SILENT APPROVAL

The role of banks linked to the crisis faced by Borneo's indigenous peoples and their forests

Report #84

SWEDWATCH

FairFinanceGuide® Sverige

Swedwatch is an independent not-for-profit organisation that conducts in-depth research on the impacts of businesses on human rights and the environment in the Global South. The aim of the organisation is to contribute towards reduced poverty and sustainable social and environmental development through research, encouraging best practice, knowledge-sharing and dialogue. Swedwatch has six member organisations: Afrikagrupperna, the Church of Sweden, Diakonia, Fair Action, Solidarity Sweden-Latin America and the Swedish Society for Nature Conservation.

Fair Finance Guide is an international civil society network that evaluates banks' considerations to social, environmental and human rights standards. The initiative offers a web-based tool enabling bank clients to request their banks to become more socially responsible and sustainable. Behind the initiative stand 30+ civil society organisations in nine countries. In Sweden it is led by the Swedish Consumers' Association in partnership with the Swedish Society for Nature Conservation, Fair Action, Amnesty and Diakonia. The project is funded with support from Sida. www.fairfinanceguide.se

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Since the logging boom began in the 1960s, large tracts of indigenous peoples' land have been dispossessed from its traditional owners in Borneo – a process which is still on-going today. Land concessions have been approved for mining projects, hydropower development and commercial plantations.

Executive summary

The destruction of Borneo's forests has been referred to as one of the largest environmental crimes of our time.[1] Predictions, based on current deforestation rates, show that Borneo's lowland forests outside of limited protected areas could be completely vanished by 2020.[2] Since the 1960s, logging, oil palm plantations, mining, and hydropower development have had extensive impact.

The forest destruction and the dispossession of land from its traditional owners has resulted in a far-reaching human rights disaster. Large areas of indigenous land and forests have been approved for development under land concession agreements, without protection of indigenous peoples' right to be informed and consulted prior to any planned developments. Communities have been displaced, lives uprooted, and traditional livelihoods severely impacted. Environmental and human rights defenders have been exposed to intimidation, threats, arrests, violence and even killings.

Although states are responsible for protecting indigenous peoples' rights, the state bodies and court systems in both the Malaysian and the Indonesian part of Borneo have failed to protect the rights of their indigenous citizens. Also, in line with internationally recognised standards, companies and financial actors, are required to respect the rights of indigenous peoples throughout their operations and financial activities. This has, however, fallen short in Borneo.

This report outlines the investments of the Scandinavian banks Danske Bank, Handelsbanken, Länsförsäkringar, Nordea, SEB, Skandia and Swedbank in four companies associated with risks and impacts on indigenous peoples and their forests in Borneo. The study explores the seven banks' actions and responsibilities, the positive and/or negative effects of these, and highlights the crucial role which investors can play to uphold international standards in situations where states do not protect indigenous peoples' rights.

Although all banks reviewed have endorsed international standards and conventions on indigenous rights in their policies and participate in important global investor initiatives on human rights, they have not yet seized opportunities to raise the specific challenges for indigenous communities affected by the investments. The findings in each case show that the banks reviewed have failed to stringently identify, analyse and act on their portfolio companies' risks and impacts on indigenous rights and forest areas with community and cultural values.

Case 1: The traditional agriculture land of a Kayan and Kenyah indigenous community in Sarawak was bulldozed with no prior consultation, to give way to the Malaysia-registered company IOI's oil palm plantation. The company has not provided compensation to enable them to maintain their traditional livelihoods for the future.

Case 2: A Dayak Murung indigenous community in Central Kalimantan has been affected by the Australian-British mining company BHP Billiton's large IndoMet Coal project. The community's access to traditional forests and land has been restricted, and there have been negative impacts on their agriculture.

In these cases, involving BHP Billiton and IOI, the banks failed to conduct their own checks and balances to verify project documentation, capture communities' perspectives and ensure independent field checks to verify actual impacts on indigenous lands and forests. The banks also report that they have been reassured by statements from the companies themselves, which claim, for example, that projects are developed on 'state land' with 'no protected areas', and that the communities have been 'consulted and compensated'.

Case 3: The Swedish company AAK imports and sells palm oil to customers that produce food, chocolate and cosmetics. The analysis highlights gaps in the company's due diligence regarding risks and impacts on indigenous rights on Borneo. Despite several banks being in close dialogue with AAK, they had not brought these weaknesses to the company's attention.

Case 4: Deutsche Bank provided financial services to a former Sarawak political leader, who in turn has been accused of facilitating large-scale deforestation and dispossession of indigenous land for the benefit of himself and his family. The report's analysis concludes that the seven banks, which all hold shares in Deutsche Bank, do not have adequate systems in place to detect and act on allegations, which concern a financial relationship between a bank and a disputed leader, which is extended over time.

Scoring of the banks' actions to respect indigenous peoples' rights in the four cases

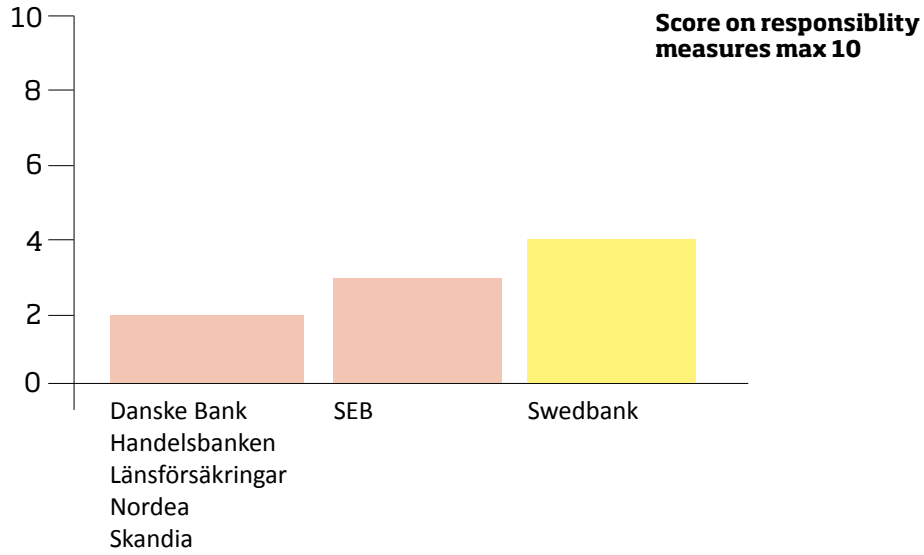

Figure 1: Average scores on what responsibility measures seven Scandinavian banks - which are invested in the companies AAK, BHP Billiton, Deutsche Bank, and IOI - have taken in response to risks and impacts on indigenous rights in the companies' business operations. The banks have been scored on whether they have been aware of the risks and impacts; conducted adequate research and analysis; and tried to influence the companies and other stakeholders in a positive direction to improve the situation for affected indigenous communities. The banks have been scored against criteria, which generate ratings between 1 and 10 (described in Annex 1).

The report concludes that more resources, and more effective processes and methods, are needed to enable banks to respect indigenous rights in both new projects and – importantly – in existing concessions and ongoing projects to allow the largest wins to be made for the benefit of millions of indigenous people and their traditional forests.

There is a critical and urgent need for banks and investors to become active, informed enforcers of indigenous rights, and to put pressure on companies and governments to improve the situation of affected communities. By requesting information and improvements from their banks, retail customers could act as change agents and raise the bar for banks' respect for indigenous rights.

The companies and banks discussed in the report have been given the opportunity to comment on these findings and present their views and perspectives. Summaries of their responses are incorporated into Chapters 5 and 6.

Recommendations

BANKS, FUND MANAGERS AND OTHER INVESTORS SHOULD:

1. Commit to protect the principles of free, prior and informed consent (FPIC) for indigenous peoples and high conservation values (HCV) protection in publicly available sustainability policies that govern all investments and business activities.

2. Ensure awareness and understanding of the specific challenges and opportunities related to indigenous rights amongst members of bank management teams, fund managers and sustainability departments. Important aspects include considerations that:

- Indigenous peoples' internationally recognised rights to self-determination and the rights to FPIC and HCV on their traditional lands, territories and forests still apply even where laws, courts, government action, or industry initiatives deny or limit these rights.
- Some current industry standards (and their implementation) display gaps and may represent narrow interpretations of international standards. International experts recommend that investors do not rely solely on industry initiatives, and underline the need to complement and verify these with their own independent audits, interviews and field checks.
- There are positive opportunities to respect indigenous rights in approved land concessions and ongoing projects in which FPIC processes and HCV assessments were not established from the onset. Re-engagement with communities and participatory HCV identification and mapping of land use and tenure can bring important benefits at almost any stage of a project implementation cycle.

