals to fill in forms to survey the property. They were asked to fill in the forms with a pencil, but to sign them with a pen. We have been told that, in other villages, no consultations took place, but that representatives of the government authorities came and held meetings at which they said that a hydropower plant was to be built and why the development was a good thing.

We fear that the development of Baram will follow a similar pattern as Murum by starting the construction phase without having carried out genuine consultations or obtained the free, prior and informed consent of the affected indigenous communities. The villages have joined forces to establish a road block into the area for the hydropower developers and will not allow surveys or machinery access to the site until real consultations have taken place. The meetings that have taken place between the developer and the villages come across as information meetings about what is going to happen rather than consultations. Villages and individual groups have also been given gifts by representatives of the developer. The village leaders consider them bribes and have filed a police report over one case of cash being handed out in several villages in December 2013.<sup>v</sup>

In a report from August this year, Save Rivers wrote that consultants who visited the villages did not say what they were collecting information about or explain what a Social and Environmental Impact Assessment (SEIA) is. The information was also provided in the Bahasa Melayu language, which is not one of the native languages and not spoken by everyone in the affected villages. Perhaps the most serious allegation is reports that the consultants have used different persuasion techniques and threats, for example that the villagers would not receive compensation if they did not take part in the surveys. More information about the consultations is available in the report 'No consent to proceed'.

The land rights of indigenous peoples in the areas affected by the Murum Dam and the Baram Dam have been set aside. Malaysia has a pluralistic legal regime that places the customary law and governance of indigenous people on equal footing with other legal systems. Among other things, the Constitution ensures 'Native Customary Rights' (NCR) to land. These rights are regularly violated by the local state administration, however. Before development of the dams started, it was announced that NCR had been set aside for everyone living in the area affected by the dam. The announcement was signed by the secretary general of the Ministry of Natural Resources and Environment and is attributed to the minister. The announcement was published in a national newspaper and was not made known in the affected areas.

Indigenous groups that have protested against the construction of the Murum Dam have been harassed by the police. The protesters have been locked up and others have been refused to bring them water and food. Several protesters have also been the subject of arbitrary arrests.

It has been notified that the road blockage that was established to keep the company out of the area where the Baram Dam is to be built will now be removed. We are concerned that this will lead to new clashes.

We also take a serious view of the fact that filling of the Murum reservoir started in September 2013, before the conflict about resettlement plans had been resolved. Notification of the filling of the reservoir was not given to the six Penan villages of Long Watt, Long Luar, Long Tangau, Long Menapa, Long Singu and Long Malim. It is also reported that the village of Long Watt was set on fire by unknown perpetrators.<sup>vi</sup>

These events show that there is a risk of human rights violations as a result of the project being carried out. We believe that the risk is clear enough for the companies involved to perform a due diligence assessment of the human rights situation. A *due diligence* must also be followed up by the company in accordance with expectations set out in the guidelines.

The development company Sarawak Energy has chief responsibility for many of these violations. Some of the violations of national law and human rights also rest with Sarawak's authorities. The close link between Sarawak Energy and the state adds to the problem. We believe that Norconsult's responsibility lies in assessing the risk of gross ethical violations in projects it contributes to and to address these violations in dialogue with its contracting partners.

- **In your opinion, what provision(s) of the OECD Guidelines has the enterprise not complied with?**

## II. GENERAL POLICIES

A. [Enterprises] should

2. Respect the internationally recognised human rights of those affected by their activities.

10. Carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation,

11. Avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur.

12. Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.

13. In addition to addressing adverse impacts in relation to matters covered by the Guidelines, encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of responsible business conduct compatible with the Guidelines.

## III. DISCLOSURE

1. Enterprises should ensure that timely and accurate information is disclosed on all material matters regarding their activities, structure, financial situation, performance, ownership and governance. This information should be disclosed for the enterprise as a whole, and, where appropriate, along business lines or geographic areas. Disclosure policies of enterprises should be tailored to the nature, size and location of the enterprise, with due regard taken of costs, business confidentiality and other competitive concern.

2. Disclosure policies of enterprises should include, but not be limited to, material information on

f) foreseeable risk factors, and g) issues regarding workers and other stakeholders,

3. Enterprises are encouraged to communicate additional information that could include:

b) policies and other codes of conduct to which the enterprise subscribes, their date of adoption and the countries and entities to which such statements apply,

c) its performance in relation to these statements and codes,

d) information on internal audit, risk management and legal compliance systems.

