

Background & Timeline to Sabah's Nature Conservation Agreement

2021

OCT
28th

Secret NCA Signing

Sabah Government secretly signs Nature Conservation Agreement (NCA) with Mr. Stan Lassa Golokin, Sabahan representative of Singaporean shell-company Hoch Standard Pte Ltd for a commercial monopoly over all carbon and other natural capital in 2 million hectares of Sabah's forest for 100 years' renewable. Sabah's Deputy Chief Minister, Datuk Jeffrey Kitingan signs as witness for both the Company and for the Government. Sabah's Chief Conservator of Forests (CCF), Datuk Frederick Kugan, signs for the Sabah Government. Sabah's Chief Minister, Datuk Seri Hajiji Noor, also witnesses the Chief Conservator's signature. Participants privately report that despite many legal and technical concerns among stakeholders, Kitingan threatened to pull out of the coalition and bring down the Government if the NCA was not signed in run-up to Glasgow COP26. Evidence later emerges that the signed NCA is result of a multiyear effort (Kitingan says five years and documentary evidence exists from 2019) that included failed efforts by Kitingan and Golokin to sign similar deals with Sabah Economic Development Corporation (SEDCO), Sabah Parks, and the Sabah Foundation (Sabah's largest land/forest holder), first under an earlier state government (which declined) and then the current administration. Despite these entities openness to the idea of carbon trading, legal counsel is said to have recommended against the terms requested by Golokin and Kitingan in these various deals.

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COP26 & Attorney-General Stop Order

Sabah's Attorney-General writes a letter to Hoch Standard (subsequently leaked) instructing Hoch Standard to stop "inviting third-party investors, financiers or financial institutions to participate" in the NCA during COP26 as it is subject to finalisation because "the proposed Designated Area under the Agreement is yet to be ascertained and to this point remains uncertain due to previous third party rights" and references the need for an Addendum to "properly and fairly protect the State Government's rights". A video of Golokin explaining carbon trading at COP later went viral on social media amidst amusement at his technical naiveté.

9th

Mongabay Breaks NCA Story

International environmental news service Mongabay breaks the story "Bornean communities locked into 2-million-hectare carbon deal they don't know about", based primarily on NCA promotional materials and interviews with Peter Burgess, owner of an Australian consultancy Tierra Australia and Global Nature Capital, who claims to have a central role in partnership with Golokin. Burgess tells Mongabay 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." This paternalist mind-set is further confirmed by his statement: "it's going to uplift these people out of poverty and bring them back into normal society." Kitingan tells Mongabay that "the agreement would protect forests in the state and that the proceeds of natural capital sales would alleviate poverty among Indigenous communities. He also said it 'will not affect them and their way of lives.' 'If it does, surely we will be talking to them.'"



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Mongabay gives extended attention to the significance of FPIC and the vulnerability of a deal at this scale, quoting the concerns of Torbjørn Gjefsen, a senior policy adviser with Rainforest Foundation Norway, and Peter Veit, director of the Land and Resource Rights Initiative at the World Resources Institute. Mongabay further quotes Burgess as saying “Everything we do must be ... under the framework of the United Nations SDG [Sustainable Development Goals] 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”; this quote well reflecting the confusion in promotional materials later revealed in the NCA itself that the SDG is a UN Convention connected to managing carbon credits. This is all part of the protagonists’ efforts to present the NCA as United Nations’ compliant. Finally, Mongabay pointed to the historical relationship between Golokin and Kitingan at the Sabah Foundation in management of state’s forestry assets “tainted by scandal”; and also reported that Golokin was at the Glasgow COP “raising capital for the project”.

10th **Local Press & Social Media Take Up the Story**

Subsequent days see substantial local press coverage sourcing Mongabay. Social media engages critiquing the NCA and expressing suspicion of Kitingan’s motives; for example, Sabah’s internationally renowned contemporary artist leaves a message on Kitingan’s Facebook account asking “Jeffrey what have you done?”. Sabahans resident in Singapore and Perth Australia visit and post mocking photos of the addresses of the said companies described as “our new landlords”, one of which is clearly not in use and the other being a modest family house in East Perth.

Peter Burgess speaks at the (virtual) International Heart of Borneo Conference

Making wide-ranging claims about the scale and potential of nature capital and carbon trading at the Sabah-based event. Avoiding direct reference to Sabah, an Australian conference participant pointed out that he was misrepresenting the situation in Australia, and a question posed to him in the official question chat by Cynthia Ong about transparency for the Sabah NCA is deleted and not addressed. A subsequent press article (November 18th) reiterates Burgess’ claims to expertise in this field, and images of his bizarre slides were posted on Twitter by Yin Shao Loong, a Senior Research Associate at Khazanah Research Institute, during Burgess’ presentation. Subsequently Kitingan was to deny Burgess’ involvement in the NCA (e.g. in the Legislative Assembly on Dec 6th, 2021), and Burgess himself denied to Al Jazeera that “we have ever been a carbon company”.



11th **NCA Declared Only a Preliminary Framework**

Local press carries articles in which the Chief Conservator of Forests (CCF) “acknowledged the risks” of carbon trading but argued there were also “advantages” in being “a frontrunner in an era where the world is rushing towards a low-carbon future”. The CCF emphasizes that what had been signed was only a “provisional framework”, lacking definition of the Designated Area, and still to be finalised, and that an “Addendum” was needed to the “framework agreement” to address nine areas requiring attention, including due diligence on the company and pricing. The CCF stressed that the NCA would have to prove itself successful in a pilot area of 600,000 hectares first, required approval of Management Plans, and would need to respect “pre-existing Native Customary Rights”. The CCF also stated “the NCA will be placed under the purview of the Sabah Climate Change Committee”. The Malay Mail, meanwhile, references the leaked Attorney-General’s letter and an unnamed insider source, to argue in parallel that the deal is not finalised and might not go ahead.

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Civil Society Critique & Call for Transparency

Local press publish an NCA statement from 10 Sabah-based civil society and conservation organisations expressing concern and calling for transparency, due process and stakeholder engagement. 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.

12th

Kitingan Defends the NCA

NCA Protagonist, Sabah Deputy Chief Minister, Jeffrey Kitingan is widely reported in the press stating that the Chief Minister had been “given the mandate by cabinet” to sign the NCA, that the plan had been to keep it discreet until Jan 2022, that the NCA would benefit Sabah environmentally and financially, with the 2 million hectares earning RM3.2 billion (\$800m) annually, and that “local communities would be mostly unaffected”, and that “the United Nations required that the profits be spent on the 17 Sustainable Development Goals”. Kitingan claimed that his critics were confused about carbon trading, saying “it is not a tangible asset, so I think people don’t understand”, emphasizing “there’s nothing to hide. It has to be above board. Auditors need to be brought in to prove how much carbon is in the atmosphere, and both buyers and sellers need to be able to see what is going on at all times.” His reference to measuring carbon in the atmosphere foreshadows his lack of understanding of all aspects to carbon verification and trading. Meanwhile his understanding of transparency and FPIC are illuminated by his comment to the local press: “we have been talking to people on the ground. Maybe not in a big way but we have been talking about it. I can assure you it will not affect the indigenous people.” Kitingan also articulates here his political rationale in a state with popular resentment of its poverty and financial dependence “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.”

Although the public debate has been focused on carbon, Kitingan highlighted the NCA’s coverage of other natural capital, and that the income of “up to RM3.2 billion [\$800,000] per year by just putting up two million [hectares] of its forest coverage” was “just for carbon alone”. He 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.”