3. Allocate adequate resources and improve sustainable investment processes and methods for human rights due diligence to ensure the proactive identification and thorough analysis of companies' risks, impacts and responsibilities for indigenous rights. Important considerations when further improving the processes and systems include:

- Ensure that the criteria for prioritising the severity of risks and impacts on indigenous peoples are designed to identify the high values at stake and cases that concern groups of people who may be small in numbers.
- Design verification methods in which the burden of proof is on companies, which should be required to provide basic information and documentation, even in contexts where states do not require public disclosure of, for example, a project Environmental Impact Assessment.
- Continue to use the company investments as an entry ticket to put pressure on both state actors and companies in order to seek innovative ways of raising issues and proposing improvements together with other investors. Banks with relatively small and passive investments still have an opportunity – and a responsibility - to engage with companies linked to breaches of indigenous rights, and their responsibility systems need to be sufficiently scaled for this.
- As part of investor efforts to instigate positive change, it is important to conduct dialogues with civil society, and to contact and propose measures to state actors in the countries where companies operate. Highlight and promote best practice standards and lessons learned. For examples, see section 3 of this report.
- Investors may file, co-file or support shareholder proposals concerning indigenous rights to FPIC and forests, or make statements at companies' annual general meetings. This type of initiatives can jointly address the three inter-related issues of indigenous rights, deforestation and climate change – drawing on current research on the important role of indigenous peoples in sustainable forest management and protection.

BANKS' RETAIL CUSTOMERS SHOULD:

1. Express concerns to their banks and request that they improve policies and investment practices related to indigenous rights, for example by emailing their bank through the Fair Finance Guide website.[3]

THE GOVERNMENTS OF INDONESIA AND MALAYSIA SHOULD:

1. Consider a review of problematic concessions with a focus on (i) the respect of indigenous peoples' rights to FPIC at approval stage, (ii) whether the relevant company has ceased impacts on indigenous rights, ensured remediation and provided adequate compensation for irreversible impacts.

Indigenous activist Mutang Urud (right) was arrested after organising community blockades against logging companies' encroachment. He was placed in solitary confinement and deprived of food and water. When released he was smuggled over the border and fled to Canada. Source: The film The Borneo Case, which follows Mutang back to Sarawak, Borneo after 20 years in forced exile. ©PHOTO AMP FILM

2. Invite the United Nations Special Rapporteur on the rights of indigenous peoples to conduct field visits and dialogue with communities, state actors and civil society.

3. Sign and ratify The International Labour Organization's Convention 169 on Indigenous and Tribal Peoples, and include provisions in the United Nations' Declaration on the Rights of Indigenous Peoples in national legislation and ensure its consistent implementation.

4. Ensure open access to historical records of indigenous peoples' land use, and allow community-elected traditional leaders and elders to testify in the courts.

5. Require companies and investors to conduct FPIC consultations and HCV assessments for new projects at feasibility and in various stages, and in existing concessions and ongoing projects at the earliest possible stage. Resulting assessment reports, including EIA reports, should be subject to compulsory public disclosure.

6. Inform and encourage investors and companies to cease opportunities that exist to excise indigenous communities' forests with community and cultural HCVs from concessions.

THE SWEDISH GOVERNMENT SHOULD:

1. Identify the specific human rights risks of the financial sector in the National Action Plan on Business and Human Rights.

2. Make it mandatory for companies to conduct human rights due diligence for their operations and value chains. The obligation should at least apply to business activities and business relationships in sectors and countries where there is a high risk of human rights violations.

For banks, this will mean conducting human rights due diligence with regard to their investment portfolios and in their client screening for credits, loans and project financing. Special attention should be given to indigenous peoples' unique rights as expressed for example in UNDRIP.

3. Introduce mandatory disclosure of corporate credits, loans, and project financing, since these may have links to projects such as commercial plantations, mining, hydropower and infrastructure, which carry risks for impacts on indigenous rights.

4. Sign and ratify The International Labour Organization's Convention 169 on Indigenous and Tribal Peoples, and include provisions in the United Nations' Declaration on the Rights of Indigenous Peoples in national legislation and ensure its consistent implementation.

List of Abbreviations

EIA	Environmental Impact Assessment
ESG factors	Environment, Social and Governance factors
ESIA	Environmental and Social Impact Assessment
FAO	Food and Agriculture Organization of the United Nations
FFB	Fresh Fruit Bunches
FPIC	Free, Prior and Informed Consent
HCVs	High Conservation Values
HRIA	Human Rights Impact Assessment
HRDD	Human Rights Due Diligence
ICMM	International Council on Mining and Minerals
ILO	International Labour Organization
IRMA	Initiative for Responsible Mining Assurance
JVC	Joint Venture Company
NGO	Non-governmental Organisation
OECD	Organisation for Economic Cooperation and Development
PRI	Principles for Responsible Investment
RSPO	Roundtable on Sustainable Palm Oil
UN	United Nations
UNDRIP	United Nations' Declaration on the Rights of Indigenous Peoples
UNGPs	United Nations Guiding Principles on Business and Human Rights
UN REDD Programme	United Nations collaborative initiative on Reducing Emissions from Deforestation and Forest Degradation (REDD+) in developing countries
WALHI Kalteng	Friends of the Earth, Central Kalimantan

1. Introduction

Over 370 million indigenous people live in 90 countries around the world.[4] Of these, 60 million people depend almost entirely on forests for their livelihoods, and their traditional land and territories[5] cover over 20 percent of the world's land surface.[6] Indigenous communities engage in fishing, hunting and shifting cultivation, and use wild forest products[7] for food, medicines and building materials. Forest landscapes, specific sites and places, animals and plants are at the centre of many groups' cultural and religious practices and identities.[8]

Throughout history, numerous indigenous peoples have been colonised by majority groups, and continue to be discriminated against and marginalised politically, socially and economically within their societies.[9] Today, many companies that engage in business activities and projects that displace indigenous communities from their traditional land without asking for their consent, and destroy and degrade their traditional forests, are listed on international stock exchanges.

Globally, a number of reports have described the far-reaching impacts of states awarding vast tracts of indigenous land to companies for development under land concessions, for example in plantation expansion and mining booms in emerging economies. The reports also highlight the role of investors such as banks, fund management companies and insurance companies who purchase shares in these companies, which are then packaged into savings products for clients, for example in the form of equity funds, pension schemes or insurances.[10]

This Swedwatch – Fair Finance Guide report presents four case studies involving seven Scandinavian banks' investments in four companies with business operations in Sarawak, on the western Malaysian side of the island of Borneo, and in Central Kalimantan on the eastern part of the island, which belongs to Indonesia.

Borneo constitutes a typical high-risk operating environment for companies from an indigenous rights perspective, and therefore the findings are relevant to any financial actor with investments in countries with citizens who identify as indigenous people.

The two main reasons for selecting Borneo as a geographic focus were:

- The rapid expansion of logging, commercial plantations, mining and hydropower projects across indigenous land has resulted in large-scale forest destruction and the systematic abuse of fundamental indigenous rights.[11]
- Although Borneo's indigenous peoples' rights are enshrined to some extent in constitutions and national legislation, they are not adequately protected in practice.[12]

The first aim of this report is to explore the impacts on indigenous rights holders that are linked to bank investments. The second aim is to analyse the gaps in current investment practices, and highlight how global investors could maximise their positive leverage on companies and governments, in line with international standards.

2. Methodology

This study presents four cases, whereby banks are invested in companies, which have business operations in Borneo. Table 1. below gives an overview of the methods used to collect information on the companies' performance and the impacts on indigenous peoples' rights. In all four cases, Swedwatch reviewed publicly available company information (for details, see respective report section).

Case no.	Company	Business activity	Swedwatch methods	Report section
1.	IOI	IOI-Pelita palm oil plantation, Sarawak.	Field investigations in Borneo. Desk research. Analysis of historic satellite images.	Chapter 5.1
2.	BHP Billiton	Haju mine, IndoMet Coal project, Central Kalimantan.	Field investigations in Borneo. Desk research. Analysis of historic satellite images.	Chapter 5.2
3.	AAK	Palm oil sourcing from Borneo.	Email survey with AAK and their consultant Proforest.	Chapter 5.3
4.	Deutsche Bank	Financial services to former Sarawak regime.	Desk research.	Chapter 5.4

Table 1: Overview of Swedwatch methods for documenting the four cases in this study, including field investigations in Borneo, desk research, analysis of historic satellite images, and in case 3. an email survey.

The companies and banks discussed in the report have been given the opportunity to comment on the findings and present their views and perspectives. Summaries of their responses are incorporated into chapters 5 and 6.

2.1 Investigations in Borneo

In July and August 2016, Swedwatch conducted field interviews and research on Borneo Island to capture the challenges faced by, and perspectives of, indigenous communities affected by private sector developments on their traditional land.

In Sarawak state on the Malaysian, western side of the island, Swedwatch interviewed 57 persons from the Kayan and Kenyah indigenous communities in Long Teran Kanan village who have been impacted by IOI's[13] IOI-Pelita palm oil plantation. 30 women and 27 men of different ages, including leaders and respected elders, were interviewed individually and in small groups. A larger group interview was also held with 25 of the community members to triangulate and confirm findings. Swedwatch further interviewed human rights lawyers, environment experts and civil society representatives from the area to shed light on the overall situation for indigenous peoples in Sarawak.

