Our Ref : JPBN.600-1/8/6 Klt.8
Date : 9th February 2022

Sila Rujuk Senarai Edaran

Dear Sir/Sirs/Madam/Madams,

PRESS STATEMENT OF THE STATE ATTORNEY-GENERAL’S CHAMBERS OF SABAH REGARDING THE PROPOSED NATURE CONSERVATION AGREEMENT (‘NCA’)

We kindly refer to the above-matter.

2. Kindly attached herewith the Press Statement by our Chambers regarding the proposed Nature Conservation Agreement for your kind attention.

Thank you.

“BERKHIDMAT UNTUK NEGARA”

( DATUK NOR ASIAH BINTI MOHD YUSOF )
State Attorney-General of Sabah

“SABAH MAJU JAYA”
PRESS STATEMENT
STATE ATTORNEY-GENERAL’S CHAMBERS
OF SABAH

9TH FEBRUARY 2022

The proposed Nature Conservation Agreement (‘NCA’) has been widely reported on by both the domestic and international press. In particular, recent reporting by AlJazeera and The Sarawak Report have raised a number of issues and concerns. The State Government of Sabah now states as follows.

The State Government’s Policy on Carbon Trading

1. The State Government will not permit any land to be leased, transferred or otherwise ‘handed over’ as part of any carbon trading or carbon monetisation program. This includes the proposed NCA.

2. The purpose of implementing a carbon trading program is to monetise carbon assets currently stored in trees and in doing so, to ensure that Sabah’s forests are protected and conserved. The proposed NCA seeks to monetise carbon assets within certain forest reserves which are classified as Totally Protected Areas (‘TPAs’). These areas have not been identified, ascertained or designated.

3. No carbon trading program will be agreed to nor implemented without the free prior informed consent of Native Communities whose customary rights may be impacted by such programs.

4. The State Government promotes carbon sovereignty as its core policy. Any agreement, scheme, device or arrangement that is contrary to Sabah’s carbon sovereignty, including the proposed NCA, will not be permitted to proceed.

5. Sabah has a right to carbon sovereignty and will harness and build its own expertise under the Sabah Climate Change Committee (SCAC), to manage a carbon future in alignment with recognised global standards, safeguards and processes that prioritise equity, inclusion, transparency and multilateralism.
The Status of the NCA

6. The State Government signed the NCA in October 2021 on the condition that it was a non-binding framework agreement that was subject to:-

   (i) Further due diligence to the satisfaction of the State Attorney-General and the Cabinet;

   (ii) An Addendum to the NCA by which all unfair and absurd contract terms are removed;

   (iii) the identification and obtaining of free prior informed consent from all affected Native Communities;

   (iv) the identification and ascertained of suitable and available TPAs (the ‘Designated Area’).

7. The NCA is therefore not finalised nor is it binding because, among others, the Designated Area – which is the subject matter of the NCA – has not been ascertained nor identified. Until the Designated Area is ascertained and incorporated, each and every term, condition and penalty in the proposed NCA is rendered non-binding and unenforceable. In short, the NCA in its present form is legally impotent.

8. Reporting by the Sarawak Report (9 February 2022) is not accurate. As the proposed NCA is not in force, it follows that its so-called penalty clauses are also not binding. Moreover, the State Government will not permit such inequitable and one-sided penalty clauses to be incorporated in the event that the NCA is finalised.

9. Similarly, it shall be observed any clause in the proposed NCA that seeks to bind the Sabah Legislature in any form is void for illegality under Malaysia’s Contracts Act 1950.

10. The State Government will also require that an addendum to the NCA be executed where absurd and / or unfair contract terms are removed. The addendum will also put in place clear safeguards and protections for the State. Unless the addendum is executed, the NCA will not be finalised.

11. The proposed NCA and its promoters are now being scrutinised by the State Attorney General’s Chambers as part of a wide-ranging and on-going due diligence exercise. Unless and until Hoch Standard Pte Ltd, its promoters and affiliates, meet the requirements of the State Government, the proposed NCA will not proceed.