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NCA Fact Sheet



An anonymous NCA Fact Sheet begins circulating on-line; identifies 11 modestly titled “unusual aspects” to the deal detailing an extraordinary lop-sidedness in favour of the company ranging from jurisdiction to irrevocability, to invasiveness and profitability. A second edition of the Fact Sheet (19/11/2021) reflects subsequent leak of the final version of the NCA which incorporates several last minute improvements. The problem areas are: (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: the companies involved are new, small, under-capitalised with no established record in this field, while public records show the ownership of Hoch Standard is hidden in the British Virgin Islands so it is unknown who is the real owner of this deal; (6) Rights Granted are Extensive and Vague: and appear to seek to control any commercial use of any natural capital or any ecosystem service except for oil, timber, gas and mining; (7) No FPIC: nor recognition of the existence of Indigenous Peoples and Native Customary Rights; (8) Performance Guarantees: no Performance Bond, Hoch Standard 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. The concerns raised in the Fact Sheet are never responded to systematically by the protagonists, and turn out to be similar to the technical and legal issues that Sabah’s Chief Conservator of Forests and Sabah’s Attorney-General were also seeking to resolve.

16th

WWF’s Grave Concerns

WWF Malaysia releases a press statement expressing “grave concern” with its Conservation Director, Dr. Henry Chan, calling for “close scrutiny” of NCA to “ensure that it adheres to existing protocols and safeguards for all affected parties, especially native communities”. “WWF also said the state should ensure that there will be a fair and equitable benefit sharing arrangement for everyone involved over the long term. ‘This is especially critical for a multi-generational agreement that spans over 100 years, such as this agreement’”.

Conflation of NCA Concerns with Misunderstanding Carbon Trading

Kitingan continues to frame discontent around the NCA as primarily the result of people failing to understand the technicalities of carbon trading (e.g. see Kitingan’s Facebook Page). However, even on his website most comments are critical, and makes clear that it is not trading that is the problem.



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Chief Conservator of Forests' Legal Letter

Sabah's CCF writes Hoch Standard a letter copied to the Chief Minister and State Attorney-General which reiterates in strong legal language the points the CCF had made to the press on 11th Nov 2021 stating that the State Government "is yet to ascertain, survey, determine and approve the Designated Area in terms of the Agreement". The letter then continues: "further to that, as was made abundantly clear to you, the State Government requires for an Addendum to the Agreement to be completed and agreed to, prior to and as a condition of the coming into force of the Agreement". The letter then specifies 16 legal and technical "key concerns" that needed to "be resolved prior to the finalisation of the Agreement". These include replacing reference to the Kyoto Protocol (no longer in force) with Paris Agreement; reference to retaining carbon credits to meet Malaysia's Nationally Determined Contributions (NDCs); a suite of measures to correct the extraordinarily lop-sided and monopolistic nature of the NCA contract and assert international standards; clarity that the government would need to approve the Nature Capital Management Plans (NCMPs) and noting Hoch Standard's obligations to undertake a baseline assessment; the restriction of the NCA to 600,000 hectares; the statement that the State Government must have "Right of First Refusal" in regards to any sale/transfer of the NCA; and a "Performance Bond" of RM10 million (\$2.5m). This letter makes it clear that the civil service from the outset had the technical competence to identify what made the NCA unjust, unfeasible and unviable under domestic and international law, and sought to rectify this with Hoch Standard. The CCF's then continues,t "Given the disparaging attacks by the public and NGOs ... addressing the above-mentioned points is key for a proper kick-start of the NCA". Furthermore, he argued, "we cannot deny that constructive engagement with relevant interested civil societies is inevitable to ensure we have a conflict free initiative. This is best engaged through the proposed Sabah Climate Action Council (SCAC) as announced by the Right Honorable Chief Minister at the launch of the 11th Heart of Borneo Conference recently." For the meantime, the CCF expressed the "demand" for "a complete and total cessation of promotional activities in relation to the NCA, including the work on a 'data room'", and noting that the "NCA is binding and enforceable only after the Designated Area for the pilot has been agreed upon" and that "in the meantime, we reserve our rights".

18th

Kitingan's NGO Briefing

NCA Protagonist Kitingan holds a briefing with NGOs flanked by his longstanding business partners Richard Taumas and Datuk Martin Idang to explain the NCA. However, most of the briefing is consumed by irrelevant statements about Sabah's conservation estate and the idea of carbon trading without presentation of the actual terms of the NCA, while the protagonists decline to respond to the issues raised by the Fact Sheet. Retired High Court Judge Idang uses threatening language against the President of the Sabah Environmental Protection Association (SEPA), Alexander Yee, for asking questions linked to the Fact Sheet, accusing him of potentially being an author of that "defamatory" document (which the protagonists simultaneously claim they have not seen), and also denying that it was necessary to consider FPIC and Native Customary Rights (NCR), since the 2 million hectares would comprise, they said, Sabah's existing Totally Protected Areas (TPAs) where any such rights were already resolved and extinguished. Kitingan sketches a business model whereby the NCA generates RM3.2 billion (\$800 million) annually based on 20 tonnes of carbon/hectare and a market price of \$20/tonne. Dismissing evidence of Hoch Standard's lack of credibility, Kitingan assured the NGOs and press "that the Singapore-based company is backed by several multi-billion Private Equity (PE) funders".



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When asked whether the company is experienced in carbon trading, Kitingan said that “the company had dealt with Indonesia, Australia as well as South American countries”; adding “if they (the company) do not deliver, there are two provisions: If the agreement is not being implemented within two years, it will be revoked; or if they do not perform, the government has the right to terminate it.”

Although debate at the event was stifled, Kitingan was obliged to admit that the only person representing the government at this event was Kitingan himself, although in what capacity was not clarified since his Ministerial portfolio is Agriculture and Fisheries. Beverly Joeman, of the Civil Society Organisation Platform for Reform critiqued the lack of transparency describing the “shock” of seeing it come out in the international press and saying “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.” Subsequent press coverage reports NGOs “unhappy and with more questions than answers” but Kitingan told the press “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.” Free Malaysia Today reported Alexander Yee as saying “SEPA will want another forum”, and “since he [Kitingan] said he has not seen the fact sheet, we will be writing to him to furnish him with a copy. We want him to verify the contents of the fact sheet before we seek clarification.” Kitingan never responded to the Fact Sheet nor other circulated or leaked documents.

21st **Kitingan’s Green Economy**

Kitingan announces the NCA is part of shifting Sabah to a Green Economy; repeats claims that carbon trading will be a better option than logging while simultaneously stating the trading would be of carbon from Totally Protected Areas.

Unanswered Technical & Legal Concerns

An anonymous “concerned group of Sabahans”, clearly including people with knowledge of the details, publishes a long list of pertinent legal and financial technical questions around due process, stating that the deal should be scrapped if these cannot be answered. There is no response to the questions.

Concerning Due Diligence on the Companies

Six-page anonymous Due Diligence Memo goes viral on social media, providing precise details of the legal and financial status of the seven companies named as connected to the NCA in legal documents and the press. These companies are new, inter-connected and registered in Australia, Singapore and Malaysia; none have a track record in carbon trading; none have proper offices, significant staff, capital or any record of business, except for one of the Australian entities which is a small agricultural land-use consultancy. Hoch Standard Pte Ltd, with whom the NCA is signed, emerges as a shell-company with just \$1,000 paid up capital and no record of business. It is wholly owned by an entity called Lionsgate Ltd, which is registered in the British Virgin Islands. The relationship between the public figure said to be behind Hoch Standard, Dr. Ho Choon Hou, and the company that carries his initials is not detailed in the records of the Accounting and Corporate Regulatory Authority in Singapore.