In Central Kalimantan on the eastern, Indonesian side of Borneo, Swedwatch conducted 11 interviews with male and female leaders from the Dayak Murung indigenous community in Maruwei 1 village, which has been impacted by the Haju mine – part of the larger IndoMet Coal mining project. The interview respondents included the village chief, religious leaders, respected elders, women's group representatives, the village nurse and a teacher. In addition, the Swedwatch team was guided to places of cultural and religious significance and through communal forest areas by a group of traditional landowners. The field research was conducted in cooperation with the non-governmental organisation (NGO) WALHI Kalteng,[14] which has engaged in long-standing cooperation with the community. Formal interviews were held with the organisation's director and one field worker.

Due to the heightened risk associated with criticising large corporations and their practices, and to protect the anonymity of the local respondents, Swedwatch has chosen not to use their names, with the exception of the three interviewed lawyers from Sarawak,and the head of Maruwei 1 village, who agreed to be included.

2.2 Bank survey

This report compares the results of the four Borneo cases with a review of seven Scandinavian banks' policies[15] and investment practices, drawing on results from an email survey and complemented with interviews carried out by Swedwatch and Fair Finance Guide[16] in October 2016. The banks' courses of action are assessed and scored based on good practice criteria developed by Swedwatch and Fair Finance Guide. These criteria focus on the following six aspects of responsible investment systems and methods:

- Awareness;
- Analysis;
- Monitoring;
- Company engagement;
- Sector and government engagement;
- Documentation.

For further information about the scoring methodology, see Annex 1.

2.3 Scope and limitations

The assessment of the banks' investments is limited to equity and bond holdings by their own-branded investment funds, and the banks have confirmed the screening of the investments in the companies. Investments by third-party funds that the banks offer are not included in the study.

Banks' credits and loans generally have a more direct link and a higher impact on companies' projects and business activities than minority shareholder investments. Due to Sweden's financial legislation, there is no public data available on credits, loans, and project financing. Swedwatch and Fair Finance Guide decided to focus on the investment aspect, for which such data is publicly available.

Swedwatch's assessment of company actions was hampered by the fact that there is no compulsory requirement to publicly disclose Environmental Impact Assessment (EIA) reports in Sarawak, Malaysia.[17] The companies in the study – AAK, BHP Billiton, Deutsche Bank and IOI – did not provide a majority of the documentation requested by Swedwatch, such as impact studies, risk assessments, or documentation of community consultation and engagement. For details, see Section 5.

In order to be able to make a fair comparison between the banks' investment actions, the report focuses on banks' investments and actions until June 2016. After this period, some of the banks have informed that their holdings in the four companies have changed, and that they have contacted the companies for further dialogue. These developments are not described in this report.

3. International standards on indigenous rights

In this section, Swedwatch presents an overview of international standards, that investors may require companies to adhere to in order to respect indigenous rights in their business operations. It includes all the key elements of the Fair Finance Guide's criteria for assessing banks' sustainability policies (see section 6.2), with a focus on the following elements:

- Human rights due diligence (HRDD);
- The principle of free, prior and informed consent (FPIC);
- The high conservation values (HCV) standard and methodology.

Making reference to international conventions, the UN Guiding Principles on Business and Human Rights[18] (UNGPs), expert statements and evolving good practice, Swedwatch elaborates on how a company can put the standards into practice, for example in mining and oil palm projects, or when sourcing agriculture products from high-risk areas. For an overview of good practice elements for companies to respect indigenous rights, see table 2.

Gaps in enforcement and narrow interpretations of respect for international norms on indigenous rights are highlighted in industry standards for mining and oil palm development in two fact boxes below. The identified weaknesses raise questions as to how far responsible investors can rely on these industry standards and sustainability certification schemes when assessing company adherence to international standards.

< Children playing in the river. This indigenous Dayak Murung community has been affected by the British-American mining company BHP Billiton's IndoMet Coal project which is upstream of their village Maruwei 1 in Kalimantan - the Indonesian part of Borneo (page 16).

Swedwatch overview of good practice elements for companies to respect indigenous rights.
A. Human Rights Due Diligence (HRDD)
1. Human rights policy including provisions for indigenous rights to Free, Prior and Informed Consent (FPIC), and to traditional land and forests.
2. HRDD system that assesses, responds to, tracks and communicates risks and impacts on indigenous rights.
3. Clearly stated responsibility for ensuring remedy and for providing compensation that consider indigenous peoples' special rights to land and forests, in cases where the company has caused or contributed to impacts on indigenous rights to FPIC and HCVs on their land.
4. Responsible exit strategies, which: a. Ensure remediation and compensation of impacts on indigenous rights, which the company has caused or contributed to, and b. Contain forward-looking provisions for managing and mitigating risks and potential future impacts on indigenous rights.
B. Good practice elements in the project cycle for land-based developments
Proactive assessments and consultation during project preparation
1. FPIC consultation according to good practice criteria, including participatory HCV assessment and mapping of land use and tenure.
2. Companies should respect communities' right to give or withhold their consent to a proposed project.
Reactive measures, in cases where a company has caused or contributed to impacts
1. Cease detrimental practices, such as expansion of business activities onto indigenous land.
2. Ensure remediation and provide compensation, which considers indigenous peoples' special rights to maintaining traditional livelihoods and connection to their land and forests.
3. Consultation in the spirit of FPIC, which adheres to FPIC good practice criteria, even if the consultation no longer takes place 'prior' to the project.
4. Community-Based Human Rights Impact Assessment which enables communities themselves to define and communicate the impacts they have experienced.
5. Participatory HCV assessment and mapping of land use and tenure.
6. Companies should respect communities' right to give or withhold their consent to any project expansion or changes.

Table 2: Swedwatch overview of good practice elements from international standards, which ensure respect for key indigenous rights in company operations and projects.

3.1 Companies' duty to respect indigenous rights

As is the case with all human rights, the state is responsible for protecting the rights of indigenous peoples. The United Nations Guiding Principles on Business and Human Rights (UNGPs) require that companies respect indigenous rights throughout all their global operations, including cases in which national legislation and state action fall short.

Indigenous peoples' right to being engaged in a consultation process seeking their Free, Prior and Informed Consent (FPIC) to proposed developments on their indigenous land and forests is well established under international law, and has its normative foundations in the International Bill of Rights.[19] The International Labour Organization's Convention 169 on Indigenous and Tribal Peoples (ILO 169)[20] requires that states protect indigenous rights through good faith consultations, and underlines the need to respect indigenous communities' own institutions in decision-making processes. The right to FPIC is most clearly expressed and detailed in the United Nations' Declaration on the Rights of Indigenous Peoples' (UNDRIP).[21]

In its Good Practice Note on FPIC, the UN Global Compact[22] notes that while international standards for protecting and respecting the right to FPIC are strong and unequivocal, domestic regulations and practice lag substantially. Referencing the UNGPs, the Global Compact emphasises how strong adherence to UNDRIP's FPIC provision can safeguard companies from developing legal and reputational risks while preventing negative impacts on indigenous peoples. This becomes especially pertinent in operating environments where governments, authorities or state-owned partner companies fail to respect indigenous peoples' right to FPIC.[23]

Indigenous peoples' forest use and management are continuously developing and adapting to changing conditions and realities, such as climate change and different external pressures. However, due to their constant interaction and dependence on the social-ecological systems they are managing, they often constitute viable attempts to achieve long-term, sustainable use and management regimes.[24] The Parties of the Convention on Biological Diversity (CBD), including Indonesia and Malaysia, have agreed on guiding principles for FPIC for the traditional knowledge of indigenous peoples related to their biological resources such as forests, plants and animal species.[25]

The High Conservation Values (HCV) methodology[26] is included in many industry standards, and is based on the identification, protection and management of six types of HCVs, which can be whole landscapes, ecosystems, specific sites or species of plants or animals. Indigenous communities depend on forests to meet their livelihood needs, and to maintain good health and nutrition; these forest values are described under 'HCV 5: Community needs'. 'HCV 6: Cultural values' highlights how forests and biodiversity resources are central to many indigenous peoples' traditional cultures and religions.

According to a number of indigenous organisations, international bodies and certification organisations, for example the Food and Agriculture Organization of the United Nations (FAO) and the Inter-American Commission on Human Rights, the

concept of FPIC is derived from indigenous peoples' self-governance, territorial, cultural and livelihoods rights and is necessary for the realisation of all those rights. Therefore, they conclude that FPIC includes the right, not only to a solid process, but also for the community to either give or withhold their consent to a proposed project.[27]

Other FPIC interpretations maintain that indigenous peoples do have the right to a fair FPIC process, where the aim is to obtain the community's consent. In these interpretations, although a good practice FPIC process gives the community time to obtain full information about the proposed development, discuss potential impacts, and negotiate conditions and adequate compensation, it does not give indigenous peoples a 'veto right' to a proposed project.

