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UN Special Rapporteur on the Rights of Indigenous Peoples
c/o OHCHR-UNOG, Office of the High Commissioner for Human Rights
Palais Wilson, 1211 Geneva 10, Switzerland

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UN Special Rapporteur on Human Rights and the Environment

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Working Group on Business and Human Rights

Communication regarding a Nature Conservation Agreement granting monopoly rights on 2 million hectares of Sabah's forested lands to a private company – Extremely Urgent

1. Local, national, regional and global Indigenous organisations PACOS Trust, Jaringan Orang Asal SeMalaysia (JOAS, Indigenous Peoples' Network of Malaysia), Asia Indigenous Peoples Pact (AIPP) and International Work Group for Indigenous Affairs (IWGIA); with civil society and conservation allies, Borneo Futures, CSO Platform for Reform, Danau Girang Field Centre (DGFC), Land Empowerment Animals People (LEAP), South East Asia Rainforest Research Partnership (SEARRP), WWF Malaysia and the Center for International Environmental Law (CIEL) ("the submitting organisations"), have the honour of making this submission to the United Nations Special Rapporteur on the Rights of Indigenous Peoples ("the Rapporteur").¹ The submitting organisations request that the Rapporteur considers as a matter of extreme urgency the Nature Conservation Agreement (NCA) that purports to grant a Singapore shell company (Hoch Standard Pte Ltd) monopoly rights over nature on 2 million hectares of forest lands in Sabah without consideration of the Native Customary Rights of the Indigenous Peoples of Sabah (Malaysian Borneo). We bring this to your attention due to the significant impact that the NCA will have on the rights of the indigenous peoples of Sabah. Particularly, the NCA is incompatible with their indigenous right to self-determination, their right to Free, Prior, and Informed Consent, as well as their economic, social, cultural, and environmental rights.
2. The submitting parties are addressing this communication to the Rapporteur on the Rights of Indigenous Peoples, while also copying several other relevant special procedure mandate-holders for their reference should both you and those other mandate holders see fit to take joint or coordinated action. However, due to the urgency of this matter, we would respectfully request that if joint or coordinated action would take significantly longer, it would be preferable for the Rapporteur to act in his own right first, with any joint/coordinated action being additional and subsequent to that.

The Issues with Sabah's Nature Conservation Agreement (NCA)

3. **Secret Signing:** On October 28th, 2021 the Sabah State Government in the Federation of Malaysia secretly signed a Nature Conservation Agreement (NCA) with a representative of Singaporean shell-company, Hoch Standard Pte Ltd (HSPL), for a commercial monopoly over all carbon and

¹ Details of the submitting organisations can be found on their websites: [PACOS Trust](#), [Jaringan Orang Asal SeMalaysia](#), [Asia Indigenous Peoples Pact](#), [International Work Group for Indigenous Affairs](#), [Borneo Futures](#), [CSO Platform for Reform](#), [Danau Girang Field Centre](#), [Land Empowerment Animals People](#), [South East Asia Rainforest Research Partnership](#), [WWF Malaysia](#), [Center for International Environmental Law](#)

other natural capital (excepting minerals and timber) in 2 million hectares of Sabah's forest for 100 years' renewable.² Under the NCA, HSPL secures 30% gross revenue from the monetization of nature capital, while the Sabah Government is responsible for most management costs. Sabah's Deputy Chief Minister, Datuk Jeffrey Kitingan, signs as witness for both the Company and for the Government while his long-standing business associate, Stan Lassa Golokin, signs for the Company. The Sabahan public learns of the signing only after the story is broken by Mongabay of the international press on November 9th, 2021, which quotes Peter Burgess, the CEO of one of the associated companies, stating on record that the communities "actually don't know that their jungles have been conserved, have been signed up and are going to be conserved for 200 years."³

4. **Major Public Concern:** News of the NCA generated immediate concern in Sabah. Indigenous civil society leaders in Sabah, Anne Lasimbang and Beverly Joeman were quoted in the press as saying, respectively, that news of the NCA "was like something exploding in your face",⁴ and "how can it be that it was signed when we didn't even know the deal existed?", and "where is the free, prior and informed consent practice here? Respect the rights of the people of Sabah."⁵ Meanwhile, the Jaringan Orang Asal SeMalaysia (Indigenous Peoples' Network of Malaysia, JOAS) President, Paulus Gahin, singled out the "secretive" NCA in an event on the UN SDGs and said that "it was due to the foreign media's initial expose that they knew the deal that ignored indigenous people's rights to their free and prior informed consent (FPIC)".⁶ On November 11th, 2021 the Malaysian press published a statement on the NCA from 10 Sabah-based civil society, indigenous and conservation organisations expressing concern and calling for transparency, due process and stakeholder engagement.⁷ These agencies emphasize "local, national and international standards [are] in place around transparency and consultation of stakeholders, in particular FPIC"; and argued for open tendering and stakeholder technical review of the terms and plans while noting that poor process would damage Sabah's reputation for sound environmental governance which had been built by cross-sectoral collaboration over many years. Furthermore, monopoly terms under the NCA would "have implications for existing conservation, carbon and ecosystem service agreements that have been initiated by Sabah's own institutions and longstanding partners". The civil society statement also argued that Sabah had the capacity to develop carbon trading without a need to share revenues with external brokers. Similar joint civil society statements have followed, alongside press statements by prominent civil society institutions in the state.⁸ Concern with the NCA was also much reflected in social media, dozens

² The unsigned NCA is available [here](#)

³ *Mongabay*, "[Bornean communities locked into 2-million-hectare carbon deal they don't know about](#)", John Cannon, 9th November, 2021

⁴ *Mongabay*, "[Details emerge around closed-door carbon deal in Malaysian Borneo](#)", John Cannon, 24th November, 2021

⁵ *Free Malaysia Today*, "[More questions than answers on Sabah carbon trade deal](#)", Durie Rainer Fong, 18th November, 2021

⁶ *Daily Express*, "[Orang Asal kept in the dark](#)", David Thien, 31st December, 2021

⁷ *Malay Mail*, "[Conservation groups call for transparency, engagement in controversial Sabah carbon deal project](#)", Julia Chan, 11th November, 2021. The parties were: Bornean Sun Bear Conservation Centre, Borneo Rhino Alliance, Danau Girang Field Centre, LEAP – Land Empowerment Animals People, PACOS Trust, Sabah Environmental Trust, Seratu Aatai, South East Asia Rainforest Research Partnership and WWF Malaysia.