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The only public records for Hoch Standard's single director, Mr. Ng Wei Cheun Benjamin, are associations with British Virgin Island companies in the Panama Papers and as a named (but not charged) individual in a Singapore timber corruption case. Detailed analysis shows that what connects these companies is a Sabahan Australian resident, Mr. Stan Lassa Golokin, who as "Global Corporate Advisor" signed the NCA for Hoch Standard. Golokin is the well-known associate of Kitingan in the Sabah Foundation's 1990s corruption scandals.

24th **Mongabay Follow-Up on Developments and Opposition**

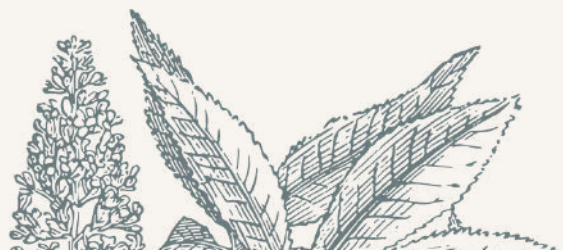
Mongabay publishes a follow-up article describing developments, quoting the imbalances in the NCA detailed in the Fact Sheet, broad civil society opposition to the agreement, doubts about its legality from insiders, and Kitingan's inability to persuade civil society of its merits at the NGO Briefing. Mongabay quoted Pangrok Sulap, the internationally-renowned indigenous activist Sabahan artist collective as asking: "if this agreement has a positive impact on the state's economy, why is it not made public before being signed?", and Anne Lasimbang, the Director of PACOS Trust, Sabah's largest indigenous organisation, who said that news of the NCA "was like something exploding in your face". These leaders stressed that recognition of indigenous jurisdiction and FPIC is fundamental. A statement, allegedly from a Dusun community organisation called Moningolig Pogun Tokou (MOPOT) (who did not respond to Mongabay requests for interview), was forwarded to Mongabay which defended the NCA referencing the promise of 3,000-5,000 jobs and saying that the government "is the sole conservator of all jungles and mangroves, rivers, mountains and plains, and ecological beings," despite MOPOT billing itself as indigenous rights organisation. MOPOT is associated with current Kitingan ally, Hip Hop DJ Andrew Ambrose (aka Atama Katama), whose social media handle introduces himself as "a Young Huguan [=Warrior], Indigenous Artiste, Revolutionista and Student of the Universe!"; Atama rigorously promoted the NCA in late 2021 as an expression indigenous rights, while denouncing as false and politically motivated the leaked documents, Fact Sheets and other opposition to the NCA, while engaging Kitingan financially and politically in support of his Pan-Borneo Dayak movement.

29th **Legal Action Initiated**

Adrian Lasimbang sues 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 and the Government of Sabah. Lasimbang is a well-known 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, the founder of TONIBUNG, a pioneering community-based renewable energy NGO, and an Acumen Fellow. 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, and the Originating Summons as BKI-24NCvC-126/11-2021(HC3).

30th **Fact Sheet Infographic**

An infographic on the terms of the NCA circulates on line; public discussion intensifies. Associates of NCA protagonists deny in social media the accuracy of the Fact Sheet, Due Diligence and other reports that have been circulating on-line and argue the NCA will generate significant revenue for Sabah with communities centre-stage.






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Attorney-General's Letter to Dr. Ho



Letter from the Attorney-General to Dr Ho is promptly leaked in social media. Letter states that since due diligence shows that Dr. Ho is neither a director nor shareholder in Hoch Standard his letter appointing Stan Golokin to sign the NCA is “null and void”, and that the state government would not have entered the agreement had it not been for his “misrepresentations”. The letter also requires documentary evidence of Hoch Standard’s financial standing and proof of the many partnerships claimed by NCA protagonists with financiers such as Tamasek Holdings and the Bill and Melinda Gates Foundation, as well as many of the world’s major banks, private equity firms and universities. In addition, the AG required copy of a “letter of appointment in respect of Mssrs. Peter & Kim and evidence of the said firm as ‘UN compliant’”. In the meantime, the AG’s letter reminded Hoch Standard that they were not to proceed in any way with the NCA. On 2nd Dec the Attorney-General acknowledges the leaked letter as genuine and initiates a probe into the leak. Soon after, social media circulates an email allegedly sent from Kitingan to Dr Ho which advised him to ignore the AG’s letter and proceed. (Although Kitingan did not comment at the time, on Dec 6th, 2021 Kitingan appeared to acknowledge in the Legislative Assembly that he had sent that email, claiming that it had only been “a question of timing”, but then refused to respond to the Speaker’s requirement that he confirm it as genuine or not).

NCA, Colonial Legacy and Patronage Politics

Mongabay publishes “is colonial history repeating itself with Sabah forest carbon deal?”, a commentary from Sabahan civil society leader Cynthia Ong, in which she says she is “speaking up in the absence of truth” given how to date the deal has only been “mansplained” as part of yet another manifestation of the “patronage politics” that “disempowers and debilitates our agency” as Sabahans. Mongabay also publish a podcast discussion with Ong exploring how the deal unfolded.

Ong’s disclosures include images from NCA promotional materials that they are full of falsehoods, and a photo of a small youth cultural troupe with NCA protagonists Stan Golokin, Peter Burgess and colleagues entitled “Thank you from the Dusun and Murut people – the indigenous custodians of Sabah’s Nature Capital” which was presumably intended to suggest to Australian Aboriginal groups with whom Burgess was seeking similar deals that the NCA had been negotiated and FPIC’d with Sabah’s Indigenous Peoples.



2nd The Golokin-Kitingan Connection

Nine-page anonymous report entitled “Troubling Questions: connections between Mr. Stan Lassa Golokin and Datuk Jeffrey G Kitingan” goes viral bringing together court records, contemporary newspaper accounts, leaked financial dealings from the Panama Papers, and extensive published academic research on government natural resource financing in Sabah. The report provides copious detail around how Golokin and Kitingan, the leading protagonists of the NCA, worked closely thirty years ago at the helm of the Sabah Foundation (holders of one million hectares of the state’s logging estate), proposing schemes to earn outsized revenues to improve Sabah’s political standing in the Malaysian Federation. Ultimately a Price Waterhouse audit found \$1 billion unaccounted for and a whole array of failed businesses, foreign shell companies, and elaborate pricing ruses diverting money from the public purse. Kitingan was detained under the notorious national security legislation, but avoided the slew of regular corruption charges through a series of technicalities and ultimately by defecting to the Federal Government. Golokin, meanwhile, went into exile where he had been involved over many years in numerous Singaporean and British Virgin Islands companies alongside other figures associated with the Sabah Foundation under Kitingan, including people now promoting the NCA, with no evidence of any regular business activities.



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No public denials are made by Kitingan but debate on social media revisits the period, which is one of the darkest moments in Sabahan history, and his supporters argue character assassination.

The Federal Connection

Wong Chen MP, a leader of the PKR party critiques the NCA focusing on lack of transparency and excessive compensation for Hoch Standard. He notes the Federal Environment & Water Minister, Tuan Ibrahim Tuan Man, stating in parliament that he had not seen a copy of the NCA receiving only assurances from Sabah Government.

5th Further International Exposure


REDD-Monitor publishes lengthy exposé entitled “Sabah’s Nature Conservation Agreement: a two-million hectare carbon deal involving a fake director, an inequitable agreement, a history of destructive logging, massive corruption, a series of offshore companies, and a sprinkling of neo-colonial racism” which draws heavily on Mongabay and the anonymous reports and leaked documents and examines them in the light of carbon trading governance issues.