3.2 Human rights due diligence

In line with UNGP requirements, through a continuous process of Human Rights Due Diligence (HRDD), companies must have policies in place that include provisions on indigenous rights - in cases where their business activities carry risks of adverse impacts on indigenous communities.[28] Companies must assess and identify – and then respond to and manage – any identified risks and impacts, and transparently communicate their efforts.

For companies engaged in mining, oil palm development or other land-based projects, Free, Prior and Informed Consent consultations can be seen as part and parcel of the HRDD process. For details, see box on 'Good practice in the project cycle' below. For companies that source agricultural products such as palm oil from regions with indigenous communities, the HRDD could include voluntary supply chain risk assessments with a focus on indigenous rights, for example in line with guidelines by the Organisation for Economic Cooperation and Development (OECD) and UN's Food and Agriculture Organisation (FAO).[29]

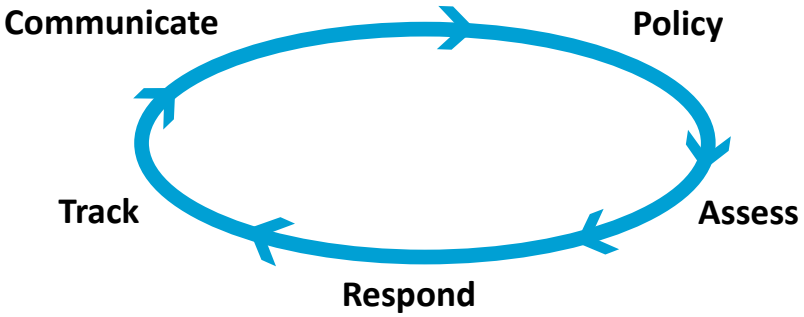

Figure 2: The Human Rights Due Diligence (HRDD) process is based on a policy, and includes the following key steps: assessing actual and potential human rights impacts, integrating and acting on the findings, tracking responses and communicating how the impacts are addressed.

Where a company causes or contributes to negative impacts on indigenous peoples' rights and their traditional forests, it is required under the HRDD process as outlined in the UNGPs to cease its detrimental practices, ensure remediation and compensate for any negative impacts that have already occurred, and ensure that they are not repeated in the future.

Company exit from a project where it has caused or contributed to impacts on for example indigenous peoples' right to FPIC or impacted on their rights to traditional land and forests without remediation is in breach of the UNGPs. In addition, when a company is exiting a project or another business relationship, it needs to transparently show a responsible exit strategy for handling residual actual and potential impacts. When a company is linked to indigenous rights abuse, under the UNGPs it is required to maximise its leverage and influence to contribute to the increased protection of indigenous peoples' rights.

3.3 Good practice in the project cycle

There is a growing realisation that development planning must focus on a rights-based approach that includes the most vulnerable and that recognises and respects indigenous peoples in decision-making.[30] This section provides an overview of evolving good practice in FPIC implementation, complemented by participatory assessment methodologies that aim to strengthen the voice of communities and engage them in defining and asserting their rights. FPIC is often integrated into a broader Environmental and Social Impact Assessment, which examines the full range of a proposed project's sustainability impacts

Proactive consultation and assessments

The principle of FPIC is implemented as an ongoing community consultation process that takes place throughout the planning and implementation phases of any development project, such as a palm oil plantation or a coal mine.

Evolving good practice in FPIC is described in guidelines and standards by organisations and initiatives such as the FAO, the Forest Stewardship Council (FSC), the Initiative for Responsible Mining Assurance (IRMA), the Organisation for Economic Cooperation and Development (OECD), the Roundtable on Sustainable Palm Oil (RSPO), and the United Nations collaborative initiative on Reducing Emissions from Deforestation and forest Degradation (REDD+) in developing countries (the UN REDD Programme).[31]

A solid FPIC consultation process ensures that indigenous peoples have the earliest possible access to all relevant information about both the potential benefits and negative impacts of a proposed project on their lands, forests and livelihoods. Provisions should be taken to ensure that no part of the procedures are coercive or manipulating, and to create conditions that promote their full and effective participation in decision making procedures. The process should consider the following characteristics of indigenous peoples:

- Their governance institutions, practices and any associated right to self-determination;
- Their relationship with land; their spiritual and cultural heritage; historical discrimination they have suffered; and
- Their unique and at times vulnerable position in society;

In line with international good practice, the FPIC process should include participatory HCV assessment and a participatory mapping which engages the community in defining their forest values, and clarifying land rights and land use in the indigenous area proposed for development. Globally, a multitude of manuals for participatory mapping have been developed for use in specific countries, sectors and conditions, and crucial lessons learned and recommendations have been generated from Kalimantan in Borneo.[32]

Based on the project information and results of participatory assessments – which should be accessible and available in appropriate channels and languages – the community can then use its own traditional decision-making mechanisms to decide whether to give or withhold its consent to a proposed development.[33]

In cases where consent is given, the results of the assessments and consultations should be included in project management plans and monitoring systems, and be revisited in ongoing FPIC consultation and mitigation measures throughout the life cycle of the project.

Reactive remediation, compensation, consultation and assessments

Where projects have already been developed on indigenous land and forests without indigenous communities' FPIC, the company should immediately stop expansion of project activities onto indigenous land. The company should then act to rectify the situation by establishing a solid FPIC process, regardless of what stage the project is at.

A first priority is for the company to ensure remediation and provide compensation. Company remedy needs to be undertaken in conjunction with state legal remedy and/or with local community-led remedy institutions, and compensation should be adequate and should consider indigenous peoples' special rights to maintain their connection with their land and forests.

In order to strengthen an affected indigenous community's voice, and give them the opportunity to identify and communicate how their rights have been affected, a Community-Based Human Rights Impact Assessment could be carried out, in line with the guidelines and methodology developed by Oxfam and the International Federation for Human Rights.[34]

Where there are overlapping claims and conflicts over land and forests, participatory HCV assessments and participatory mapping processes can – even when conducted at a later project stage – help indigenous communities identify land use and valuable resources on their land.

3.4 Gaps in mining and palm oil industry standards and their enforcement

Considering that many domestic regulations are not stringently protecting indigenous rights, standards, which go beyond national regulations and raise the bar for companies and investors can be important drivers of positive change. However, concerning respect for indigenous rights, the two industry initiatives – Roundtable on Sustainable Palm Oil (RSPO) and the industry association International Council for Mining and Metals (ICMM) - display some weaknesses in implementation and in certain aspects represent narrow interpretations of international standards on indigenous rights. These shortcomings are described in the following two text boxes.

Criticism of the Roundtable on Sustainable Palm Oil (RSPO)

The principles and criteria of the voluntary RSPO palm oil sustainability standard[35] explicitly require companies to ensure Free, Prior and Informed Consent (FPIC) and to clearly identify High Conservation Values (HCVs) before establishing a new plantation. For this purpose, the RSPO has issued a detailed practical FPIC guide[36] and refers to HCV manuals for integrating participatory HCV assessments together with communities during the early stages of the FPIC process.

During 2014–16, the RSPO was the target of serious criticism that called its credibility and integrity as a certification body into question. For example, according to the NGO Environmental Investigation Agency[37] RSPO FPIC requirements were vague and contradictory, and assessors have turned a blind eye to impacts on indigenous rights to FPIC. Assessors also systematically performed flawed HCV assessments that enabled the destruction of important biodiversity values. HCVs vital to community needs and the cultures of indigenous people were poorly understood, and the HCV assessments often covered only a small fraction of concession areas and then allow destruction of HCVs in areas that are not surveyed.[38]

In response to the criticism, the RSPO has developed forward-looking policies. In 2015, it passed Resolution 6h on seeking quality audits and improved scrutiny, and in 2016 Resolution 6d on “effectively planned, implemented and monitored compensation projects” in RSPO’s “remediation and compensation procedure” was approved. It remains to be seen whether the RSPO enforces these policies in practice. The Environmental Investigation Agency recommends that buyers of palm oil conduct careful audits and in-house due diligence until the RSPO certification process has credibly addressed its problems in practice and enforcement.[39] The Environmental Investigation Agency’s conclusions are echoed in findings from a 2015 study on banks and deforestation, a key recommendation of which is that banks not rely entirely on RSPO certification, but put in place their own solid checks and balances to complement the weaknesses of the RSPO certification process.[40]

Weak interpretation of international standards in ICMM mining sector standard

The ICMM's position paper on indigenous peoples contains commitments to "adopt and apply engagement and consultation processes that ensure the meaningful participation of indigenous communities in decision making" and to "work to obtain the consent of Indigenous Peoples".[41] The ICMM paper contains provisions that represent narrow interpretations of international standards in its description of companies' responsibility to respect indigenous rights:

• While both ILO 169 and UNDRIP underline the right of indigenous peoples to identify themselves according to their customs, traditions, and history, the ICMM statement purports that "states may be involved in determining which communities can be considered indigenous". This could be problematic in countries that generally do not respect indigenous rights, and where states may deny such rights for specific indigenous groups affected by proposed development projects.