⁸ See also the statement by 32 civil society organisations and 56 individuals to the State Assembly ("[Demand for Engagement, Disclosure and Transparency on Sabah Forest Carbon Deal in the Nature Conservation Agreement \(NCA\)](#)") on 6th December, 2021; the statement by 11 civil society organisations on the flaws of the NCA (*New Straits Times*, "[Address NCA technical issues to fully benefit from carbon trade deal, says 11 Sabah](#)

of articles in the local, national and international press (especially Mongabay and Al Jazeera) that independently confirmed civil society's concerns and galvanised government action (For timeline and lists of materials see Appendix 1).

5. **NCA Rationale Unconvincing:** On November 12th, 2021 the Sabah Deputy Chief Minister, Jeffrey Kitingan, the sole protagonist for the NCA in the Sabah Government, defended the NCA as benefiting Sabah environmentally and financially, with the 2 million hectares earning RM3.2 billion (\$800m) from carbon trading annually.⁹ Kitingan told the public that “I can assure you it will not affect the indigenous people,” and alleged that “the United Nations required that the profits be spent on the 17 Sustainable Development Goals”. We return below to the use of the good name of the United Nations to mislead Sabahans that the NCA is being undertaken with the partnership and safeguards of the United Nations system. In addition to carbon trading, the NCA seeks to privatise and monetize biodiversity and other natural capital. Kitingan claimed “Other aspects of nature capital, non-carbon, are far more valuable, but there isn’t a globally accepted formula to measure those yet. But those can fetch even more later, without the state losing anything in the process. It is creating value from what we have that is not generating any income, and without losing our assets. In fact, we are protecting it for future generations.” At no point in the NCA or associated materials is the existence acknowledged of the Convention on Biological Diversity, the Nagoya Protocol, or any other relevant international legal instrument in respect to Access and Benefit Sharing. Kitingan also articulated his political rationale as advancing sovereignty for the state government “we can generate our own income from assets that are rightfully ours — land and forests. We don’t want to continually be dependent on the federal government for handouts so we need to be able to earn revenue where we can. They are already talking about legislating carbon. If they can take our oil, then they can take this too.” Kitingan scheduled an NGO Briefing on November 18th ostensibly to discuss the NCA. Instead “defamation” was raised when a participant asked questions, and barely any relevant information was shared, most of which contradicted the facts already in the public domain. Kitingan declared afterwards “I’m satisfied that we have been able to connect, understand each other and clarify their concerns. I’m sure they are also happy with it, so we can move forward from here to ensure the NCA is accepted and implemented. We have explained whatever shortcomings (that were) raised and we will rectify what needs rectification.” While the press reported that the NGOs left “unhappy and with more questions than answers”.¹⁰ Overall, every aspect of the NCA rationale has been unconvincing to civil society and technical experts starting with fundamental misunderstanding and misrepresentations of carbon trading and prices, but ending up firmly in governance and abuse of rights.
6. **Alarming Failures in Due Diligence:** The primary concern for Sabahan civil society has been the absence of due diligence. From the initial “NGO Briefing”, and in every press statement since, Kitingan has deflected any and all efforts to examine the actual legal and financial arrangements of the NCA and obscure who has controlling interests in the multi-billion dollar revenues that he projects will be earned through HSPL. This concern has only been strengthened by the obvious falsehoods about HSPL’s standing and financial backers, with Kitingan presenting them as a

[NGOs](#)”, 9th February, 2021), and the statement by the Sabah Environmental Protection Association (*Free Malaysia Today*, [“More questions than answers on Sabah carbon trade deal”](#), op. cit., 18th November, 2021).

⁹ *Malay Mail*, [“Sabah DCM defends carbon deal, says it will benefit state both environmentally and financially”](#), Julia Chan, 12th November, 2021

¹⁰ *Free Malaysia Today*, [“More questions than answers”](#), op. cit., 18th November, 2021

“global player, involved in private equity funding all over the world” and “backed by several multi-billion private equity funding institutions ... dealing with other countries, such as Indonesia, Australia, South America dealing with monetising natural capital”.¹¹ This is despite denials from Temasek Holdings,¹² the most important named financial agency, Southern Capital, the most likely backer named in promotional materials,¹³ and in direct contradiction to the statement Dr. Ho Choon Hou, who is said to control HSPL,¹⁴ and whose reputation as a Singapore physician, venture capitalist and Non-Resident Ambassador to Mexico,¹⁵ has continually been used by protagonists to assert the legitimacy of the deal. However, detailed reports citing a wide array of legal, press and academic research has shown that HSPL is one of a cluster of shell-companies lacking adequate capital, staff, offices, substantive experience or qualification to implement this deal, with ultimate control vested in a British Virgin Islands company, Lionsgate Ltd, whose existence and ownership NCA protagonists decided to keep secret.¹⁶ Stan Golokin and other NCA protagonists were documented in these reports as close business associates of Kitingan dating from the period (1986-1994) in which he ran Sabah Foundation (holders of one million hectares of the state’s forest estate), proposing schemes to earn outsized revenues to improve Sabah’s political standing in the Malaysian Federation. Ultimately, claim multiple contemporary media, legal and academic sources, a Price Waterhouse audit found \$1 billion unaccounted for and a whole array of failed businesses, foreign shell companies, logged-out forests and elaborate pricing ruses diverting money from the public purse. Kitingan was detained under the notorious national security legislation, but avoided the many regular corruption charges through a series of technicalities in the Hong Kong and Malaysian courts and ultimately by defecting to the Federal Government. Golokin left the country at that time.¹⁷ Since this history is well-known, the prospect of similar financial opportunities under the NCA appeared to attract many in the business-political class to align themselves with Kitingan. In contrast, civil society despaired that the State Attorney General’s efforts to require the basic due diligence to verify any such relationships were obstructed since at least May 2021 by NCA protagonists, especially Kitingan.¹⁸