12. Therefore, the statement released by Datuk Frederick Kugan, the Chief Conservator of Forests previously is accurate. The signed NCA is indeed incomplete and hence non-binding, until Hoch Standard satisfactorily meets
the State Government’s requirements outlined in the addendum. Datuk Fred’s statement was correct and was not misleading as alleged by an NGO recently.

13. Amongst issues that remained unresolved are the Designated Area, Pilot Area and map; development of a Nature Conservation Management Plan (NCMP); consent from affected Native communities (where necessary); Carbon Pricing and Price Discovery mechanisms agreeable to the State; Independent oversight of the implementation of the NCA and an objective performance assessment in meeting the intended goals; safeguards to mitigate/avoid negative impact to current key economic sectors of the State; safeguards to ensure that revenue gained from carbon trading are leveraged for the long-term benefit for the people of Sabah; and a satisfactory due diligence report on and confirmation of the truth and reliability of Hoch Standard’s representations and capability.

14. Notwithstanding the several representations made by Hoch Standard - that they have access to financial networks and are capable of funding and realising the objectives of the NCA - the State Government calls for a more in-depth due diligence process which was initiated by the State Attorney General.

15. The State Cabinet has approved the concept on carbon trading in principle. As it relates to the proposed NCA, finalisation is subject to strict deliverables and the execution of the addendum. The Sabah Climate Change Committee (‘SCAC’) and its advisory committee will assess and advise the Cabinet on all matters related to the NCA. The Cabinet reserves its right not to finalise the NCA.

16. SCAC will lead a multi-party dialogue with all stakeholders where representations from across all political factions in Sabah will be called upon.

17. The State Government in respect AlJazeera’s reporting on the NCA (2nd February 2022) has no comment on the allegations made against certain individuals or individual members of the government.