• The ICMM outlines a narrow interpretation of indigenous peoples' right to Free, Prior and Informed Consent (FPIC). It states that "individuals or sub-groups should not be given 'veto rights' to a mining project, unless legally mandated" and that "unanimous support from potentially impacted indigenous peoples is not required". This interpretation opens up for situations where the respect for indigenous peoples' concerns and proposals as part of an FPIC process will depend heavily on national legislation and practices – many of which are weak in their protection of indigenous rights.

• While the UNGPs are clear that companies should uphold international standards in all their global business operations, the ICMM is vague about companies' responsibilities to respect indigenous rights in cases where governments fail to protect indigenous communities: "In cases where governments may decide that a project should proceed where consent has not been obtained, ICMM members will determine whether they ought to remain involved with a project". The former Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, cautions that commercial interests or revenue-raising objectives do not constitute valid public reasons to limit indigenous rights, especially not if the benefits from the extractive activities are primarily for private gain.[42] In contrast to the Special Rapporteur, ICMM does not state that the company decision should be based on compliance with international standards.

4. Background: Borneo

Borneo's indigenous peoples' lands and forests have been dispossessed and degraded on a large scale in recent decades – a process that is still ongoing. Significant gaps in Indonesian and Malaysian state protection of indigenous rights exist. At the same time there are crucial positive opportunities to protect indigenous rights in existing concessions and ongoing projects. This section references a range of international literature, and draws on Swedwatch interviews with Borneo lawyers, experts and human rights and environment defenders who summarise their views on the challenges and opportunities for investors and governments.


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In 1993, Malaysian police armed with shields, tear gas and bulldozers, dismantled the seven-month-long indigenous Penan blockade against logging on indigenous land at Long Sebatu, Sarawak, Borneo. One child was killed.

SOURCES: BRUNO MANSER FUND WEBSITE AND STRAUMANN, 2014.

4.1 Destruction of forests and dispossession of indigenous territories

The island of Borneo is home to an estimated 4–6 million[43] indigenous people who belong to approximately 450 different ethnolinguistic groups who define themselves by their own distinct cultures and languages. Many of these groups have traditionally lived in communal longhouses and engaged in traditional livelihood strategies including hunting and gathering and shifting cultivation.[44] Borneo's indigenous peoples' traditional land and forests have been systematically dispossessed on a large scale. This began with a logging boom from the 1960s to the 1980s, followed by the establishment of oil palm and other commercial plantations. The situation has been further aggravated by the conception of large hydropower and mining projects that began in the 2000s.[45] According to one estimate, over 2.5 million indigenous peoples were displaced across Indonesia, including on Borneo, by logging and other activities in the 1970s alone.[46]

Borneo's tropical forests, which are home to globally unique landscapes, plants and animals, have been destroyed by logging, fire, and conversion to commercial plantations on an unparalleled scale in recent decades.[47] Sarawak is a global hotspot for deforestation and forest degradation. From 1990 to 2009, approximately 80 percent[48] of its land surface was affected by high-impact logging or forest clearing.[49] The problem is equally severe in Central Kalimantan, which has suffered the second-highest rate of deforestation in Indonesia in recent years. The province lost about 1.3 million hectares of forest cover during the period 2000–08,[50] and according to the NGO Forest Watch Indonesia, from 2009 to 2013 over 619,000 hectares were deforested each year.[51]

According to the international NGO WWF, looking at Borneo as a whole, only half of the island's forest cover remains today, as compared to a century ago. In a 2012 study WWF projected that if current deforestation rates continue, Borneo could lose most of its lowland rainforests outside of protected areas by 2020. According to WWF, the current network of protected areas on the island is too fragmented and too vulnerable to illegal logging, illegal wildlife trade and forest fires to guarantee the survival of Borneo's forests.[52] In 2009, protected areas with intact forest cover extended over only 3 percent of Sarawak's land surface.[53]

Who is an indigenous person?

There is no international definition of an indigenous person: the UNDRIP and other key human rights documents emphasise the right of indigenous peoples to identify themselves according to their distinct cultures, customs and traditions. Typically, indigenous peoples have historical continuity with pre-colonial societies, and maintain strong links to traditional lands and forests. Indigenous groups form minorities within their current societies, and have their own social systems, languages and cultures.[54] "Indigenous peoples" is also a concept under international law, which gives this group a number of well-defined individual and collective rights, including the right to lands, territories, and resources. Indigenous peoples' identification forms the basis for recognition of their collective rights.[55]

4.2 State protection of indigenous rights to traditional land and forests

Despite existing constitutional and legislative provisions for the protection of indigenous rights, rights to land and forests are not well protected in Malaysia and Indonesia. For example, both governments have awarded land concessions to companies without undergoing FPIC processes with indigenous communities. Also, in court rulings in land cases, indigenous land rights have been 'overruled' instead of being protected by the state.

In Sarawak, in Malaysian Borneo, the rapid expansion of development projects has led to a multitude of cases of encroachment on indigenous territories. The Human Rights Commission of Malaysia received a total of 166 grievances relating to Native Customary Rights matters during the period 2002 to 2011, many of them from Sarawak.[56] A 2011 report by the UN Special Rapporteur on Indigenous Rights states that, at the time, over 200 indigenous land-related cases were before the Sarawak courts; the report highlights the difficulties for "indigenous communities' ability to exercise their native customary rights over their lands, upon which they depend for fishing, hunting or farming, and which are essential to their cultural survival".[57]

Alleged corruption in Sarawak

In Sarawak, Borneo, former Chief Minister Abdul Taib bin Mahmud and his family have faced far-reaching accusations of corruption, land seizure and tax evasion. According to Straumann (2014), Taib bin Mahmud disestablished the Forestry Ministry in 1985, a few years into his three-decade-long rule (1981–2014), and transferred responsibility for issuing land concessions to a new Ministry of Resources Planning. Afterwards, the former chief minister allegedly controlled the issuing of logging concessions and plantation licences in Sarawak.[58]

According to 2012 and 2013 publications[59] by the international NGO Global Witness[60], a senior government official and a timber industry executive stated that companies seeking logging or plantation licenses make "unofficial payments" to former Chief Minister Abdul Taib bin Mahmud for these to be issued. The same report found that members of Taib's family were allocated land through directives from the ministry headed by Taib for a fraction of its real commercial value, enabling these individuals to subsequently sell these assets for multimillion dollar profits. During its investigation, Global Witness also posed as investors and secretly filmed Taib's family members and lawyers offering to sell land given to them by Taib at cut-rate prices. Global Witness put the presented allegations to former Chief Minister Abdul Taib bin Mahmud, who in his response stated that the accusations of corruption were "wholly untrue and malicious".

According to Straumann (2014), globally, several banks and financial companies such as Deutsche Bank, HSBC, UBS and Credit Suisse have been implicated in investments, project financing and money laundering that cause or facilitate deforestation and the dispossession of indigenous land and forests.

2016 ruling backlash for indigenous rights

The highest court in Malaysia - the Federal Court - issued a ruling in December 2016 asserting that the state does not recognise indigenous rights to traditional territories and forests – only to limited areas of farmland. This was an enormous setback, with potentially far-reaching consequences, for Sarawak's indigenous landowners. Lawyer Baru Bian, the legal counsel for the defendants, explained to the press that since indigenous rights come under international common law, they are not subject to national laws or legislation. Therefore, he considers the court ruling to be inconsistent with the common-law principle, under which other countries recognise indigenous rights, including rights to traditional forests used for community needs and livelihoods.

The ruling signified an extensive blow to efforts to secure indigenous rights. When interviewed in the Malaysian media, lawyer Baru Bian stated that the decision "completely finishes off ten other cases that were won by the Dayak landowners at the Court of Appeal and twenty other cases pending at the same court and affects more than one hundred cases pending in high court". [61]

4.3 Opportunities for progress

Vast tracts of land in Borneo have already been allocated to projects and companies. According to WALHI Kalteng and Friends of the Earth Australia, the total area of current concessions for mining, oil palm, rubber, logging and timber cover over 70 percent of the area of Central Kalimantan province (see Figure 3). Since the concessions are developed in stages over time, there are still opportunities to protect indigenous peoples' rights and forests. For example, although oil palm expanded by 278 percent from 2000 to 2010 across all of Kalimantan's five provinces, at the end of this period 79 percent of allocated leases remained undeveloped.[62]

Indigenous communities in Central Kalimantan, Indonesia, have placed their hopes on a 2013 Constitutional Court ruling[63] that strengthens indigenous peoples' rights to their traditional forests. However, this has yet to be fully translated into provincial regulations. Encouragingly, in January 2017 Indonesia's central government recognised the traditional forest rights of nine indigenous communities for the first time.[64] In Central Kalimantan, the local government introduced the 'Dayak Misik' scheme, which allows indigenous communities that have mapped out their land to apply to excise their area from state forest areas. According to Arie Rompas, Executive Director of WALHI Kalteng, the province also issued a decree on customary land in 2009, according to which indigenous communities can register both individual and communal lands.[65] However, in practice, this registration is still weaker than state land titles, and companies that have been given concessions are reluctant to acknowledge indigenous communities' claims.