¹¹ *Malay Mail*, [“Sabah DCM bullish on carbon deal, says won’t get ‘conned’”](#), Julia Chan, 18th November, 2021

¹² *Al Jazeera*, [“‘Very hush-hush’: Borneo’s \\$80bn carbon deal stokes controversy”](#), Ian Neubauer, 2nd February, 2022

¹³ *Mongabay* [“Indigenous leader sues over Borneo natural capital deal”](#), John Cannon, December 17th, 2021

¹⁴ Dr. Ho stated in his only statement to the press on the NCA that he is “the sole funder at this point of time” adding “I have been funding the working capital of the team, advisers, legal fees, etc.”. Meanwhile he deepened Asia-Pacific regional concerns by alleging “we are now in active discussion also with Sulawesi, Western Australia, and East Timor”. *The Vibes* [“Not just US\\$1,000: Hoch Standard clarifies involvement with Sabah NCA”](#), Jason Santos, 6th February, 2022

¹⁵ [“Appointment of Non-Resident Ambassador to the United Mexican States and Non-Resident Ambassador to the Holy See”](#), Ministry of Foreign Affairs, Singapore, 29th September 2020

¹⁶ See also the anonymous Due Diligence Memo on the seven companies associated with the NCA ([“Who Are the Companies Connected to Sabah’s Controversial Nature Conservation Agreement?”](#)), 21st November, 2021

¹⁷ See also the anonymous report on the historic relationship of Kitingan and Golokin ([“Troubling Questions: Connections Between Mr. Stan Lassa Golokin and Datuk Jeffrey G. Kitingan”](#)), 2nd December, 2021

¹⁸ *Al Jazeera*, quotes documents describing as “deeply disturbing” State due diligence efforts prior to signing, on the grounds that Dr. Ho “has an impeccable reputation”, see [“‘Very hush-hush’: Borneo’s \\$80bn carbon deal stokes controversy”](#), op. cit., 2nd February, 2022; while *Mongabay* reports “Apparently, however, some or all of the routine investigation prior to signing was blocked during negotiations. According to documents and WhatsApp exchanges seen by Mongabay, key figures in favor of finalizing the agreement actively discouraged probes into the people and firms involved as early as mid-2021”, [“Indigenous leader sues over Borneo natural capital deal”](#) op. cit., December 17th, 2021; Kitingan wrote to Dr. Ho directly countermanding the AG’s instructions on 1st December, 2021; see *Daily Express* [“AG Orders probe into leak”](#), Hayati Dzulkifli, 2nd December, 2021. The Sabah Attorney General’s Press Statement also makes clear that she will no longer

A whistle-blower justified himself to Al Jazeera by saying that he was “sick to his stomach” since the NCA was such an “obvious con”.¹⁹

7. **State Government Strong-Armed:** Leaked correspondence from the Chief Conservator of Forests (CCF) and State Attorney General in the aftermath of signing, and subsequent press interviews, make clear that Sabah’s public servants had deep misgivings about the legal and technical shortcomings of the NCA and sought to resolve them and/or delay signing.²⁰ The CCF told Al Jazeera that he had been “pressured” to sign;²¹ though present the AG did not sign or witness the NCA. Kitingan overrode these obstacles by threatening to pull his party out of the ruling coalition to bring down the State Government if the NCA was not signed in the run-up to Glasgow COP26.²² This threat continues, as stated on record with Al Jazeera.²³
8. **State Legislative Assembly (DUN) Sidestepped:** Kitingan claimed it was not necessary to bring the NCA to the DUN on the grounds that it did not require new law-making,²⁴ but he did take questions during the debate on the 2022 State Budget. These questions were pointed, diverse and hostile, and almost entirely unanswered (despite the interventions of the Speaker), and focused on inappropriate process, lack of due diligence, and the state-federal framework for carbon trading.²⁵ 32 civil society organisations and 56 concerned individuals prepared and circulated a Memorandum for this sitting identifying precisely how the NCA compromised the functions and integrity of the DUN to legislate and oversee state budget and expenditure; four recommendations address transparency, due diligence, FPIC, and stakeholder consultation.²⁶ Following this sitting, politicians from across the opposition parties continued to pose critical questions and commentaries in the press, while coalition government MPs remained silent.²⁷ The Chief Minister offered to set up a Select Committee on the NCA to ensure “there is

tolerate HSPL’s resistance to thorough due diligence; see *Nabalu News*, [“Press statement of the state Attorney-General’s Chambers of Sabah regarding the proposed NCA”](#), 9th February, 2022.

¹⁹ *Al Jazeera*, [“‘Very hush-hush’: Borneo’s \\$80bn carbon deal stokes controversy”](#), op. cit., 2nd February, 2022

²⁰ CCF to AG ([“\(1\) Nature Conservation Agreement, \(2\) List of Concerns for NCA Addendum Negotiation, \(3\) Proposed Amendments to the Forest Enactment 1968, \(4\) Proposed New Rules Under Forest Enactment 1968, \(5\) Indicative Map of Designated Areas”](#)), 29th October, 2021; AG to HSPL ([“Nature Conservation Agreement between the Government of the State of Sabah and Hoch Standard Pte. Ltd. \(the ‘Agreement’\)”](#)), 8th

November, 2021; CCF to HSPL ([“Nature Conservation Agreement Between the Government of the State of Sabah and Hoch Standard Pte. Ltd. \(the ‘Agreement’\)”](#)) 17th November, 2021; *The Star*, [“Sabah Nature Conservation agreement yet to be finalised, says Sabah Forestry Dept”](#), Stephanie Lee, 11th November, 2021

²¹ *Al Jazeera*, [“‘Very hush-hush’: Borneo’s \\$80bn carbon deal stokes controversy”](#), op. cit., 2nd February, 2022

²² The dynamics of political patronage and dysfunction behind this are laid out by Sabahan civil society leader Cynthia Ong in Mongabay ([“Is colonial history repeating itself with Sabah forest carbon deal? \(commentary\)”](#)), 1st December, 2021 and a podcast [“What do two giant land deals mean for the future of Southeast Asia’s forests?”](#), 8th December, 2021