## IV. HUMAN RIGHTS

States have the duty to protect human rights. Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:

1. Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.
3. Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.
4. Have a policy commitment to respect human rights.
5. Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.

Special reference is also made to Commentary 41 on the chapter on human rights:

41: In paragraph 1, addressing actual and potential adverse human rights impacts consists of taking adequate measures for their identification, prevention, where possible, and mitigation of potential human rights impacts, remediation of actual impacts, and accounting for how the adverse human rights impacts are addressed. The term 'infringing' refers to adverse impacts that an enterprise may have on the human rights of individuals.

The chapter on human rights was written in accordance with the UN Guiding Principles on Business and Human Rights, and we have therefore enclosed Principle 21 of these Guidelines:

21. In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders. Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them. In all instances, communications should:

- (a) Be of a form and frequency that reflect an enterprise's human rights impacts and that are accessible to its intended audiences;
- (b) Provide information that is sufficient to evaluate the adequacy of an enterprise's response to the particular human rights impact involved;
- (c) In turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality.

- **Overview of documentation**

Save Sarawak Rivers Network (2014) Report 'No consent to proceed',  
[http://www.internationalrivers.org/files/attached-files/no consent to proceed baram report2014.pdf](http://www.internationalrivers.org/files/attached-files/no%20consent%20to%20proceed%20baram%20report2014.pdf)

Norconsult (2013) 'Norconsult growing in Sarawak', Norconsult's website 23 September 2013, retrieved at 13.15 <http://www.norconsult.com/?did=9112692>

The Bruno Manser Fonds (2012) Report: 'Sold down the river'  
[http://www.stop-corruption-dams.org/resources/Sold down the river BMF dams report.pdf](http://www.stop-corruption-dams.org/resources/Sold_down_the_river_BMF_dams_report.pdf)

Suhakam – Human Rights Commission of Malaysia (2009) The Murum Hydroelectric project and its impact towards the economic, social and cultural rights of the affected indigenous peoples in

Sarawak

<http://www.suhakam.org.my/wp-content/uploads/2013/12/Murum1.pdf>

Malaysia Today (2013) *Humanitarian Crisis in Sarawak as dam empoundment destroys penan villages – Long Watt burned down in suspected arson*. Article published on 23 September  
<http://www.malaysia-today.net/humanitarian-crisis-in-sarawak-as-dam-empoundment-destroys-penan-villages-long-watt-burned-down-in-suspected-arson/>

Sarawak Energy Factsheet (online) and International Rivers' comments on the distributed factsheets

<http://www.sarawakenergy.com.my/index.php/hydroelectric-projects/fact-sheets/35-hydroelectric/>

[http://www.stop-corruption-](http://www.stop-corruption-dams.org/resources/Commentary%20on%20SEB%20Factsheet%20on%20Murum%20Dam%20Oct%202012.pdf)

[dams.org/resources/Commentary on SEB Factsheet on Murum Dam Oct 2012 .pdf](http://www.stop-corruption-dams.org/resources/Commentary on SEB Factsheet on Murum Dam Oct 2012 .pdf)

Correspondence between FIVAS and Norconsult (see overview below)

- **Is the complaint relevant to other countries' contact points?**

Because the complaint is directed at the Norwegian company Norconsult, we believe that it is primarily relevant to the Norwegian NCP.

- **What does your organisation think that the enterprise should do to remedy the alleged violations in the complaint?**

In our opinion, Norconsult should first (1) be open about what assessments they make of the impacts on fundamental rights in projects they become involved in. Norconsult must also (2) raise serious rights violations and violations of indigenous rights with its contracting partner. If the consequences of the development projects that Norconsult participate in lead to serious rights violations despite (1) and (2), Norconsult should (3) withdraw from the project.

## **About contact with the company**

- **Contact with Norconsult**

FIVAS first contacted Norconsult in September 2013 and expressed concern about the conditions surrounding the development. We contacted Norconsult because we took a very serious view of the fact that filling of the Murum reservoir started before all the villages had been resettled and before the disagreement concerning resettlement had been resolved. Because of the urgent nature of the matter, we tried to contact Norconsult's employees in Malaysia directly for confirmation of or comments on the events. Through the department's secretary, we received a reply by email from Thor A Lynaas of Norpower Sdn Bhd on 30 September 2013, referring all enquiries to Einar Kilde of Sarawak Energy.