6th Civil Society & the State Legislature

Civil Society presents a Joint Memorandum to the Sabah State Legislative Assembly (DUN) demanding engagement, disclosure and transparency on the NCA in advance of the State Legislature’s discussion of the issue scheduled in response to a question to Kitingan in the 2022 Budget Session. The Memo lays out seven ways in which the NCA compromises the functions and integrity of the DUN in its function to legislate for the state and oversee its budget and expenditure. Its four recommendations address transparency, due diligence, FPIC, and stakeholder consultation. The Memo is signed by 32 civil society organisations and 56 concerned citizens, it galvanises opposition critique, while the government coalition remains silent.

Discussion in the State Legislature

Although Kitingan had said it was not necessary to bring the NCA to the DUN on the grounds that it did not require new law-making, he had agreed to take questions during the debate on the 2022 State Budget, which were pointed, diverse and hostile, and not always well-informed. Former Chief Minister, and now opposition leader Datuk Seri Mohd Shafie Apdal, provided a comprehensive critique, with Kitingan and NCA protagonists only pushing back to deny that the NCA “sold” Sabah’s land, and to wave a file written confidential that Kitingan said contained answers to all of the AG’s due diligence questions on Hoch Standard. Another opposition party, Democratic Action Party (DAP), asked for clarification of the state-federal legal framework for carbon trading. Discussions in the DUN made clear that Shafie, when in power, had declined earlier versions of the NCA. Pressed on the data in the Singapore Government register of companies, Kitingan continued to insist that Hoch Standard “are a global player, with a stage for this business. They are a SPV – a Special Purpose Vehicle to triple A off-takers.” In unusual filmed scenes, also widely circulated on social media, the Deputy Speaker of the DUN had to silence both lawmakers, and repeatedly request Kitingan to answer the question whether the state government had approved the NCA and who was put in charge of it. As reported in the local press, “Kitingan eventually told the House that the chief minister was given the mandate by the Cabinet to carry out the deal which was then handed to Kitingan to realise”; Shafie then questioned why the Minister of Agriculture was taking the lead in an area clearly under the Chief Minister. Ultimately, Kitingan refused to answer questions or allow interjections and read his original speech.





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Sabah's Chief Minister Weighs In

The Chief Minister, Datuk Seri Hajiji Noor, speaks publicly for the first time on the NCA in the State Assembly offering to set up a "select committee to look into the NCA deals and terms" in response to opposition criticism "if there's a need for the sake of transparency". Significantly Hajiji claimed the NCA "was still far from sealed, let alone being implemented because of the many terms that had yet to be decided on both by Sabah and the consultant's part." But he added to parliamentarians: "if this deal goes well, allowances and allocations will increase but of course it has to be managed properly to succeed". Hajiji claimed Hoch Standard's 30% revenue share was "still on the negotiation table" and that he "hoped" that the government would get a larger share because "it will help the Government to have more money to assist the rakyat (people)." Hajiji also assured Assemblymen that state government would "update" them on the matter "including if the State is able to proceed with the carbon trading".

10th

Will DaMal, Sabah's Premier Conservation Areas, be Part of NCA?

Under the title "Will Danum Valley, Maliau Basin and Imbak Canyon be part of the carbon deal?", the New Straits Times reports lack of resolution around inclusion of Sabah's most renowned protected rainforest areas, which are currently the subject of a UNESCO World Heritage Site nomination. This 200,000 ha area falls under Sabah Foundation (Yayasan Sabah). Its Deputy Director, Datuk Sam Mannan, is quoted as saying "as the Chief Minister has explained, we just have to wait and see the merits and demerits, how is it going to assist us to make monetary gains from things which are protected." Mannan is a veteran of Sabah's long-standing carbon-trading efforts who understands the obstacle of additionality to the financial viability of the proposed deal.

11th

NCA Leaked

The NCA is leaked on-line (unsigned). It confirms all the issues raised by the Fact Sheet & Infographic. There is no response from the NCA protagonists.

12th

Press Coverage of the Legal Challenge

Local press starts to cover Adrian Lasimbang's legal challenge to NCA. Lasimbang is reported as saying "while carbon trading is not a bad idea and is already being practised in conservation, the NCA lacked transparency and over how it is formulated. According to international standards, under UN Declaration on Rights of Indigenous People, all sustainable development requires transparency". Furthermore, Lasimbang said "the deal raised several red flags" including "very wide interpretation on coverage including carbon and non-carbon encompassing the whole resources". He was concerned that "Natives dependent on these forest areas will not be able to utilise any products from there. Even water essential for life to us will be under the jurisdiction of the said company." When asked by the press how Natives could be adversely affected, Lasimbang responded "the villagers collect lots of non-timber products such as ratan and 'tuhau', the Crocker Range Park under present set up allows sustainable traditional use of these materials. But when the NCA is enforced, these will be under the control of a foreign company. It is ridiculous if the natives who want to make tuhau or harvest bamboo shoots or ambarua need to get consent from (Singapore-based) Hoch Standard." Lasimbang also questioned the structure of the deal. "The conservation and everything will be done by the state and we get 70pc payment while the Hoch Standard the broker doing nothing gets 30pc ... the usual 10pc (conventional kickback) has now jumped to 30pc."



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Lasimbang also critiques the lack of understanding of additionality, the fact that the contract specifies the State Government can only spend the revenues under UN SDG (Sustainable Development Goals) which will be ending in 2030, and the fact that the Sabah Government cannot audit the company in regard to revenues obtained. He questioned whether Sabah was repeating what had happened when it signed away its petroleum rights never to be regained. He also asserted “there is enough talent in Sabah to do the management and do the deal directly with industries without going through a third party who does nothing for 30pc.”

13th **Appointment of Sabah Climate Change Committee**

The State Government appoints an Interim Sabah Climate Change Committee to look into carbon trading, including to carry out due diligence on proposals, clearly including the NCA. Reporting the creation of this body in the local press on Dec 15th, 2021, Chief Minister Datuk Seri Hajiji Haji Noor said “reducing climate change impact is high on the State Government’s agenda” and that the Committee would “discuss climate change policies and actions, drive green economic growth, catalyse green technology and low-carbon growth”. (This is a forerunner to the Sabah Climate Action Council- SCAC).

16th **REDD-Monitor Update**

The international REDD-Monitor ran a second article “Leaked: Sabah’s Nature Conservation Agreement”, which reported the exchanges in the DUN, the legal case advanced by Adrian Lasimbang, and provided the detailed list of concerns with the NCA. The article remarks how the NCA makes no single mention of Indigenous Peoples and local communities but references rights thirteen times though “in every case” this “refers to carbon rights, property rights, intellectual property rights, or rights to Natural Resources which the Government of Sabah transfers in entirety to Hoch Standard ‘for the purpose only of monetisation of the same pursuant to the provisions of this Agreement’.”

17th **Mongabay Updates**

A follow-up article provides details on the legal case and quotes from Adrian Lasimbang including “I think this deal is a scam ... only a thief works secretly”. The article includes lengthy coverage of civil society concerns with lack of due process, transparency and respect for Native Customary Rights. None of the protagonists responded to requests for interview, but after an email was sent to Dr. Ho, Mongabay reports that Benjamin Ng, the person identified in the anonymous critique of the due diligence process, wrote to Mongabay stressing that Southern Capital, the institution where Dr. Ho is employed and which had been referenced in NCA promotional materials was “not related to and had no affiliation with” any of the institutions involved in the NCA. Ng also claimed that “the engagement and securing” of the interests of indigenous peoples would be the responsibility of the local government and not Hoch Standard, although he said they were aligned to the importance of this and would address it in the Management Plans. Lasimbang, one of Sabah’s leading indigenous advocates, details reasons for not trusting in these assurances. Mongabay quotes Cynthia Ong on a range of transparency issues and the lack of alignment of the NCA with basic carbon trading procedures, including accounting in the NDCs and what “additionality” is possible in Totally Protected Areas. Mongabay also reported how the normal due diligence process was interfered with by those who stood to gain: “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.”