²³ Kitingan reporting he “would leave the ruling coalition if the project was blocked”, *Al Jazeera*, [“‘Very hush-hush’: Borneo’s \\$80bn carbon deal stokes controversy”](#), op. cit., 2nd February, 2022

²⁴ *Borneo Post*, [“Nature Conservation Agreement won’t be brought to State Assembly – Jeffrey”](#), Mariah Doksil, 18th November, 2021

²⁵ *Malay Mail*, [“DCM Jeffrey Kitingan in hot seat at state assembly over Sabah carbon trading deal”](#), Julia Chan, 8th December, 2021, and *The Vibes*, [“War of words break out in Sabah over Nature Conservation Agreement”](#), Jason Santos, 8th December, 2021

²⁶ Joint Memorandum by Civil Society to DUN [“Demand for Engagement, Disclosure and Transparency on Sabah Forest Carbon Deal in the Nature Conservation Agreement \(NCA\)”](#), 6th December, 2021

²⁷ *Daily Express*, [“Disclose details of Nature Conservation Agreement: Darell”](#), Hayati Dzulkilfi, 8th December, 2021

transparency in its implementation”,²⁸ but this is yet to happen. Procedures against Kitingan for misleading the House on the authority to sign the NCA, the completion of due diligence, and the financial standing of HSPL have apparently been mooted, as well as demands that the Legislative Assembly have the opportunity to vote on the NCA.²⁹ Meanwhile Kitingan told Al Jazeera that the DUN had approved it.³⁰

9. **NCA Signed without Clear Authority:** The NCA was signed for HSPL by Stan Golokin on the authority of Dr. Ho Choon Hou; but due diligence shows Dr. Ho actually holds no legal authority at the shell company in his name, except, perhaps, through the secret shareholder, Lionsgate Ltd in the British Virgin Islands.³¹ Meanwhile, documentary evidence shows that the Cabinet had not authorised signing of the NCA,³² and, as noted above, neither was approval sought or obtained from Sabah’s Legislative Assembly (DUN). How can a deal signed in secret without authority bind the Peoples of Sabah for generations?

10. **Legal Action Initiated:** On November 29th, 2021 Adrian Lasimbang filed suit in the Sabah High Court to request documents to determine if and how the NCA would impact Sabah’s Native communities, naming the Chief Conservator of Forests (CCF) and the Government of Sabah.³³ ‘Banie’ Lasimbang is a well-known Kadazan indigenous leader and rights advocate from Penampang, with an international reputation for his work on renewable energy and climate change. He is a former Senator (DAP); the founder of TONIBUNG, a pioneering community-based renewable energy NGO; and an Acumen Fellow.³⁴ Court documents record Lasimbang suing as a representative of the Native Communities of Sabah holding Native Customary title and right over un-alienated State land of a proprietary and/or usufructuary nature.³⁵ HSPL’s attempt to legally intervene proved late, and Lasimbang was provided with the documents on January 19th, 2022, informing the press that these show the earlier leaks were legitimate.³⁶ Lasimbang’s next moves are not in the public domain; the onus remains on the State Government to select the Designated Area, at which point the indigenous communities impacted can be identified. Kitingan announces “he is considering legal action against Al-Jazeera, Lasimbang and others who are actively disseminating false information to the public, particularly those that are defaming his name”; Lasimbang responds he “can sue me so I can provide him the opportunity to expose all the necessary evidence to prove that the NCA deal is not a ‘scam’ to the court and the public can be

²⁸ *The Star*, [“Hajiji: Sabah can form select committee on conservation deal if it's needed for transparency”](#), Stephanie Lee, 9th December, 2021

²⁹ *Daily Express*, [“NCA ‘promoted in Scotland even before finalised”](#), 17th February, 2022

³⁰ *Al Jazeera*, [“‘Very hush-hush’: Borneo’s \\$80bn carbon deal stokes controversy”](#), op. cit., February 2nd, 2022

³¹ Sabah Attorney General’s leaked letter ([“Nature Conservation Agreement Between the Government of the State of Sabah and Hoch Standard Pte. Ltd. \(the ‘Agreement’\)”](#)), 1st December, 2021; Due Diligence Memo ([“Who Are the Companies Connected to Sabah’s Controversial Nature Conservation Agreement?”](#)), 21st November, 2021

³² *Al Jazeera*, [“‘Very hush-hush’: Borneo’s \\$80bn carbon deal stokes controversy”](#), op. cit., February 2nd, 2022

³³ See *Daily Express*, [“Now NCA faces legal challenge”](#), Oswald Supi, December 12th, 2021; and *Mongabay*, [“Indigenous leader sues over Borneo natural capital deal”](#), op. cit., 17th December, 2021

³⁴ *Acumen Academy*, [“Meet the Fellows: Adrian Banie Lasimbang”](#)

³⁵ Originating Summons BKI-24NCvC-126/11-2021(HC3).

³⁶ *Borneo Post*, [“Suit will clear air on carbon deal, says former senator”](#), 5th February, 2022

informed.”³⁷ With respect to Al Jazeera, the State Government “has no comment on the allegations made against certain individuals or individual members of the government”.³⁸