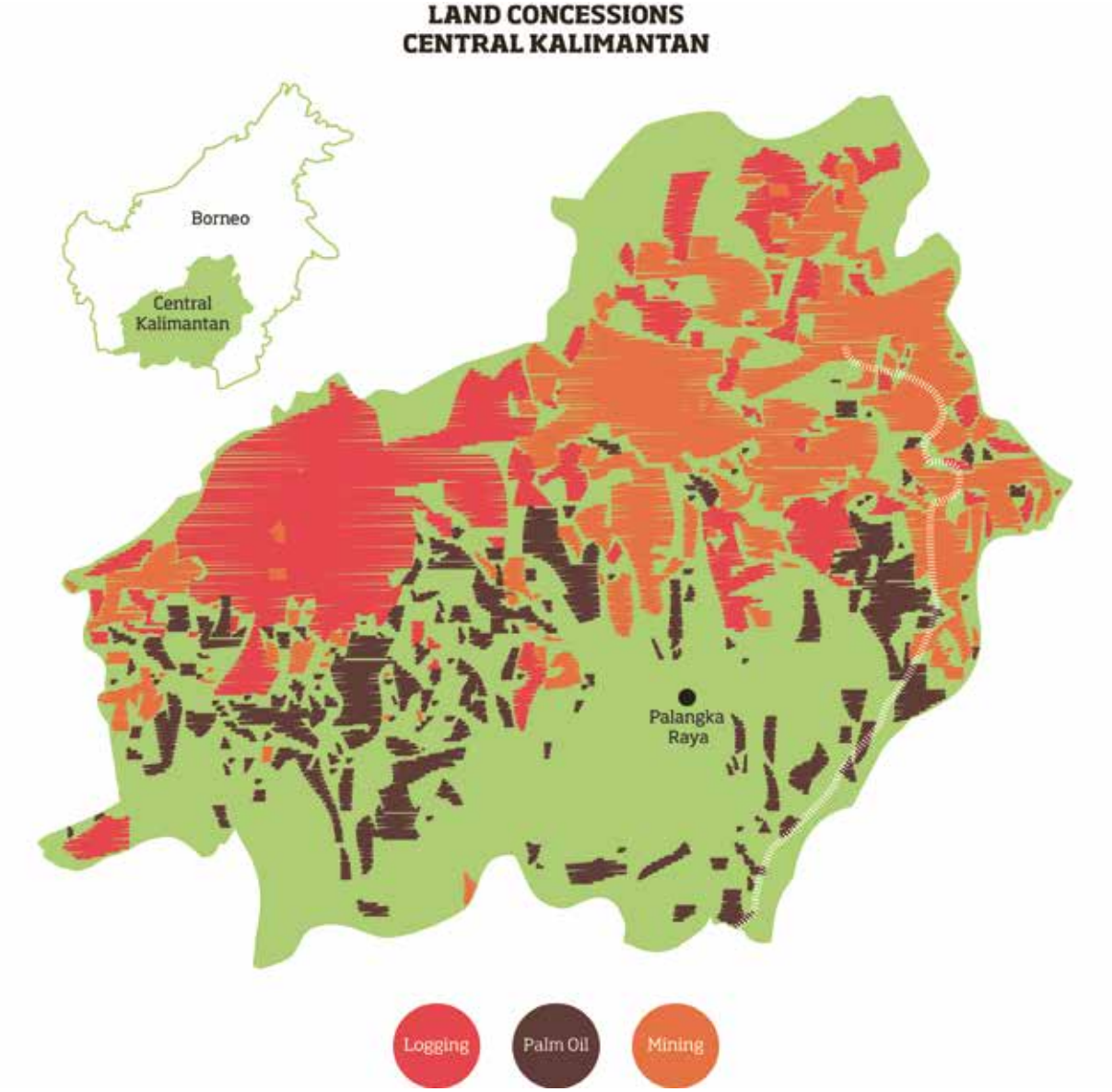

Figure 3: Mining, timber and oil palm concessions in Central Kalimantan.
SOURCES: MCCLEAN, 2015; AND WALHI (FRIENDS OF THE EARTH INDONESIA) 2015.

In Sarawak, communities and civil society organisations have been encouraged by statements by the former Chief Minister of State Adenan Satem who was in office from 2014 until his death in January 2017.[66] Adenan asserted that there would be restrictions on the issuance of new concessions for timber and oil palm.[67] During Swedwatch's interviews in Sarawak, respondents stressed that since most land is already under concessions, an even more pressing issue is how indigenous peoples' forests and traditional land affected by current concessions can be protected and sustainably managed for the future.[68]

Swedwatch interviews with Sarawak environment and human rights experts

In August 2016, Swedwatch interviewed three prominent human rights lawyers in Sarawak, Malaysia – Baru Bian, See Chee How and Harrison Ngau Laing. Swedwatch also interviewed civil society representatives and environmental consultants. During the interviews, these experts outlined the current challenges facing indigenous communities in defending their rights to FPIC, and their rights to forests and land.

Court cases depend on oral testimonies and historic records

According to the lawyers, the Malaysian state is aware of the FPIC provisions in UNDRIP, but the problem from a legal point of view is that the parliament has not passed the necessary laws and guidelines to put FPIC into practice. As Baru Bian describes:

> *"Indigenous peoples' use of their customary land and forests is considered a source of livelihood and enjoys protection under Article 5 of the Malaysian Federal Constitution."*

This means that any breach of citizens' right to a livelihood is deemed to be unconstitutional. By contrast, the Sarawak Land Law only recognises indigenous rights to land where there is evidence of the land being farmed and occupied for agricultural activities before 1 January 1958, the cut-off date stipulated in the law.

According to the interviewed lawyers, it is becoming increasingly difficult for claimant communities to 'prove' their historic land rights, since community-elected traditional elders are not allowed to testify in courts, and the access to historic land use records is being constrained.

Traditionally, communities would elect their own leaders, and the testimony of a village chief – often provided in the local language – was strong and empowering for the community when heard in court. For a number of years, the government – not the community – has appointed and removed village chiefs, regardless of the degree of community support. Therefore, the traditional leaders who can still remember the rivers, streams, mountains and valleys that form the traditional land boundaries between indigenous villages are no longer allowed to testify in court.

According to the civil society representatives and consultants interviewed in Sarawak, communities and lawyers could, prior to 2005, easily access public historical records that described their land and forest use. Thus, in some cases this strengthened their claims to traditional lands. Today, anyone who wants to access historical land records must write officially to the director of the Department of Natural Resources and Environment Board. Almost all applications are rejected, even if it is for the purpose of court evidence.

Hard line towards indigenous communities

The courts and the police are uncompromising in their treatment of indigenous communities that protest encroachment on their land. It is not uncommon for community members to be fined and jailed in connection with, for example, road-block demonstrations. The companies are also taking action. See Chee How explains:

> *"Before, the companies tried to buy off indigenous communities. Now they intimidate them instead. People are being killed because they are seen as obstructing a project."*

According to the interviewed lawyers, only communities that are ready to strongly defend their land and forests stand a chance against companies. Harrison Ngau Laing recounted:

> *"I tell people, 'you have to lock your houses, and you have to fight any intruders'."*

Opportunities for companies to protect indigenous rights

In the interviews, the lawyers reflected on the conflicts and the many ongoing, drawn-out court cases. Because nobody represents the interests of indigenous peoples, the system essentially forces people into conflict and to resort to legal action. Cases may then take years to be resolved.

They also observe how companies and investors suffer from the flaws in the system. According to See Chee How:

> *"The way it works in practice is that the government gives leases to their cronies, who then sell them to other companies at a very high rate. It is not a good situation for a company that buys a concession, only to discover an ongoing, unresolved land conflict."*

The lawyers recommend that investors and companies always conduct their own due diligence before entering into joint ventures or buying concessions. They advise that potential investors commission independent surveys, interview affected communities and review old land records to understand where there may be overlaps with traditional land rights. Several interviewed stakeholders in Sarawak underline that – despite state omissions – there are clear opportunities for companies to follow international norms and, for example, excise indigenous lands and forests from concessions.

Indigenous communities in Long Teran Kanan village, Borneo, who have been affected by palm oil development across their traditional land, discuss a 2016 proposal from the company IOI-Pelita, which includes extinguishing the community's land rights in 18 years' time.

5. Swedwatch case investigations: impacts on indigenous communities

The cases presented in this section outline instances where indigenous rights have been circumvented in part due to that companies failed to conduct adequate Human Rights Due Diligence (HRDD), Free, Prior and Informed Consent (FPIC) processes, and participatory assessments of High Conservation Values (HCVs) on their traditional land and forest areas.

The seven banks reviewed in this report are all invested in either three or all four of these companies, together with a number of larger global financial actors. The case descriptions are based on findings from Swedwatch's Borneo fieldwork, analysis of historic satellite images, desk research and inputs from company representatives. The company actions in each case are matched against international standards, as outlined earlier in this report in section 3 on international standards.