2021

DEC

18th

NCA and Politics

Kitingan is quoted on the Dyak International Organisation DIO-TV.Com explaining the political role of the NCA as providing the “financial capacity” for Sabah to “move forward and develop according to its vision and preferred timeline” which needed a “united political front”. Discussion of NCA funding led into discussing membership, defections to the party and the number of candidates at the next elections.

22nd

NCA and Federal Politics

Democratic Action Party (opposition) Member of Parliament, Chan Foong Him was reported as saying that “instead of blindly bulldozing the NCA, which was signed silently and without due consultation, he [Kitingan] should get the house rules clean first by getting the Sabah government involved in the development of the single domestic platform market (for carbon trading).” Chan referenced the answer in Parliament on Dec 15 by the Federal Deputy Energy and Natural Resources Minister Ali Biju who said that “the Sabah Government had failed to comply with the National Guidance on Forest Carbon Market over the NCA with Hoch Standard”. In response Chan argued that the Borneo states should not “just blindly accept whatever rules imposed by the federal government”.

Carbon Trading Infographic

“Forest Carbon 101: what Sabahans need to know” is circulated under #carbonsovereignsabah by NGO LEAP laying out the evolving international treaty/legal framework, carbon marketplace terminology, accreditation and best practices.

28th

The NCA: A Flawed Business Model infographic

Released under #carbonsovereignsabah by LEAP which subjects Kitingan’s NCA revenue estimates to empirical analysis. Kitingan assumes revenues can be earned on 20 tonnes sequestered CO2 equivalent per hectare per year but empirical data on Sabahan sequestration rates shows only 1.5 tonnes qualify. Kitingan assumes a carbon price of \$20/tonne while the average value in the voluntary carbon offset market in 2021 was less than \$5/tonne. If the NCA was applied to Totally Protected Area (TPA), additionality would require restoration. Only around one third of the TPA requires and/or is suitable for restoration, and the costs of doing so are so high that this is not viable let alone profitable at current carbon prices. (However, the infographic shows that the lopsided structure of the NCA is such that Hoch Standard would still earn 30% gross revenue while the state government was burdened with all the restoration/ management costs and would carry any financial losses). The infographic further shows the restoration task is so demanding that no more than a tiny proportion of the proposed NCA area could ever be feasibly restored (no more than a few thousand hectares/year). In short, the size of the NCA financial returns have been magnified by Kitingan by orders of magnitude, perhaps between one hundred and thousand times, and there is currently no financial viability for an NCA in Sabah’s TPAs; alternative approaches based upon additionality, facts, technical collaboration and a carbon sovereign strategy are described.

30th

Mongabay’s Indigenous Stories

Mongabay lists the NCA as one of its top ten indigenous stories of 2021 in a year that “has proved to be one of the most consequential years for Indigenous rights and participation in global climate and conservation efforts.”

2021

DEC

31st

NCA & Green Economy to Double the Economy in Two Years

Kitingan's 2022 New Year Message states that "Sabah must move away from a conventional exploitative extractive economy into a digital circular one given Sabah's vast agricultural, forest and nature capital endowments" and that "what the State needs now are stronger, braver and more innovative leadership and good governance". Under his plan with "access to global financial capital and investors; good multilevel strategic plans and nature conservation" Kitingan says he will be able to double Sabah's GDP "within the next two years". Furthermore "poverty and corruption must be eliminated through digitalising the economy, blockchain and by activating 'lazy assets'". These 'lazy assets', says Kitingan, are the natural environment in a society that can currently "only look with envy at the prosperity of our neighbours". "However, come to think of it, we are not at all poor. Take a look around you. We are blessed in abundance with our beautiful nature, our heritage. And while the world of old may reward the industrialists, in the world today, green is gold." For this transition Kitingan defines the opportunity as follows: "the whole world is concerned about the negative effects of climate change, not only on the global economy and our health, but on the survival of humanity itself due to carbon emissions and environmental degradation". In service to this vision in which Sabahans will be "in the perfect position to partake in this new economy and walk shoulder-to-shoulder with the rest of the world" all contemporary buzzwords are to be mobilised. Kitingan says "but going green is not just about the environment, nature and conservation. It is also about healthy living and the emerging circular digital economy - smart carbon, green technology, Artificial Intelligence (AI), machine learning, deep learning, big data, organic and sustainable farming and cryptocurrency and blockchain technology and the dawn of metaverse." Kitingan connects this to his longstanding political position on advancing sovereignty: "when Sabah is strong financially and politically, then Sabah can successfully claim her constitutional rights and more importantly, her independence". This millenarian account is not questioned in the press, not even the idea that any country could double its GDP in two years.

Civil Society Concerns on SDGs

In sharp contrast to Kitingan's message was press coverage of an event organised by the Jaringan Orang Asal SeMalaysia (namely the Indigenous Peoples' Network of Malaysia, JOAS), together with Centre for Orang Asli Concerns (COAC), Asia Indigenous Peoples Pact (AIPP), the European Union (EU) and Partners of Community Organisations in Sabah (PACOS Trust). This event was themed around the UN's Sustainable Development Goals and identified multiple ways in which Malaysia was missing opportunities to engage with Indigenous Communities to advance the SDGs. JOAS President, Paulus Gahin, singled out the "secretive" NCA 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)". Speaking for the Malaysian Civil Society Organisations - SDG Alliance, Dr. Kon Onn Sein, emphasised both the ESG requirements of investors in respect to environment, climate and Indigenous Peoples' rights and the central roles of indigenous peoples in maintaining forests globally.

2022

JAN

3rd

Legal Case Update

The press announced that Lasimbang had accepted a legal request for time extension for providing the NCA documents. The national Malay Mail quotes Lasimbang as stating "I am taking legal action because it has become the only way for Sabahans to get clarity about what this deal will commit to our people for the next one hundred years," and records that Kitingan, "the main proponent", had "given personal assurances and emphasised the financial value of the deal to the sovereignty of Sabah".

10th

Court Order to NCA Documents Granted

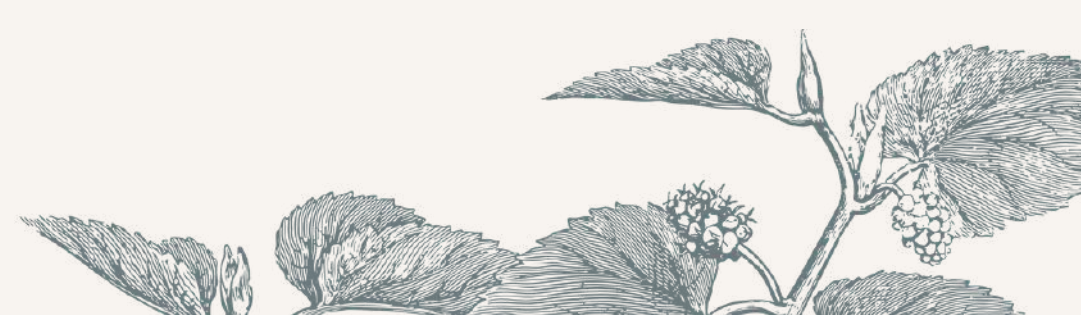
The High Court Order of 10th Jan 2022 requires the CCF to provide within 8 days the NCA, the map of its Designated Area, and relevant correspondence and due diligence with Hoch Standard. The CCF complied on 19th Jan, undertaking to provide the still unprepared Designated Area map and due diligence materials as they become available. If the file held up in the state legislature by Kitingan did actually contain relevant documentary evidence it was not yet in the hands of defendants (Sabah Chief Conservator of Forests and State Government).