11. **Anti-Corruption Complaint Submitted:** The opposition Warisan Party announced it had formally lodged a report with the Malaysian Anti-Corruption Commission (MACC) over the NCA on February 7th, 2022.³⁹ The details are not yet in the public domain.
12. **Technical Non-Viability:** Independent studies summarised in a Technical report make clear that the entire premise of the NCA – marketing carbon from Sabah’s Totally Protected Areas – is fundamentally flawed because of lack of “additionality”. The only possibility – and this also lacks international precedent – would be to argue that restoration is not a current practice or obligation of Sabah’s conservation agencies and, therefore, additional carbon sequestered through restoration could be marketed.⁴⁰ The Report shows that the problem with this is that tropical forest restoration is just too hard to do at large scale (the maximum achieved in a year during thirty years of such efforts in Sabah is 2,000 hectares), yields only a quarter of the carbon per hectare claimed by NCA proponents, and is way too expensive to be profitable at current carbon prices even if it were possible (in fact it only achieves break even at many times the current carbon price). Among the Report’s conclusions are that “it is unlikely that the NCA, in its current form, could be certified to any internationally recognised carbon standard” and “it is highly unlikely ... that the NCA could generate sufficient saleable carbon to meet the costs of restoration – with no reasonable prospect of the project generating any additional revenue for the State for several decades”. Overall, Kitingan’s misrepresentation of the financial aspects of the deal over-estimate its carbon credit income by perhaps one thousand times. Meanwhile, the structure of deal means that even while the State Government is losing money on restoration costs, HSPL would earn 30% of the gross revenue from sales with minimal expenses.⁴¹
13. **Legal Problems with the NCA:** Though the NCA contains secrecy clauses, and though its protagonists made significant effort to obscure its content, drafts and then the final signed document soon leaked alongside detailed analyses of its “unfair and absurd clauses”, as the Sabah Attorney General was to later call them in an official press release.⁴² Problems include: (1) Jurisdiction: whereby aspects of the NCA and its mediation are governed under Singapore Law; (2) Scale & Monopoly: where half of Sabah’s forests are granted under 100-year renewable lease as a monopoly to an unknown commercial party without the public being informed; (3) Irrevocable: many clauses in the NCA seek to make it impossible for future or present Sabah Governments to cancel the NCA or for the Legislative Assembly to pass laws that impact its financial profitability without payment of compensation equivalent to cash flow to the end of the 100 year contract; (4) Foreign Control: the NCA grants rights to this Singapore shell company to sell on these rights to any entity without Sabah Government needing to give consent; (5) Limited Due Diligence (see above); (6) Rights Granted are Extensive and Vague: and appear to seek to

³⁷ *Borneo Post*, [“Suit will clear air on carbon deal, says former senator”](#), op. cit., 5th February, 2022

³⁸ *Nabalu News*, [“Press statement of the state Attorney-General’s Chambers of Sabah regarding the proposed NCA”](#), 9th February, 2022

³⁹ *The Edge Markets*, [“Warisan lodges report with MACC over NCA deal”](#), 7th February, 2022

⁴⁰ See the technical report ([“Technical & financial impediments to the viability of the Nature Conservation Agreement \(NCA\)”](#)), Prof. David Burslem & Dr. Glen Reynolds, 15th February, 2022

⁴¹ See infographic ([“The NCA: A Flawed Business Model”](#)), Carbon Sovereign Sabah, 28th December, 2021

⁴² *Nabalu News*, [“Press statement of the state Attorney-General’s Chambers of Sabah regarding the proposed NCA”](#), 9th February, 2022

control any commercial use of any natural capital or any ecosystem service except for oil, timber, gas and mining; (7) No FPIC (see below); (8) Performance Guarantees: no Performance Bond, HSPL only required to prepare Management Plan and commercialise 50,000 hectares within two years, REDD+ standards required but no biodiversity guarantees or financial performance targets; (9) Trading & Payment Mechanisms: arrangements are lopsided and ignorant of basic carbon credit trading procedures; (10) Profitability: Sabah Government is required to bear all the major costs of generating carbon credits while the company earns 30% gross revenue.⁴³ A similar list of concerns with rigorous attention to the detail, has emerged from whistleblowing insiders,⁴⁴ the civil service,⁴⁵ and the Sabah Attorney General herself.⁴⁶ Since Kitingan, as the Deputy Chief Minister, believes that he has the political mandate to override such legalities and concerns,⁴⁷ international pressure will apparently be required.

- 14. Additional Legal Issues:** In addition to issues of Native Customary Rights (see below) and around due diligence and fraud (see above) there are at least three areas where the NCA appears in contradiction with existing domestic legislation. (a) Sabah's Forest Enactment (1968) Section 15(1) does not permit the licensing for commercial exploitation of natural resources in Totally Protected Areas (Forest Reserve Classes I, VI and VII); (b) in addition to the many clauses under the Sabah Biodiversity Enactment (2000) that guarantee native and community rights (see below), the entire premise of the NCA is voided by the failure to work within the legal framework of the Sabah Biodiversity Council for access to commercial rights over the state's biodiversity heritage; (c) the Malaysia Contracts Act, 1950 voids the many clauses in the NCA that seek to bind the Sabah Legislature in regard to passing legislation that impacts the NCA without providing financial compensation to the end of the contract. In addition, it is clear that Sabah will not be able to accredit and sell Carbon Credits already included in Malaysia's NDCs under the Paris Agreement, despite claims by Stan Golokin.⁴⁸
- 15. Position of Sabah Attorney General:** Sabah Attorney General, Datuk Nor Asiah Binti Mohd Yusof, issued a major press statement on behalf of the Sabah Government on February 9th, 2022,⁴⁹ that opens with the Sabah Government's five-point policy on carbon trading, which includes "no handing-over" of land in any fashion to third parties; "carbon sovereignty" as core; no carbon trading without FPIC; and the role the Sabah Climate Action Council (SCAC) "to manage a carbon

⁴³ See anonymous infographic ("[What is the Nature Conservation Agreement \(NCA\) Between Sabah State Government & Hoch Standard?](#)"), 30th November, 2021

⁴⁴ *Daily Express*, "[Scrap NCA deal if answers are not forthcoming](#)", 21st November, 2021; *Al Jazeera*, "[Very hush-hush: Borneo's \\$80bn carbon deal stokes controversy](#)", op. cit., 2nd February, 2022

⁴⁵ CCF Letter to HSPL ("[Nature Conservation Agreement Between the Government of the State of Sabah and Hoch Standard Pte. Ltd. \(the 'Agreement'\)](#)"), 17th November, 2021. *The Star*, "[Sabah nature conservation agreement yet to be finalised, says Sabah Forestry Dept](#)", op. cit., 11th November, 2021

⁴⁶ *Nabalu News*, "[Press statement of the state Attorney-General's Chambers of Sabah regarding the proposed NCA](#)", 9th February, 2022