We again contacted Norconsult when we visited Sarawak on 20 March 2014 and asked for a meeting to give Norconsult an opportunity to provide information about its participation in the construction of Murum and Baram. We received a reply on 25 March 2014 with reference to the previous email exchange.

On 11 April, FIVAS, Save Sarawak Rivers and Bruno Manser Fonds sent a letter to Norconsult in which we, referring to the problematic conditions in Sarawak Energy and the dam development projects, asked Norconsult to withdraw from contracts with Sarawak Energy. We also requested



a meeting when representatives of Save Sarawak Rivers and the affected villages visited Norway in May.

We received no response to the letter, despite several reminders, until 16 May, in a letter sent by email from Compliance Officer Guro Ruud Cedell. The letter, which was dated 13 May, was signed by CEO John Nyheim. In the letter, Nyheim rejected our request for a meeting, referring to the fact that Norconsult does not participate in public debate. FIVAS replied to this letter on 19 May.

FIVAS also had contact with Sarawak Energy in parallel with the contact with Norconsult. We expected greater willingness to engage in dialogue from Norconsult, a Norwegian company than from Sarawak Energy, despite the Norwegian management of the company. After contact with Einar Kilde and CEO Torstein Dale Sjøtveit by email and phone, Sjøtveit finally gave us a clear message on 20 March 2014 that the company did not wish to engage in dialogue with FIVAS.

### **Overview of written correspondence. Copies of the correspondence are enclosed.**

'Concern relating to Murum Dam'. Email to Norconsult of 25 September 2013. Reply received on 30 September 2013.

'Re: Norconsult in Sarawak'. Email from Norconsult of 20 March 14, reply received 25 March 2014

'Meeting on Norconsult's role in Sarawak, Malaysia'. Sent by post and email on 11 April 2014.

'Meeting on Norconsult's role in Sarawak, Malaysia'. Reply from Norconsult, sent by email on 16 May.

'Regarding Norconsult's role in Sarawak, Malaysia'. Letter to Norconsult, sent by email on 19 May.

The correspondence with Dale Sjøtveit and Kilde of Sarawak Energy Berhad will be presented by request.

- **Has the organisation raised, or taken the initiative to raise, the alleged violations in other forums?**

FIVAS has not raised Norconsult's activities in other official forums targeting business and industry or responsible business conduct in particular.

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<sup>i</sup> 'Norconsult growing in Sarawak', Norconsult's website 23 September 2013, retrieved at 13.15  
<http://www.norconsult.com/?did=9112692>

<sup>ii</sup> Sarawak Energy, Factsheets: Social and Environment Impact assessment (SEIA)  
<http://www.sarawakenergy.com.my/index.php/hydroelectric-projects/fact-sheets/35-hydroelectric>,

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International Rivers, comments on 'Factsheet' (2012) [http://www.stop-corruption-dams.org/resources/Commentary on SEB Factsheet on Murum Dam Oct 2012 .pdf](http://www.stop-corruption-dams.org/resources/Commentary_on_SEB_Factsheet_on_Murum_Dam_Oct_2012_.pdf)

<sup>iii</sup> Suhakam (2009) The Murum hydroelectric project and its impact towards the economic, social and cultural rights of the affected indigenous peoples in Sarawak. <http://www.suhakam.org.my/wp-content/uploads/2013/12/Murum1.pdf>

<sup>iv</sup> The Star (2014) 'Resettled Penans Complaining', <http://www.thestar.com.my/News/Community/2014/06/20/Resettled-Penans-complaining-State-authorities-fail-to-deliver-on-some-promises-Suhakam-notes/>

<sup>v</sup> Sarawak report, 4 January 2014, 'Sarawak Energy Reported For "Bribing" Natives!' <http://www.sarawakreport.org/2014/01/sarawak-energy-reported-for-bribing-natives-expose/#commentarea>

<sup>vi</sup> Malaysia Today, 23 September 2013, Humanitarian Crisis in Sarawak as dam empoundment destroys penan villages – Long Watt burned down in suspected arson <http://www.malaysia-today.net/humanitarian-crisis-in-sarawak-as-dam-empoundment-destroys-penan-villages-long-watt-burned-down-in-suspected-arson/>