14th

NCA Promotional Videos

Kitingan releases a 10-minute explanatory video on his Facebook page that had 5,600 views at time of writing. Video focuses first on the importance of climate change, and then turns to describing the immense wealth available from a shift away from logging to carbon credits and a green economy, and what this can do for Sabah, including 3,000-5,000 ranger jobs. Kitingan's income estimates now range from RM5 to 8 billion/year (\$1.25 to 2 billion) but he does now revise down his estimate of the length of time to double Sabah's GDP per capita to a still incredible three years from two in his New Year's message. Listeners are warned that Sabah is losing money "every minute, every hour, every day" by not putting the NCA into motion. The video is silent on the commercial and legal complexities of the NCA which are the subject of contention, although he does say that offers of foreign investment worth billions are already coming in, but that he cannot speak about the details for the present. He repeats that carbon is now worth \$50/tonne (indicating his lack of understanding of the difference between the compliance market and the voluntary offset market). His video also claims that the Sabah Government is 100% in support of the NCA because there are "only benefits and no downsides".

A second short video appeared on Facebook the following day under his party's media imprint, in which he talks about the Lands and Surveys Dept and District Offices having to register the land ownership of all rural communities, whether used or unused, to earn a share of the NCA revenues. He tells Sabahans "we will be creating a system for this. this is already being done in Brazil by Allcot, a big company. I have already spoken to them via Zoom and they will be guiding and advising us on how to go about this. They have already done this with 1,800 landowners." (Allcot is a prominent Spanish greenhouse gas emissions management service provider with a project of this nature in the Brazilian state of Pará). These videos have been widely disseminated at village level. Many communities, confused by the content of the second, mimicking as it does a government order, have been exploring registering their degraded watersheds and undeveloped lands at District Officers.





2022

JAN

18th

Pro-NCA Financial Claims

Speaking at the Sabah International Business and Economic Summit (SIBES) Kitingan repeats and ups his claims that the NCA would earn RM3.2 billion (\$800,000) to RM5.6 billion (\$1.4 billion) annually from carbon credits “without cutting a single tree”, and that under the NCA “Sabah would be moving into a green and circular economy, which meets the United Nation’s 17 Sustainable Development Goals”. Kitingan also said the success of the NCA “is expected to lure an estimated USD10 billion in private funding”. The NCA was framed as “part of the modernisation and transformation programmes by the government to preserve and safeguard the interests of the indigenous communities.” These claims are further reported on 24th Jan.

19th

Legal Intervention Fails

Hoch Standard’s attempt to legally intervene in Lasimbang’s High Court proceedings fails because it is submitted after the documents have been transferred.

26th

NCA Singled Out Internationally by UK Guardian

Sabah’s NCA referenced in think-piece by George Monbiot as an “astonishing” example of what is wrong with carbon off-setting.

27th


Community Outreach

Adrian Lasimbang announced as president of the indigenous association, Pertubuhan Suara Anak Sabah (Sabah Peoples’ Voice Association), proposes roadshow program to explain the NCA to indigenous communities in Sabah. With this, Lasimbang leaves the (opposition) Democratic Alliance Party and returns to his activist and civil society roots. (Initial outreach efforts from late Jan into Feb alongside PACOS indicate that village communities are confused about carbon trading in general and the NCA in particular. Communities with ancestral territory in Forest Reserves are particularly concerned about what this may do to their forest land access).

FEB

2nd

Al Jazeera Garners Major Attention



Al Jazeera publishes a lengthy story entitled “‘Very hush-hush’: Borneo’s \$80bn carbon deal stokes controversy: Figures behind the deal include a politician linked to deforestation in the 1990s and an associate named in the Panama Papers” after two months of investigation and verification of Kitingan and Golokin’s current and past activities. Al Jazeera had sight of the key documents, and interviewed a whistle-blower close to the deal who said he was “sick to his stomach” since the NCA was “an obvious con”; meanwhile, the Chief Conservator of Forests said “he had been ‘pressured’ to sign the agreement on the understanding it was a preliminary document” and that while the CCF “believed the NCA had ‘good intentions’, he was concerned about Hoch Standard’s background and the firm’s 30-percent cut.” Adrian Lasimbang was also interviewed, though not about his court case, but he did confirm the “open secret” of Kitingan and Golokin’s involvement in widespread deforestation between 1986 and 1993 with such massive corruption and mismanagement that “the net economic benefits were almost zero”. Al Jazeera also confirmed the due diligence claims that had been circulating in social media that Hoch Standard is owned by the untraceable Lionsgate Ltd in the British Virgin Islands (BVI); Golokin’s repeated association with such secretive shell companies; and the fact that the sole director of Hoch Standard is Mr. Benjamin Ng, another individual named in the Panama Papers.

2022

FEB

2nd

International experts on indigenous rights (Kristen Lions from the University of Queensland), business transparency (Brice Böhmer from Transparency International) and carbon trading (Holly Jean Buck, University of Buffalo) stated on record to Al Jazeera that the lack of consideration given to indigenous rights left the scheme “quite vulnerable” and “could see Sabah carbon credits rejected by the market”; that the lack of community consultation was “another red flag and quite illegal”; and that it was “questionable whether Sabah needed a foreign company to sell its carbon credits” especially not for as much as the 30% cut. Al Jazeera checked directly with Temasek Holdings the claims by Kitingan and in NCA promotional materials that Singapore’s sovereign wealth fund was backing the deal since NCA protagonists have emphasized this due to Singapore’s carbon market intentions. Those claims are entirely false. Al Jazeera put to Kitingan that Temasek was not backing the NCA, which he accepted, but still insisted to Al Jazeera that Hoch Standard had the backing of “big funding agencies” and was valued at US\$10 million, contrary to Singapore Government records. Kitingan falsely informed Al Jazeera that Sabah’s legislative assembly had debated and approved the NCA, and also that the Sabah Cabinet had approved it when records seen by Al Jazeera show they approved “only the theoretical monetisation of carbon and natural assets subject to strict due diligence”. Kitingan also revealed the political leverage he holds over the government by stating to Al Jazeera that he “would leave the ruling coalition if the project was blocked”. Were he to do this, the State Government would fall.

3rd **Opposition Claims there are Grounds to Cancel NCA**

The opposition Warisan Party leader, Datuk Seri Shafie Apdal took to the Malaysian press Kitingan’s empirically false statement to Al Jazeera that the NCA had “already been debated and approved by Sabah’s legislative assembly”. Shafie claimed this was “an apparent attempt to confuse the people in Sabah and the international community as well.” Noting that Al Jazeera’s investigations also refuted that Cabinet had approved the deal “Shafie called for the cancellation of the NCA”. Shafie added that “Warisan is ready to support efforts to maintain Sabah’s natural resource reserves via the sale of carbon credits, but it must be done with full openness, integrity and taking into account the interests of indigenous peoples.”