⁴⁷ Kitingan stated on record: "As for Sabah attorney-general Datuk Nor Asiah Mohd Yusof disabling the NCA, he said the AG can only advise but the government will decide. Anyway, she (Nor Asiah) cooperated with the NCA. She was also there during the signing of the NCA on October 28, last year." *The Vibes*, "[Sabah should implement NCA before federal law is passed: Jeffrey](#)", Jason Santos, 7th February, 2022

⁴⁸ Golokin misleadingly claims there was a "real possibility that Sabah is given special flexibility to sell their carbon credit" and that "in terms of legislation, there has not been definitive agreement in terms of the World Bank NDC Platform and therefore, Sabah has been given such privileges". *The Vibes*, "[Not just US\\$1,000](#)", op. cit., 6th February, 2021

⁴⁹ *Nabalu News*, "[Press statement of the state Attorney-General's Chambers of Sabah regarding the proposed NCA](#)", 9th February, 2022

future in alignment with recognised global standards, safeguards and processes that prioritise equity, inclusion, transparency and multilateralism”. Next the Press Statement describes the status of the NCA, asserting what was signed in October 2021 was a “non-binding framework” subject to “due diligence to the satisfaction of the State Attorney-General and the Cabinet”, inclusion of an Addendum “by which all unfair and absurd contract terms are removed”, the “identification and obtaining” of FPIC “from all affected Native Communities”, and identification of “suitable and available TPAs” as the Designated Area. Without this the NCA “in its present form is legally impotent”. The AG makes clear that the Sabah Government will require this Amendment to address a long list of technical and legal issues, as well as demanding cooperation with the State AG’s efforts to gather the facts about HSPL “notwithstanding” HSPL’s “several representations”, in order to confirm “the truth and reliability of HSPL’s representations and capability”. Notably it then declares that “unless and until HSPL, its promoters and affiliates, meet the requirements of the State Government, the proposed NCA will not succeed.” The document ends by highlighting that the SCAC and its advisory committee will “assess and advise the Cabinet on all matters related to the NCA”, adding “the Cabinet reserves its right not to finalise the NCA” and that the Committee will lead a “multi-party dialogue with all stakeholders where representations from across all political factions in Sabah will be called upon”.

16. **Current Status (February 20th, 2022):** Despite the fact that the NCA has lost legal, technical and financial credibility and has proven to be a significant liability to the state government in the domestic, federal and international arenas, the protagonist, Deputy Chief Minister Kitingan, is not backing down and continues to mobilise support locally and internationally. Unofficial reports state his Ministry of Agriculture & Fisheries, are preparing a White Paper on NCA implementation for Cabinet. This will cut across the Attorney General’s current effort to complete basic due diligence. Asked recently about the NCA Kitingan said: “It is going good (well). Those who make noise, they do not understand or because they have some personal or private interests, that is why they said something.’ When asked about Sabah forests experts’ views that the deal is unlikely certifiable, saleable or profitable, Jeffrey disagreed with the co-authors of the report ‘We won’t do it if it is not bringing in revenue, right now we have zero revenue on carbon. Anything comes in from nothing, it is good, right? It (the deal) is viable but there is a court case, I cannot talk or it will be sub judice.’”⁵⁰

Indigenous Rights, Rights of Nature and the Role of the United Nations: Our Requests

17. **Free Prior and Informed Consent (FPIC), and Native Customary Rights:** The NCA makes no single reference to the existence of, or respect for, Indigenous Peoples, Free Prior and Informed Consent (FPIC), and Native Customary Rights. Furthermore, the protagonists have, from the outset, and in every press interview on the issue, denied the need and relevance of consideration of such rights. If these were to be addressed, stated Ng of HSPL, “the engagement and securing” of the interests of indigenous peoples would be the “responsibility” of the local government and not HSPL.⁵¹ The much repeated position of Kitingan is that the activities of the NCA will not impact communities, and that because the NCA is intended to cover Totally Protected Areas any Native Customary Rights have been addressed and extinguished during their gazettelement.⁵² It is noteworthy that this is not the position of Sabah’s Chief Conservator of Forests who has stated in

⁵⁰ *New Straits Times*, [“Everything is good about Nature Conservation Agreement, says Jeffrey”](#), Olivia Miwil, 19th February, 2022. (There are currently no criminal proceedings so the case is not sub judice.)

⁵¹ *Mongabay*, [“Indigenous leader sues over Borneo natural capital deal”](#), op. cit., 17th December, 2021

⁵² *Malay Mail*, [“Sabah DCM bullish on carbon deal”](#), op.cit, 18th November, 2021

the press that “consent from each native community will be required before these rights are 'signed away' through the NCA”;⁵³ nor is it the position of Sabah’s Attorney General who the notes that the NCA will require “identification and obtaining” of FPIC “from all affected Native Communities”, before it can be brought into force.⁵⁴ Multiple joint statements from civil society organisations on the NCA has explicitly included reference to NCR and FPIC (see above). WWF-Malaysia in their own statement said there was need to “ensure that it adheres to existing protocols and safeguards for all affected parties, especially native communities”.⁵⁵ Interviews with individual Indigenous and civil society leaders in the state all assert FPIC (see above), as does Lasimbang’s legal challenge. Opposition parliamentarians, raised the issue, for example Datuk Ewon Benedick (UPKO-Kadamaian) “asked the state government to reconsider the deal as it only benefited outsiders and would infringe upon the traditional rights of indigenous peoples in such areas”.⁵⁶ Native Customary Rights (NCR) are enshrined by the Sabah Land Ordinance of 1930 (revised in 1996), which is the foundation for the State’s land tenure system.⁵⁷ Malaysia is a signatory to UNDRIP.⁵⁸ One of the TPAs likely to be centre-stage under the NCA is the Crocker Range “Man and the Biosphere Reserve”, where United Nation’s endorsed community use zones are legally recognised and respected in park management plans and practices, so Indigenous communities can sustainably harvest natural resources for subsistence use and trading.⁵⁹ The NCA would extinguish these rights, as warned by Lasimbang in his press statements explaining the need for his legal action.⁶⁰

