

HOCH STANDARD

MS. BEATRIZ BABIN
Chief, Special Procedures Branch
OHCHR
United Nations
12111, Geneva 10,
Switzerland

30th April 2024

Dear Ms. Beatriz Babin,

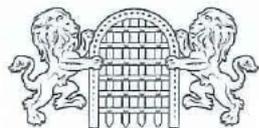
SUBJECT: RESPONSE TO ALLEGATIONS REGARDING THE NCA PROJECT
REF: AL OTH 142/2023

1. We refer to the mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the right to development; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment; and the Special Rapporteur on the rights of Indigenous Peoples dated 20 December 2023 (Ref: AL OTH 142/2023).

2. The Nature Conservation Agreement dated 28 October 2021 ("NCA") was signed between the Sabah Government ("SG") and Hoch Standard Pte Ltd ("HSPL"). It is clear that the intention of both parties is to explore the commercial viability of carbon and nature capital aspects within Sabah with distinct obligations to be performed by each party respectively. The NCA is never meant as a closed-door agreement but was executed during the limitations of the Covid 19 period. The signing ceremony by the Sabah state was solemnized in the office of the Chief Minister of Sabah, attended [REDACTED] (The Honorable Chief Minister of Sabah), [REDACTED] (then Deputy Chief Minister of Sabah II), [REDACTED] (Sabah Attorney General), and [REDACTED] (Chief Conservator of Forest). Photos of the signing ceremony by the Sabah Government are enclosed as Exhibit A.

3. The NCA was silent on the due diligence of HSPL. This is primarily due to the fact that due diligences have been conducted extensively by representatives of the previous Warisan-led SG, namely, SEDCO and by Sabah Parks, both wholly owned government statutory bodies of the SG. Specifically, a draft Nature Conservation Agreement between Sabah Parks and HSPL was then approved by the Legislative Committee of Sabah Parks and also by the Sabah Attorney General's office. However, there was a change of power in the political realms of Sabah.

4. The nature conservation project proposal was subsequently submitted to [REDACTED] (then Deputy Chief Minister II "DCM 2") when the present SG came into



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power. Notwithstanding the due diligences made under the previous Warisan-led government, the current SG led by DCM 2 has conducted its own due diligence involving series of direct communications with Dr. Ho Choon Hou and the entire global NC team over Zoom conferences (due to the travel restrictions of Covid-19). Several other Zoom meetings have also taken place to discuss the NCA, including the first meeting attended by the Sabah Attorney General and Chief Conservator of Forest accompanied by their senior staffs. The Chief Conservator of Forest has also given a preliminary indicative provisional map for the NCA project to DCM 2 during the said meeting. All of the above culminated in the signing of the NCA on 28 October 2021. Hence, we are confused about the due diligence allegations as reiterated by the Sabah Attorney General office.

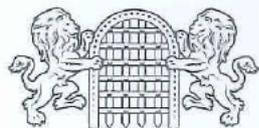
5. In respect to the ownership equity status of HSPL, it is to be noted that the legal representative of HSPL has reaffirmed the ownership status of HSPL in writing to the Sabah Attorney General. Furthermore, HSPL had proposed to the SG to conduct its own due diligence through the Malaysian Embassy in Singapore as they deemed fit. This was officially conveyed during the first NCA Technical Meeting between representatives of the Sabah Forestry Dept and HSPL on 29 November 2023. Accordingly, said proposal was incorporated in the minutes of said meeting.

6. The modest paid-up capital of HSPL should not be an excuse for non-compliance with due diligence, nor should the shares being held by a BVI registered company. A special purpose corporate vehicle with a small initial paid-up capital is commonly adopted by companies embarking on similar ventures. In fact, the SG had approved a carbon project in Sabah to a company with only paid-up capital of RM2.00 (S\$0.55) only, and all RM2.00 worth of shares are held by a foreign entity, involving approximately 80,000 hectares of forest area in Sabah. It must be noted that it is common practice for companies to commence operations with a relatively modest paid-up capital, which is then increased as necessary over time to accommodate business growth, expansion, and operational requirements. This approach allows companies to optimize their initial capital allocations, adjusting them in response to evolving market conditions, strategic objectives, and financial needs.

7. Furthermore, in regard to the NCA to be subjected to the Sabah Climate Change Action Committee ("SCCAC"), it must be noted that other carbon projects in Sabah have not been placed under the full purview of SCCAC, prior to implementation, notably, the Permian carbon project.

8. In contrast, the cabinet of the SG approved on 4 March 2022 the establishment of the Steering, Management and Implementation Committee for the NCA with DSP Dr. [REDACTED] as its Chairman. The principal terms of reference of this Committee are to implement the NCA judiciously.