5th **Kitingan Threatens Lawsuits**

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”, and claims Al Jazeera had relied the “on false allegations” by a whistle-blower “who is hell-bent to discredit the deal and even set up his own group to take over the deal”. Lasimbang declared Kitingan “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 informed.” Lasimbang remarked that Kitingan “keeps plucking figures from the air and announcing billions of possible revenue without providing details how he came up with such numbers’. In the absence of a designated area on what basis were the calculations of revenue made? Did he conduct any consultations with our conservation agencies on how much it will cost to maintain the carbon in these areas?” Lasimbang also pointed out “I have acquired a court order to be able to have access to documents regarding this deal. I can confirm that the leaked documents that have been viralled in the internet several months ago are legit.” As such the “people of Sabah deserve to know why he continues to defend the 1000 dollar Singapore company Hoch Standard, why this company deserves a 30% broker fee, why this company can withhold money that belongs to the State, why no due diligence was done, why not a single mention of indigenous people’s rights in the agreement... and many more whys.”



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5th

Lasimbang also questioned why Kitingan was focused on a deal outside of his jurisdiction as Minister of Agriculture rather than attending to farmers' needs. Kitingan initiated no legal actions.

6th **Golokin & Dr. Ho Defend the NCA**

Stan Golokin (with Dr Ho briefly present on Zoom) speak for the first time alongside Kitingan to defend the NCA which was characterised as mobilizing Sabah's "lazy assets" (i.e. nature). Golokin shared details about earlier, non-implemented iterations of the NCA with Sabah Economic Development Corporation (SEDCO) and then Sabah Parks. Dr Ho stated that he was the sole funder of the NCA contradicting multiple statements by Kitingan to the press and Legislative Assembly about Hoch Standard's institutional funding base; and that he had already presented Kitingan and Sabah Government "the evidence of funding and the monies required for the carbon trade deal to take off". Dr. Ho also stated that "six international bodies had already expressed interest in working with Hoch Standard" and claimed that they were also in "active discussion with Sulawesi, Western Australia, and East Timor". Dr Ho said he would use "joint venture companies" to hire the necessary manpower in the territories Hoch Standard would operate, indirectly confirming that Hoch Standard did indeed have no capacity to do this themselves. Golokin dismissed concerns about Federal carbon accounting/NDC requirements and claimed confusingly 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". Golokin dismissed the need for FPIC, defended the 30% gross revenue figures, and showed a photo of the Sabah Attorney-General at the signing ceremony to prove she was present (though she did not sign to witness the document).

Kitingan Defends the Deal

Kitingan releases a press statement denying that the NCA was a sale of land as alleged by opposition leaders; he states confusingly that it is "getting the approval of the state cabinet, and does not need to be brought and tabled in the DUN (State Legislative Assembly) because we already have legislation and a decision on this matter under the state government". Kitingan argues the NCA will be more lucrative than current logging, but then states that the NCA would be in the TPAs that "are protected under laws such as the Forest Enactment 1968 with the strict monitoring of the Sabah Forestry Department (JPS), therefore, there is nothing that can allow the state's forests to be destroyed arbitrarily". Kitingan also stated that "there are plans so that our people, our indigenous people will benefit, including the villagers who have land. We will get them registered so that they can enjoy this NCA programme too." No evidence suggests the legal existence of such a village-land NCA scheme, which he also disseminated through Facebook on 15th January, but there are subsequent reports of confused communities exploring registering their catchments for this purpose at District Offices.

7th

REDD-Monitor Updates

Covering the latest developments from the Al Jazeera story, exposing how Peter Burgess was still misrepresenting himself, and references Kitingan's threats to sue Al Jazeera and Lasimbang.

Anti-Corruption Complaint Submitted

The opposition Warisan Party formally lodged a complaint with the Malaysian Anti-Corruption Commission (MACC) over the NCA. The details are not yet in the public domain.

2022

FEB

7th

Kitingan Raises Federal Threat, Cites Jealousies and Claims Martyrdom

In a significant lengthy interview with the local news service, The Vibes, Kitingan warns “there are now moves being devised at the federal level to enact a law to control carbon credits”, hence his “plea for the immediate implementation of the NCA before the new law comes into force”. Next, advancing into Kitingan’s favoured political territory of leveraging Sabahan suspicion of the Federal Government, he continues “although land and forests come under the state’s purview, if we can lose our oil and gas revenues, then we can lose this one as well. So this is why we need to act fast, do it before the federal government has the overall control.” The NCA is then presented as a new start for dignity in Sabah: “with better financial capacity” argues Kitingan “we can talk to the federal government on a more equitable basis”. Kitingan also provides further contradictory and confusing commentary on if and how he was authorised to advance the NCA, saying: “When I proposed this to the government, initially they were unable to understand, forcing me to explain further until they understood. We then proposed to the federal government and the cabinet to give authorisation to the chief minister. Then I look at it. For the last two years, they were already doing it. But they did not complete the job because there was a change of governments. We only need to commit to this plan.” Kitingan, as usual, dismissed concerns around the use of a foreign shell company, the contractual arrangements and due diligence saying “there is no risk for the government. We are making an agreement with Hoch Standard. We have done our due diligence. This is a SPV with a multimillion-dollar connection. Why Singapore? Because Singapore is a triple-A rated nation, with triple AAA connection given for its financial institution status.” He claimed that if a foreign company was not involved Sabah would earn lower “set prices” in Malaysia. Kitingan shared his explanation for all the criticism. “I think they see there’s a lot of money and want to put their hands on this deal. I am sure this is going on in their heads. A lot of people want to take over. Despite all these obstacles, even the government and chief minister have so many people advising and influencing him.” On the other hand, the court case was attributed to the notion that Lasimbang was “probably trying to score political points”. Doubtless aware of the moves that emerged on 9th February Kitingan remarked “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.” Ultimately Kitingan displayed his customary saviour complex saying he was ready to face the on-going NCA controversy: “Never mind if they want to sacrifice me politically. I cannot let the people down if the opportunity is there.”

8th

Kitingan Isolated

Political commentator Joe Samad runs a piece in Free Malaysia Today retelling the NCA story with the critique and unanswered questions, noting that “the biggest question was why the state government was willing to grant 30% of the profits to Australian and Singaporean companies”. In that regard he noted pointedly: “The fallout from the deal left Kitingan alone to answer the public” and that it “looks like Kitingan will have to continue this fight alone”. This indirectly highlights that at no point since news broke has any other cabinet member or other government official defended the deal.



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8th

Sarawak Report Gets Involved

Summarises recent developments with invective, leaks a signed version of the contract, highlights the confidentiality clause and suggests that the NCA is actually “a classic cancellation scam” whereby the individuals who control Lionsgate do not bother to implement, but instead use Hoch Standard to either sell-on or abandon the NCA to earn “a massive cancellation penalty” from the Sabah Government. Sarawak Report locates Kitingan at the heart of the deal and remarks that “he holds apparent connections” with the company awarded “up to US\$24 billion” in potential profits.

9th

Civil Society Statement on Technical Flaws

A press statement from 11 Sabah civil society organisations is published in the national press arguing that the technical and financial arrangements under the NCA are flawed, with incorrect pricing, lack of understanding of additionality, and lack of transparency and due diligence. The group “cautioned that credible international buyers, in undertaking their own due diligence, would be alarmed by the lack of transparency with regard to the identity and competency of the owners of one of the parties to the NCA”, and propose voluntary “disclosure of documents that reveal the identity of the real party to the NCA along with their financial and technical records.” Dr. Rebecca Jumin of WWF-Sabah is quoted saying carbon trading is “complex and requires technically competent people from relevant government departments, universities, civil society and other stakeholders ...to sit down and examine the ecological, social, economic, legal and institutional complexities together in good faith and with impartiality”. In an effort to dispel the claims of billions to be generated, the issues of additionality and the challenges of restoration to achieve this are laid out by Datuk Dr Glen Reynolds of SEARPP (Sabah’s international rainforest research partnership) and Dr. Philipson, lead author of a 2020 paper on forest restoration and carbon trading in Sabah using two decades of sequestration data from representative Sabahan forests. Finally, the group points out the claims of \$20 and now \$50/tonne for CO2 Equivalent are compliance market prices not relevant to the NCA, while the “kinds of voluntary carbon credits Sabah could sell, namely forest offset credits, are selling for ... an average around \$5”. They conclude that far from being the claimed money-spinner “it would sadly be not profitable to use restoration to sell carbon from protected areas”.