The NCA was negotiated and signed while ignoring the Native Customary Rights of the Indigenous Peoples of Sabah (Malaysian Borneo), amounting to a violation of their rights to Free Prior Informed Consent and self-determination, including the right to be free from racial discrimination under international law. The Agreement is an unequivocal example of a lack of respect and acknowledgment of the rights of Indigenous Peoples to effectively participate in public life, and be able "to determine and develop priorities and strategies for the development or use of their lands or territories and other resources".⁶¹ NCA protagonists failed to respect the Sabahan Peoples indigenous rights, by taking decisions about indigenous traditional territories, lands, and natural resources without any consideration for People of Sabah’s right to self-determination as established in the United Nations Declaration on the Rights of Indigenous Peoples. The process for approval of the NCA failed to ensure any effective opportunities for the Sabah People to

⁵³ *The Star*, [“Sabah nature conservation agreement yet to be finalised, says Sabah Forestry Dept”](#), op. cit. 11th November, 2021

⁵⁴ *Nabalu News*, [“Press statement of the state Attorney-General's Chambers of Sabah regarding the proposed NCA”](#), 9th February, 2022

⁵⁵ *The Star*, [“WWF Malaysia urges close scrutiny on Sabah's carbon trading deal”](#), Muguntan Vanar, 16th November, 2021

⁵⁶ *The Star*, [“Shafie urges Sabah to drop controversial carbon credit deal”](#), Muguntan Vanar, 6th December, 2021; this Assemblyman has announced in the press his support for Lasimbang’s legal challenge around indigenous rights, *Nabalu News*, [“UPKO sokong NCA dibawa ke mahkamah – Ewon”](#), 21st February, 2022

⁵⁷ Juprin Wong-Adamal, “Native Customary Land Rights in Sabah”, *Journal of Malaysian and Comparative Law*, Vol 25, 1998

⁵⁸ The Declaration on the Rights of Indigenous Peoples (document A/61/L.67) was adopted on 13 September 2007 by a recorded vote of 143 in favour– including Malaysia, to 4 against, with 11 abstentions.

⁵⁹ [“Crocker Range Park: Community Use Zone \(CUZ\)”](#), Yassin Miki et al. IUCN World Parks Congress, 2014 and “Community Use Zone (CUZ) Model and Its Outcome in Malaysia Case Study from Crocker Range Park, Sabah”, Peter Voo et al., *Journal of Management and Sustainability*; Vol. 6, No. 3; 2016

⁶⁰ *Daily Express*, [“Now NCA faces legal challenge”](#), Oswald Supi, 12th December, 2021

⁶¹ Article 32 of the UNDRIP.

participate in decisions that affect their rights, including their right to free, prior and informed consultation and consent. Even in the context of purported conservation initiatives like the NCA, "Indigenous Peoples should be consulted and participate in designing, implementing, managing, and monitoring [of these initiatives] and have effective access to complaints mechanisms to seek remedies for violations of their rights."⁶² However, none of these Indigenous Peoples' rights standards was met by the NCA. Instead, this agreement jeopardizes collective rights, including access to land, health, well-being, housing, and food security, and perpetuates marginalization and discrimination against Indigenous People that have been consistently observed by the UN Special Rapporteurs in the region.⁶³

We call upon the UN Special Rapporteur on the Rights of Indigenous Peoples to remind the NCA protagonists that failure to comply with international treaties and domestic law in these matters will prevent access under the NCA to international carbon trading markets.

18. **Indigenous Representation:** Political support for the NCA is almost entirely confined to the large and internally diverse Kadazandusun ethnic group, the constituency for Kitingan's political party, STAR. However, within this grouping, there are similar numbers who question the wisdom of the NCA. Kitingan holds the Kadazandusun title Huguan Siou Lundu Mirongod (paramount thinker), a revived traditional title developed to advance group interests politically and without decision-making authority; his brother Pairin, a former Chief Minister, holds the supreme title, Huguan Siou (paramount leader). Kitingan's allies and clients use social media and personal outreach to represent the NCA as an instrument for advancing the realisation of Kadazandusun rights, either directly or through political patronage. He conflates FPIC with politics, recently defending the lack of consultation with Indigenous Peoples to Al Jazeera stating "we, as leaders, represent our constituencies that are mostly Indigenous voters."⁶⁴ Meanwhile, the only civil society statement supporting the NCA quoted in the press was allegedly from a Dusun community organisation connected to a Kitingan ally called Moningolig Pogun Tokou (MOPOT), who make the non-credible assertion that the government "is the sole conservator of all jungles and mangroves, rivers, mountains and plains, and ecological beings."⁶⁵ It should be noted that the forests intended for designation under the NCA are located in the historical territories of many different Indigenous and local communities across Sabah.

We call upon the UN Special Rapporteur on the Rights of Indigenous Peoples to remind the NCA protagonists that UNDRIP and FPIC provide rights of self-representation to the full diversity of communities independently of political leaders.

⁶² UN General Assembly, ["Report of the Special Rapporteur on the rights of indigenous peoples \(A/HRC/45/34/Add.3\)."](#) *Regional consultation on the rights of indigenous peoples in Asia*, September 4, 2020, at para. 77.

⁶³ See *Id.* Additionally, [in a statement on his visit to Malaysia from 13 to 23 August 2019](#), Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights, narrates that Indigenous Peoples in Sarawak, Sabah, and Peninsular Malaysia People expressed to him their concerns due to the fact that "the states continue to find devious ways to deprive indigenous communities of the land they have traditionally relied upon, for example by disingenuously declaring their land a 'forest reserve' while allowing corporate actors to exploit the area."