9. The root of the remaining issues lies with the SG, despite having signed the NCA, deciding to put its obligations under Clause 9.1(c) of the NCA on hold, i.e., to provide the Designated Area of the 600,000ha and thereafter the remaining areas to achieve 2,000,000ha. It is also premature, judgmental, and unfounded to allege our non-compliance



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with Free Prior and Informed Consent ("FPIC"), as alleged by civil society organizations and certain parties within the SG. As the intention of the NCA was to market the carbon credit globally, we are well aware of the legal obligations to ensure strict compliance with the UNFCCC guidelines and to abide by UNDRIP (Art 10 and Art 11.2).

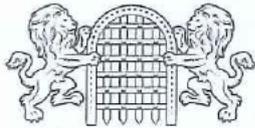
10. Our team is committed to the deliverables of the NCA despite the on-hold status from the SG. Preliminary engagements with the different indigenous communities in Sabah below should suffice as a testament to our efforts to pave the roads for FPIC once the SG duly fulfils their obligations in accordance with the NCA. Our local NC team of HSPL has been actively engaging and educating the various indigenous community groups in Sabah on the NCA, which include:

- a) Kadazan Dusun Cultural Association;
- b) Persatuan Murut Tahol Sabah (PMTS);
- c) MAGEBS – Ethnic Bumiputra Indigenous Group of Sabah;
- d) Sakag Talantang NGO (indigenous group);
- e) indigenous community of Kg Basai Tungud in the district of Beluran;
- f) Kg Talantang Dua in the district of Kota Marudu;
- g) Kg Malinsau, Ulu Sugut in the district of Ranau; and
- h) 20 Native chiefs in Tambunan.

11. Several briefings were also made directly to the local indigenous leaders. Letters of support and photos of these engagements are collectively attached as Exhibit B.

12. Some "opponents" of the NCA have spread the perception that the NCA will be implemented without due regard to indigenous rights. The proponents of the NCA are acutely aware that strict compliance with FPIC is imperative for its successful implementation. Furthermore, the NCA project must meet the highest code of corporate governance to be globally bankable. Therefore, the assertion by these "opponents" of the NCA that it will be implemented "recklessly" is devoid of logical reasoning and without basis.

13. Similarly, once the SG has provided the Designated Areas, our tasks within the NCA are dependent on the multiple data to be collected, generated, analysed, and presented from the Designated Area assigned in order to determine the measurement and methodology that is recognized and suitable for the best interest of the NCA. This explain the reason why we are associated with global service providers and project developers with a proven track record in carbon projects globally. On the ground, we have our local NC team headed by Mr. [REDACTED] with 35 years of experience as a qualified forester who served as the Deputy Conservator of Forests in the Sabah Forestry Department. Working together with [REDACTED] is [REDACTED] an experienced Australian who with his associates have successfully completed carbon and nature capital projects in Australia incorporating at least 8 million hectares of lands in Australia that have been validated and approved by the Australian government. Once the Designated Areas are determined by the SG, a robust and highly credible data room will be established by both the local and global NC team, followed by the formulation of the Nature Conservation Management Plan ("NCMP"). The Methodology and



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Measurement Protocol ("MMP") associated with the NCA is one of the chapters in the NCMP. Thus, all issues associated with MMP will be explained and prescribed in the NCMP.

14. Contrary to the above allegations, the NCMP will enhance the protection of the livelihoods of the poor and vulnerable. It is a mutual understanding from the SG and HSPL that there is a need to ensure the efforts to protect natural capital do not disproportionately harm those who rely on natural resources for their livelihoods. Besides the data to be collected using state-of-the-art technologies within the Designated Area, the NCMP has to take into consideration the customs, insights, knowledge, practices, and rules of the indigenous people.

15. With due respect to the Sabah Attorney General, we beg to differ in that the NCA is signed, sealed, and delivered. The NCA is a valid binding agreement duly entered by the SG and HSPL for the intentions as enshrined therein. The determination of the legality and enforceability of the NCA can only be appropriately assessed by the courts in Singapore.

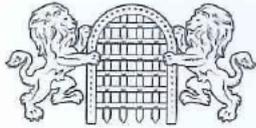
16. HSPL is committed to ensure that the signed NCA will be implemented for the benefit of the Indigenous people of Sabah and will not simply institute legal actions to effectuate the signed NCA until the process of arbitration and mediation are fully exhausted as specified in the NCA.

17. It must be noted that under an unlikely and unwelcome event of a unilateral termination by the SG, the compensation to HSPL shall be independently determined by a top-tier global accounting firm acceptable to both parties.