Major Sabah Government/Attorney-General Press Release

Sabah Attorney-General, Datuk Nor Asiah Binti Mohd Yusof, issues a major press statement on behalf of the Sabah Government that is rapidly circulated in entirety through social media and covered in the local and later international press. The document opens with the Sabah Government’s five-point statement of 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 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, stating that what had been signed 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 the identification of “suitable and available TPAs” as the Designated Area. Without this, and notably with no Designated Area, the NCA “in its present form is legally impotent” (on this point they critique Sarawak Report’s assertion the NCA is already in force with its penalty clauses binding).



2022

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9th

The Sabah AG also states that “any clause in the proposed NCA that seeks to bind the Sabah Legislature in any form is void under Malaysia Contracts Act 1950” (this references NCA efforts to prevent the Legislative Assembly passing any law limiting the application of the NCA without financial compensation.) The AG makes clear that the Sabah Government will require the said Amendment to address the existing list of technical and legal issues identified in previous press coverage and leaked documents, as well as authorizing the State AG’s existing effort to gather the facts about Hoch Standard’s actual financial and institutional competence (“notwithstanding” Hoch Standard’s “several representations”), in order to confirm “the truth and reliability of Hoch Standard’s representations and capability”. Notably the Press Release declares that “unless and until Hoch Standard Pte Ltd, its promoters and affiliates, meet the requirements of the State Government, the proposed NCA will not succeed.” The document ends with highlighting the role of the SCAC and its advisory committee to “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”. Finally, in respect to the Al Jazeera article, the State Government “has no comment on the allegations made against certain individuals or individual members of the government”.

10th

Mongabay Update

Under the title “Malaysian officials dampen prospects for giant, secret carbon deal in Sabah”, Mongabay details implications of the Attorney-General’s Press Statement, the Al Jazeera article and the civil society press statement of Feb 9th, 2022.

Responses to the Attorney-General’s Press Statement

The Secretary for the Opposition Democratic Action Party, Phoong Jin Zhe, is quoted as saying “isn't it improper and uncommon for a government to enter a multi-billion deal without seeking advice from the AG and without conducting due diligence?” while calling for “a special State Assembly sitting ... to ensure Sabahans' interests are safeguarded”. The Secretary General of Warisan (opposition) sought to leverage the critique of the civil society organisation to argue that “Warisan's request to the State Cabinet to prepare a white paper on NCA is necessary.”

Claims by Sarawak Report

They publish news of the Sabah AG’s press release (which it characterises as “pulling the plug” on the NCA), but links the failing NCA to news of what it considers “copy-cat plans” by the Chief Minister of Sarawak. (In fact the Sarawak plans have an entirely separate history under UK PACT-financed climate transition funding; hence CM Sarawak’s announcement language that they would “collaborate with credible private sector players to capitalise on carbon market potential, including payment for ecosystem services within the legal framework to ensure transparency and accountability”. In Sarawak, the financial benefits quoted are calculated with correct carbon prices and are less than 10% of the numbers claimed by Kitingan for the NCA.)

14th

More Sarawak Report Claims

Publishes “Blame The Media! – Sabah State Government Launches Cover-Up Over Carbon Cowboy Deal”.





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14th

This lengthy story argues that the State Attorney-General's Press Statement is an effort to escape the NCA by falsely arguing that what was signed is a "non-binding framework", "unenforceable" and "impotent"; Sarawak Report instead taking the position that the NCA is binding and that her statement is "an attempted cover-up of a disastrous commitment" made by "a government at war with itself" due to Kitingan taking advantage of the weakness of the coalition. Sarawak Report continues "it is not hard to read between the lines that the Chief Minister and Conservator of Forests have been woken up by the public outcry to the sheer enormity of the contract they have signed and are supporting the AG's attempt to place a legal block on the attempts by Kitingan to push forward with the arrangement. Blame the press for misreporting what happened and re-write history." However, the new evidence provided in this article contradicts this argument, namely the leaking of a letter from the Chief Conservator of Forests to the State Attorney-General dated October 29th, 2021, the day after NCA signing. In this letter the CCF remarks that "despite voicing out all our concerns and our reluctance to enter into the NCA in the current form, the State Government has decided to proceed with its signing for bankability purposes". The letter then puts on record that Hoch Standard "had agreed that this NCA will be subjected to continuous negotiation" and that they would "address all our concerns in the form of an addendum or supplementary to the NCA", and then seeks to advance that very process with the Attorney-General by providing the relevant documents "for her further action", long before the Agreement was leaked. Sarawak Report coverage is delivered in distorting tone and improperly suggests they have played a significant role in addressing the NCA controversy.

16th


REDD-Monitor Update

References the Attorney-General's press statement and the coverage by Sarawak Report.

17th

Technical Report Doubts NCA Revenue Prospects

Carbon Sovereign Sabah releases a technical report commissioned from Professor David Burslem (University of Aberdeen) and Dr. Glen Reynolds (Director, South East Asia Rainforest Research Partnership (SEARRP) entitled "Technical & Financial Impediments to the Viability of the Nature Conservation Agreement (NCA)", focusing on the economics and practicality of the restoration activities required by the carbon market's "additionality" requirements. This report by experts with decades of relevant research experience in Sabah makes clear that the entire premise of the NCA - marketing carbon from Sabah's Totally Protected Areas - is fundamentally flawed. The only possibility for claiming additionality - 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 can be marketed. The problem with this approach, the report details, is that tropical forest restoration is just too hard to do at large scale. By way of comparison, the maximum achieved in a year during thirty years of such efforts in Sabah under INFAPRO is just 2,000 hectares. Furthermore, research shows that restoration yields only a quarter of the carbon 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, which the NCA protagonists claim is ten times higher than the real 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".



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The report is disseminated to the relevant stakeholders and the press. Press covers the (above mentioned) Technical Report under the title "Sabah carbon deal not certifiable, saleable or profitable, claim experts" on February 18th.

18th

Due Diligence & Approval

Former Kota Kinabalu member of parliament Datuk Dr Hiew King Cheu said "the Sabah government should not have entertained the NCA before all the pertinent facts are established and the details specified comprehensively", and that "adverse publicity in the international media makes the secretive NCA deal appear unreasonable and of questionable benefit to Sabah's interests". With reference to the British Virgin Islands company, Lionsgate, "whose ownership is not stated in the agreement signed by the Sabah Government leaders", he said "there is a need for public accountability to disclose who stands to benefit from the NCA, given [that] the identity of who actually owns Hoch Standard Pty Ltd remains undisclosed". He further asserted that the NCA "should be tabled for endorsement voting and approval in the Sabah State Assembly".

19th

NCA Reported as Still Going Ahead

In an article in New Straits Times, titled "Everything is good about Nature Conservation Agreement, says Jeffrey", Kitingan responds to the Sabah Attorney-General, the court case, and report that shows the NCA has no financial viability by saying: "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 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.'"