⁶⁴ *Al Jazeera* ["Malaysian state's top lawyer declares Borneo carbon deal dead, Critics say \\$76.5bn carbon capture project in Sabah state is unfeasible and lacking in transparency"](#), Ian Neubauer, 24th February 2022

⁶⁵ *Mongabay*, ["Details emerge around closed-door carbon deal in Malaysian Borneo"](#), op. cit., 24th November, 2021

19. **Privatizing Collective Heritage and Rights of Nature:** The NCA treats life in the forests of this part of Borneo as a commodity that a government leader has the right to make available for alienation, in entirety and as a long-term commercial monopoly, to a private company. We believe this is a dangerous precedent internationally and contrary to natural justice. The biodiversity and living ecosystems of Sabah are of global significance and cannot be subject to the whim of individual leaders, and indeed should not be treated as if they are financial assets. The fact that our state's Totally Protected Areas (TPAs), which we have set aside and cherished for the conservation of our collective heritage, can be handed over in secret and without shame to an unaccountable company should also be of international concern. One of these TPAs is a World Heritage Site (Kinabalu Park) with another (DaMal) under World Heritage application,⁶⁶ while a third is a UNESCO Biosphere Reserve (Crocker Range), and a fourth is a Ramsar site (Lower Kinabatangan Segama Wetlands). The fact that a leader can argue that this is justified on the grounds of big money and government sovereignty, as part of a circular green economy, and as a significant contribution to solving the global environmental crisis is alarming. Global bodies – public and private – must distance themselves from such greenwashing. That this same leader is also allowed to prevent due diligence that would show if he is or is not, connected to the secret owners under the NCA, and can ignore or override civil society, indigenous communities, technical experts, even the State Attorney General, must generate ESG concerns that lead to statements by the relevant authorities denying access to internationally approved markets. This experience with the NCA, and the lack of mechanisms with which to tackle an obvious carbon market scam, has dented our faith in the ability of the international community to deploy carbon trading to help address the crisis of climate change. We think that this is unfortunate and call on all stakeholders to take robust action to defend basic governance standards. If the Sabah Government is unable to extinguish the NCA for political and/or legal reasons, the Peoples of Sabah will rely on mobilising global solidarity, deploying international legal mechanisms and enforcing carbon/natural capital governance standards to prevent the NCA from defrauding the people. We request the support of UN Special Rapporteurs towards that end.

20. **Role of the United Nations:** The value of the NCA is predicated on misrepresentation about the engagement and role of the United Nations in overseeing this Agreement, particularly through the Sustainable Development Goals (SDGs), which the protagonists wrongly suggest is an instrument overseeing carbon trading.⁶⁷ Indeed, the NCA refers to the role of the United Nations 12 times and SDGs no less than 18 times. The Preamble (Section D(a)) declares that the intention is that NCA be an “international legally binding instrument to regulate the activities of each party, to ensure that it complies and supports the SDGs”. While the NCA does also appropriately reference compliance with REDD+ standards, we are concerned that throughout the contract the parties “covenant” to support the SDGs and ensure project activities “comply” with “SDG requirements and best practice”, even implying that under this deal the United Nations might have a role “auditing, reviewing, and monitoring the progress of the implementation of the SDGs”. This is particularly confusing in a one-hundred-year contract, given the SDG framework

⁶⁶ *New Straits Times*, [“Will Danum Valley, Maliau Basin and Imbak Canyon be part of the carbon deal?”](#), Olivia Miwil, 10th December, 2021

⁶⁷ *Mongabay*, [“Bornean communities locked into 2-million-hectare carbon deal they don’t know about”](#) op. cit., 9th November, 2021, quotes protagonist Peter Burgess as saying ““Everything we do must be ... under the framework of the United Nations SDG convention”” adding that “adherence to the standards laid out in the SDGs will make natural capital, such as carbon credits, more valuable in the global marketplace”. Kitingan has claimed to the press that the value provided by HSPL was the “connection” to the “United Nations body involved in carbon trading”, *Malay Mail*, [“Sabah DCM bullish on carbon deal”](#), op. cit., 18th November, 2021

runs until 2030. The NCA also specifically references the 2030 Agenda Partnership Accelerator of UN DESA/TPI; and claims that HSPL will undertake “consultations in relation to the development and implementation of the Natural Resource Management Plan” with “various divisions of the United Nations, as appropriate”. The NCA declares that it is to be governed under the Kyoto Protocol whose second commitment period ran 2012-2020, whereas it should be governed by the Paris Agreement (2015). The UN Convention on International Settlement Agreement (Singapore Convention) is used as justification to remove dispute mediation from Sabah’s jurisdiction to that of Singapore. The purpose of these repeated references to the United Nations in the NCA itself, and in public statements, appears to be to legitimise the NCA and suggest that Sabahans can rely on United Nations involvement and standards to ensure its success. We therefore call on United Nations’ bodies to clarify to the Sabah Public that the UN have not been engaged in the development of the NCA and will play no role in its oversight, especially not to guarantee that the NCA will deliver on rights or sustainable development commitments. We also request that the Sabah Government be informed that United Nations’ standards’ setting in this area is under the UNFCCC (including REDD+ and new rules agreed on under Article 6 of the Paris Agreement) and is not related to the SDGs. Furthermore, we request that the UN Special Rapporteurs confirm to the Sabah Government and Protagonists that carbon credit certification requires standards of transparency, due diligence and governance of the kind referenced in Sabah Government policy and not reflected in the proposed NCA.

The submitting organisations collectively express our gratitude for your consideration of this letter. We stand ready to provide any further information you may require for your process and would be grateful if you can keep us informed of any progress.

Primary contact for all communications regarding this submission is Ms. Cynthia Ong – please feel free to reach out via the information below:

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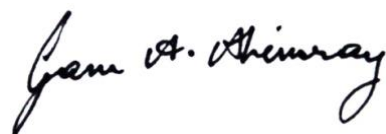
Yours sincerely,



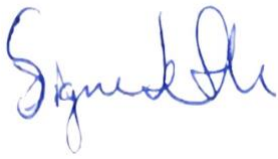
PACOS Trust



Jaringan Orang Asal SeMalaysia
(21 Indigenous NGOs)



Asia Indigenous Peoples’ Pact
(46 organisations in 14 countries)



International Work Group for Indigenous Affairs (IWGIA)

 P.P. Marc Ancrenaz

Borneo Futures



CSO Platform for Reform
(100+ CSOs)



Danau Girang Field Centre



Land Empowerment Animals People



Southeast Asia Rainforest Research Program



WWF Malaysia



Center for International Environmental Law (CIEL)