18. HSPL has demonstrated goodwill by its willingness to amend terms of the NCA, as long as these amendments enhance the global bankability of the NCA for the mutual benefits of the parties and fellow Sabahans.

19. The NCA has been specifically designed to benefit all Sabahans, especially the indigenous people of Sabah. It is meant to reward the Sabahans who have continuously conserved their forests for decades by providing 70% of the net proceeds from the NCA to the SG as their official trustee. Furthermore, the NCA does not require the SG to inject any equity or cash into the NCA project. The carbon credit revenue sharing formula reflects global norms, and we are confident that the commercial terms of the NCA are much more favourable than other carbon projects currently being implemented in Sabah. The NCA project will directly and indirectly attract multi-billion US\$ Foreign Direct Investments (FDI) into Sabah, and combined with the carbon credit proceeds generated therefrom received by the SG will significantly enhance the GDP (economy) of Sabah thereby addressing the current abject poverty problems in Sabah, consequently meeting Agenda No. 1 of the 17 UN SDGs – poverty eradication.

20. In summary, baseless allegations against the NCA project have inflicted significant harm, compromising its integrity, reputation, and prospects for success. Rebuilding trust, restoring confidence, and mitigating the damage caused by these unfounded claims will require concerted efforts from all project stakeholders. A clear communication, and a



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renewed commitment to transparency, accountability, and science/evidence-based decision-making will be prioritized.

21. Despite the baseless allegations levelled against the NCA project, HSPL remains steadfast in its commitment to move forward with the SG to successfully implement the NCA project for the ultimate beneficiary - the citizens of Sabah, especially those facing poverty-stricken environmental and socio-economic challenges. HSPL believes that the NCA project represents a significant opportunity to achieve positive change in Sabah. By fostering collaboration, promoting sustainable practices, and prioritizing the well-being of local communities, HSPL is dedicated to ensuring that the NCA project realizes its full potential in improving livelihoods, protecting biodiversity, and promoting inclusive development across Sabah. Despite the obstacles posed by these baseless allegations, HSPL remains committed to working hand in hand with the SG and other stakeholders to overcome challenges and achieve shared goals for the betterment of Sabah and its people.

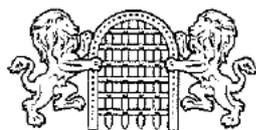
22. HSPL has proactively reached out and extended invitations to stakeholders who have expressed opposition to the NCA to participate in its comprehensive NCA briefing session in Kota Kinabalu, Sabah, Malaysia. Notably, a written invitation has been extended to [REDACTED] a representative [REDACTED] (NGO in Sabah). HSPL patiently awaits his feedback and is prepared to provide a thorough briefing highlighting the significant value propositions of the NCA to any interested stakeholders. The aim has always been to foster open dialogue, address concerns, and collaborate towards a mutually beneficial understanding of the implementation of the NCA.

23. To reinforce strict compliance with all applicable UN protocols and guidelines, particularly the FPIC and UNDRIP, HSPL is extending an invitation to a UN representative to join its Local Expert Governance Committee. This Committee will oversee the full implementation of the NCA.

24. In conclusion, HSPL reaffirms its unwavering commitment to collaborate with the SG in the implementation of the NCA with utmost integrity. Our foremost priority remains ensuring that all indigenous Sabahans emerge as the ultimate beneficiaries of this initiative. To uphold transparency and accountability, we are fully prepared to subject all benefits accruing to Sabahans to thorough auditing and verification by a top-tier accounting firm. We believe that by working hand in hand with the SG and adhering to the highest standards of governance, we can realize the shared vision of sustainable development and prosperity for the people of Sabah.

25. Our team is ready to make a full presentation of the NCA project to your esteemed organizations at your convenience.

26. Lastly, we know that [REDACTED] NGO, Sabah, Malaysia is one of the main opponents against the NCA and we wish to put on record that our local NC Team has attended his "negative" briefing of the NCA. We have also invited him to attend our NCA briefing in Kota Kinabalu, Sabah, Malaysia in July 2023. However, we regret



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to advise that to date, [REDACTED] has yet to attend our NCA briefing in Sabah, Malaysia.

Thank you.

Sincerely yours,

[REDACTED]

Director
Hoch Standard Pte Ltd

[REDACTED]

Political Secretary to Deputy Chief Minister 1
Chairman NCA Steering, Management, Implementation Committee
Sabah Government, Malaysia

[REDACTED]

Treasurer General
Kadazan Dusun Cultural Association (KDCA)
Sabah, Malaysia

[REDACTED]

President
Sakag Talantang NGO
Sabah, Malaysia