Datuk Nor Asiah Binti Mohd Yusof  
State Attorney-General  
Sabah State Attorney-General’s Chambers
<table>
<thead>
<tr>
<th>No.</th>
<th>Name and Title</th>
<th>Contact Information</th>
</tr>
</thead>
</table>
| 1    | Sandakan FM (RTM SANDAKAN) u/p: Mohamad Kunorhidzwah Ahmat (Berita Hal Ehwal Semasa) | Faks: 089-667202  
   Tel: 0145641979  
   Email: beritasandakan@gmail.com |
| 2    | Sabah Bureau Chief/Journalist                      | Faks: 088-215886  
   Tel: 088-211546/219498/211071  
   Email: editorsb@bernama.com  
   Email: nashir_bah@yahoo.com.my  
   Faks: 089-672117  
   Tel: 089-673207  
   Hp: 0138738381 |
| 3    | The Editor Daily Express                           | Faks: 088-238420  
   Tel: 088-256422  
   Email: ykin86@gmail.com  
   Email: sph@tm.net.my  
   Email: sph_dailyexpress@yahoo.com |
| 4    | Astro AWANI Sandakan                                | Hp: 0146657453  
   Email: hazsyahabdulrahman@gmail.com. |
| 5    | Daily Express Sandakan, u/p: Mardinah Jikur (Journalist) | Email: j.mardinah@yahoo.com  
   Tel: 013-8562077 |
| 6    | The Star                                           | Email: borneojim65@yahoo.com  
   H/P: 017-8188991 (James Leong) |
| 7    | Bulletin TV3 Sandakan                               | Email: nfmedia94@gmail.com |
| 8    | New Straits Times KK                               | Tel: 088-738 976  
   Email: ersieanjumin@gmail.com |
| 9    | Borneo Post Sdn.Bhd  
   1st Floor, Block 44,  
   Lot 4 Lebuah Tiga  
   90000 SANDAKAN | Faks: 089-274187  
   Email: borneopostkk@yahoo.com |
| 10   | The Editor See Hua Daily News                      | Faks: 088-218991  
   Tel: 088-318991/318811  
   Email: seehuasbh@yahoo.com |
<table>
<thead>
<tr>
<th>No.</th>
<th>Name</th>
<th>Address</th>
<th>Contact Details</th>
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<tbody>
<tr>
<td>11</td>
<td>Ketua Biro</td>
<td>Berita Harian Sdn Bhd</td>
<td>Faks: 088-487523 Tel: 088-487 521 Hp: 014-6749065 Email: <a href="mailto:rafiqahdahali@gmail.com">rafiqahdahali@gmail.com</a></td>
</tr>
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<td>Lot 65, 1st Floor, Block G, Asia City</td>
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<td>88000 KOTA KINABALU</td>
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<td>12</td>
<td>Ketua Editor</td>
<td>Sin Chew Daily</td>
<td>Faks: 088-393213 Tel: 088-393222 Email: <a href="mailto:news_kk@sinchew.com.my">news_kk@sinchew.com.my</a> Email: <a href="mailto:lyong@sinchew.com.my">lyong@sinchew.com.my</a> (Yong Ling Yi) Reporter: Ng Jia Xiang (h/p: 019-8809052) Email: <a href="mailto:angai95@hotmail.com">angai95@hotmail.com</a></td>
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<td>Mulu Press Sdn Bhd</td>
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<td>u/p: Encik Lee Nyuk Lin</td>
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<td>13</td>
<td>The Editor</td>
<td>Merdeka Daily News</td>
<td>Faks: 088-234286 Tel: 088-218702 Email: <a href="mailto:monica28283@yahoo.com">monica28283@yahoo.com</a></td>
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<td></td>
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<td>Unit 724, 7th Floor, Wisma Merdeka</td>
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<tr>
<td>14</td>
<td>Utusan Borneo</td>
<td>Tingkat 6, Wisma KTS</td>
<td>No.Tel: 088-318991 No.Faks: 088-315991 Email: UtusanBorneo@<a href="mailto:kk@gmail.com">kk@gmail.com</a></td>
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<td></td>
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<td>Peti Surat 14210, Jln Pantai</td>
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<td>88000 KOTA KINABALU</td>
<td></td>
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<tr>
<td>15</td>
<td>Editor</td>
<td>Overseas Chinese Daily News</td>
<td>Faks: 089-215262 Tel: 089-217204 Email: <a href="mailto:ykin86@gmail.com">ykin86@gmail.com</a></td>
</tr>
<tr>
<td></td>
<td></td>
<td>2nd Floor, Block 16</td>
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<td>Chief Editor</td>
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<td></td>
<td>Overseas Chinese Daily News</td>
<td>No. Fax: 088-241003 No.Tel: 088-256422 Email: <a href="mailto:bongocdn@yahoo.com">bongocdn@yahoo.com</a> (H/P: 019-8206960)</td>
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<td>P. O. Box No. 10139</td>
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<td>88801 KOTA KINABALU</td>
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<tr>
<td>16</td>
<td>Sinar Harian Sabah</td>
<td></td>
<td>Hp: 017-4020879 (Puan Norasikin Daineh) Email: <a href="mailto:norasikindaineh@gmail.com">norasikindaineh@gmail.com</a></td>
</tr>
<tr>
<td>17</td>
<td>Utusan Malaysia Sabah</td>
<td></td>
<td>Hp: 014-5744222 (Puan Suraidah) Email: <a href="mailto:hadieydah18@yahoo.com">hadieydah18@yahoo.com</a></td>
</tr>
</tbody>
</table>
|   | The Vibes                                         | Hp: 010-5668290 (Puan Rebecca)  
Email: rebecca@thevibes.com |
|---|--------------------------------------------------|---------------------------------------------------------------------------------|
|19.| Sabah360 Online                                  | Hp: 014-5521816 (En Yusof)  
Email: armie_bp@yahoo.co.uk                                                      |
|20.| The Malay Mail Sabah                              | Hp: 012-8380800  
Email: julianchan@themalaymailonline.com                                         |
|21.| MalaysiaKini                                     | Hp: 012-2842328 (En. Steven Gan)  
Email: editor@malaysiakini.com & steven@malaysiakini.com                        |