The first and second cases outline findings on how indigenous communities have been directly impacted by the Australian-British mining company BHP Billiton's[69] IndoMet Coal project[70] and the IOI-Pelita[71] palm oil plantation, a majority share of which is owned by the Malaysian company IOI.[72] The third case discusses the risks of potential adverse impacts on indigenous peoples in the Swedish palm oil importer AAK's[73] supply chain when sourcing palm oil from Borneo. The fourth and last case differs in that it is based on desk research only, and describes German-registered global investment bank Deutsche Bank's[74] financial services to Chief Minister Abdul Taib bin Mahmud in Sarawak during his time in office (1981–2014). The former chief minister has been accused of facilitating forest destruction and the displacement of indigenous communities on a large scale through corrupt practices and business dealings, as described in chapter 4.2 above.[75]

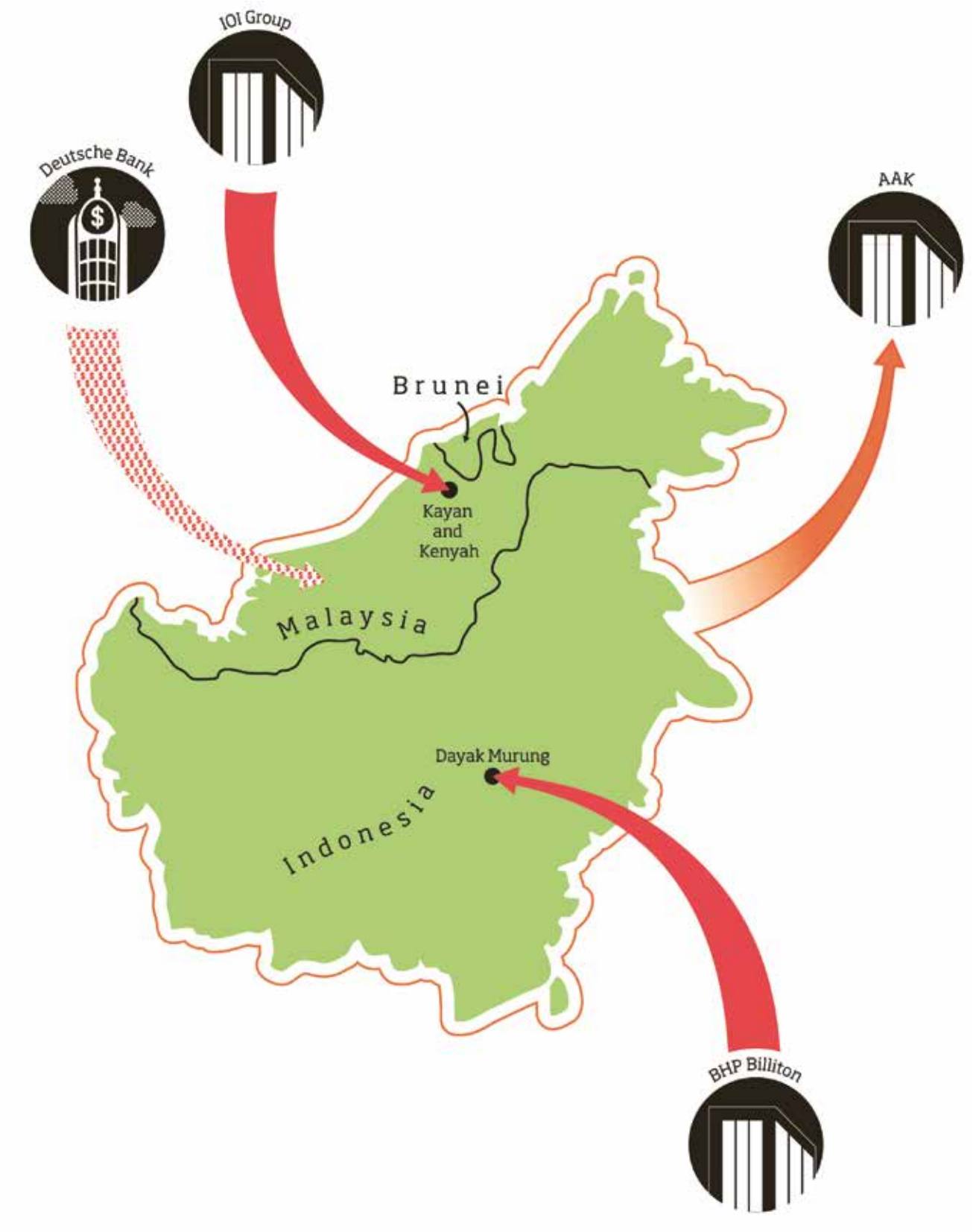

Figure 4: Illustration of the links between the four companies and indigenous communities. BHP Billiton and IOI are associated with impacts on indigenous communities through their projects, AAK sources palm oil from undisclosed suppliers and plantations, and Deutsche Bank provided financial services to the former chief minister of Sarawak, who in turn stands accused of facilitating forest destruction and forced evictions of indigenous peoples.

Case no.	Project /Business activity	Company (Business areas) / Joint Ventures	Affected indigenous communities	Issues in focus
1.	IOI-Pelita palm oil plantation	IOI (Palm oil and other plantations, manufacturing and property development). In joint venture with the state-owned company Land Custody and Development Authority (Pelita) since 2006 (on-going).	Kenyah and Kayan communities in Long Teran Kanan village, Sarawak, Malaysia.	Palm oil plantation impacting on rights to FPIC and HCVs Shortcomings of current mediation process to ensure remediation and determine compensation.
2.	Haju mine, IndoMet Coal project	BHP Billiton (Mining, metals and petroleum). In joint venture with Adaro Energy 2010 to October 2016).	Dayak Murung community in Maruwei 1 village, Central Kalimantan, Indonesia.	Coal mining project impacting on rights to FPIC and HCVs. Lack of information on responsible exit strategy related to remediation and compensation for residual impacts on indigenous rights.
3.	Palm oil sourcing from Borneo	AAK (Food ingredients, chocolate and confectionery fats, technical products and feed).	Risks for indigenous communities related to sourcing palm oil from undisclosed plantations across Borneo.	Risks for indigenous communities related to sourcing palm oil from undisclosed plantations across Borneo.
4.	Financial services to former Sarawak regime.	Deutsche Bank (Financial services).	Risks for indigenous communities across Sarawak, Malaysia.	Risks for indigenous communities across Sarawak, Malaysia.

Table 3: Overview of the four cases in this study, detailing the focus on business activities, companies, affected communities and key issues.

5.1 Case 1: The Kayan and Kenyah affected by palm oil development

This section presents the results from Swedwatch field interviews with the Kayan and Kenyah indigenous communities in Long Teran Kanan village, which have been impacted by the establishment of the Malaysian joint venture company IOI-Pelita's palm oil plantation. Fact boxes and timelines with significant events in the development of the project are included for reference. Also, a comparison is presented of the majority joint venture partner IOI's actions to international standards. Throughout the section, for information in text boxes where no source is cited, information is drawn from Colchester and Chao (2013).

Swedwatch interviews with impacted communities

The IOI-Pelita plantation is situated about four hours drive from the Miri District Capital in the Northern part of Sarawak on the Malaysian side of Borneo Island. The plantation was established on forested land along the Tinjar River in the late 1990s, and overlaps with traditional lands of the indigenous community that resides in two traditional longhouses in Long Teran Kanan village.

From July to August 2016, Swedwatch interviewed 57 persons from the Long Teran Kanan village in individual or smaller groups and conducted one larger group interview with 25 community members, some of whom were also consulted in the survey comprising 57 respondents. In order to ascertain a logical sequence for the discussions, each interview was initiated with a discussion of the significant events for the communities in the late 1990s, when clearing for a palm oil plantation was initiated on their traditional land.[76]

The interviewees described their livelihoods before and after the development of the plantation, and reflected on their efforts to solve the land conflict through dialogue with the company. Swedwatch was especially diligent in its research regarding the identification of both positive benefits and negative impacts from the plantation. Finally, the interviewees described the ongoing state-mediated process between the company and the community[77], and the compensation offers they had received from the company.

IOI-Pelita palm oil plantation: Key developments, 1996-2013

1996–97: Land acquisition
In 1996 and 1997, land concessions were granted to the Malaysian joint venture company Rinwood-Pelita for the development of a palm oil plantation which overlapped the traditional lands of the Long Teran Kanan community.

In 1997, after the community had failed to convince the company to withdraw from their traditional lands, four plaintiffs representing the community, filed a case in the High Court in Miri, Sarawak, against the joint venture and the Government of the State of Sarawak.

1997–2005:[78] Clearing and planting
Rinwood-Pelita cleared the communities' traditional lands and agricultural areas and planted oil palms within the concession boundaries. According to the company, the gross area of the concession was 9,040 ha, and they have planted a little less than half that area – 4,266 ha – with oil palms.[79]

2006: IOI becomes majority joint venture owner
In the midst of drawn-out court proceedings between the traditional landowners and Rinwood-Pelita, the Malaysian, joint venture company IOI acquired the shares from Rinwood and formed a new joint venture, IOI-Pelita.

2008–09: The RSPO alerted to IOI's conflict with communities
In July 2008, the lawyer representing the Long Teran Kanan community conveyed the community's concerns to the RSPO Executive Board, highlighting efforts to settle the conflict out of court. In 2009, the RSPO was considering whether IOI met the RSPO's 'Partial Certification Requirements', which stipulate that there should be no ongoing land conflicts on any of the company's plantations.[80]

2010: Miri High Court confirms community's traditional land rights
After 12 years of court proceedings, a High Court judge in Miri, Sarawak, ruled that the community indeed had indigenous rights to the claimed area. The ruling clarified that the community's traditional land rights still applied, and that the company's provisional leases were 'null and void'. In this ruling, the judge acknowledged the community's

documented customary agreements which were made with residing indigenous groups when they moved to the area in the 1960s.

Controversially – referring to the fact that the company had already developed the plantation – the judge did not request that the company vacate the land. Instead, he cited the 1996 state-approved EIA and ruled that IOI-Pelita should compensate the community for damages to their lands and crops and for being deprived of using their land. He also ruled that the community should be allowed to stay in the area.

2013: IOI-Pelita wins controversial Appeal Court ruling
Although IOI-Pelita had assured the indigenous communities in 2009 that it would not appeal the Miri High Court ruling if they lost the case, in 2010 IOI filed an appeal against the High Court ruling. In April 2013 the Malaysian Court of Appeal overturned the High Court ruling while not accepting the arguments which the 2010 ruling was based upon.[81] The communities perceived the appeal as a grave breach of trust, given the company's earlier assurances.

Livelihoods and forest use before land dispossession

Before the palm oil plantation was developed, the communities' livelihoods relied on a combination of hunting and gathering in the remaining secondary forests, shifting cultivation and small-scale cash crop plantations such as rice, cocoa and vegetables. Today, many of the community's agriculture land and forest areas have given way to oil palm cultivation by the company.

> *"Our forest used to be just like a supermarket where everything was for free. All the types of food we needed were available there. It was easy to hunt animals and the fish in the river was abundant",*
> one middle-aged man recounted.

Many interviewees said that before the company came to their area, community cohesion and social relations were strong. Every year before the start of the new farming season, the elders would perform spiritual ceremonies.

> *"The village chief and our spiritual leader would go to the forest to identify the area of forest land for new farming, while leaving previous years' fallows to regenerate and fertilise",* one interviewee recalled.

Clearing and planting without FPIC

According to interviewed Kayan and Kenyah community members, the earlier project owner – the Rinwood-Pelita joint venture – did not engage in any type of community consultation process during the project preparation phase. A few interviewed persons said that there were some contacts between the company and one specific community leader, but for the majority of the villagers the unannounced start of land clearing came as a surprise. Elders shared their first-hand experiences of the event. A former village chief, now in his 80s, remembered that the company employees arrived during

the fruit season when the cocoa pods and the durian fruits were almost ready to harvest. An interviewed female elder recalled her experiences:

> *"They came in without consulting us – the landowners. They brought heavy machines operated by Indonesian workers to clear our gardens and trees. I was scared and cried".*

Younger respondents accounted similar stories, which had been shared with them by their parents and older relatives.

> *"I still remember my mother telling me about how the elders in this village tried to stop the bulldozers on that day",* said a woman in her 30s.

Her response reflects how the community's failure to stop the company's conversion of their agriculture land has left them with less access to land for cultivation today. In response to Swedwatch's inquiries and follow-up questions regarding benefits of the oil palm plantation, the interviewees stated that the plantation has not improved their communities' livelihoods. On the contrary, communities have experienced a decrease in their standard of living. When asked about employment opportunities on the palm oil plantation during peak production, the villagers responded that the company offered very low salaries, which they could not survive on. A large majority of the employees at the plantation were Indonesian migrant workers.

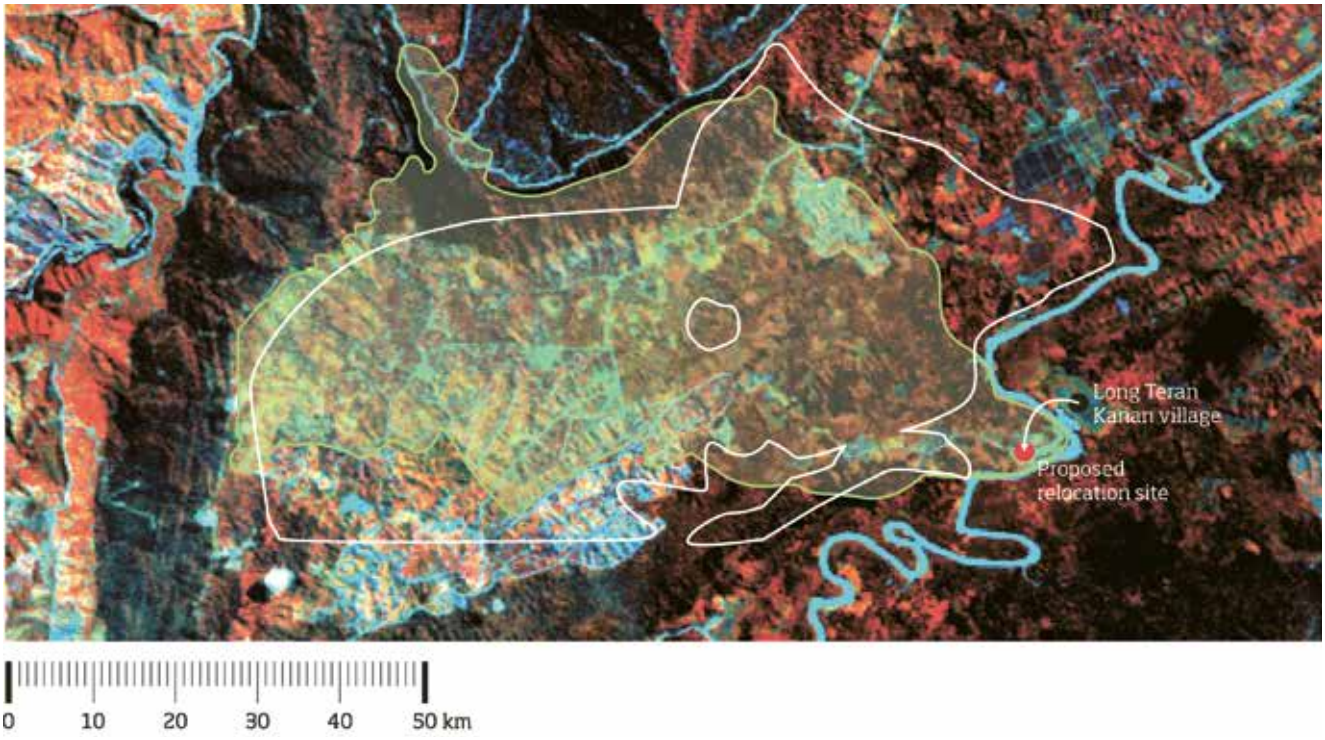

Figure 5: Landsat 5 image from 2005 ((c) USGS/Nasa) showing the extent of the oil palm plantation. The white lines represent the boundaries of IOI-Pelita's land concessions, which overlap with the communities' traditional land marked in light green with green boundaries. The traditional land boundaries are defined in the project EIA from 1997. The bright turquoise areas in the western and northern parts of the concession area have been cleared of forest, and the oil palm parcels are visible as red squares. The black dot represents the current location of the communities' long-houses in Long Teran Kanan village, while the red dot shows the company's suggested relocation site for the communities (see section on 'Community perspectives on the company proposal' below).

The villagers also described how they had lost their traditional cultivation land to the plantation, and their access to wild game and forest foods was diminished.

> *"When our peoples' farmland, gardens and land were desecrated for the development of the plantation, that is when our freedom and our livelihoods turned from bad to worse",* said one man.

Many interviewees were deeply troubled by the company's breach of their spiritual and religious customs. Several plantation workers had reportedly been buried on the communities' traditional land – upstream of the river where they used to collect drinking water.[82] The communities perceived this as an expression of the company's disrespect for their indigenous values and way of life.

Concerns for the future of the community

A majority of the interviewees – especially elders – expressed concerns about the future of their community and the younger generation.

> *"If the dispute with the company doesn't resolve fast and if I die, all our land will be lost. There will be no one left to defend my land",*
> said one village elder in his 70s.

Because of the difficulties of generating income from agriculture, many community members have left the village. A number of young people are moving to Miri District Town to find work. Since they do not have higher-education credentials, their parents are concerned that they may end up in low-paid jobs and vulnerable situations. The interviewees raised concerns that in the future increasing numbers of community members would move to the city, and that the result may be the dissolution of the community and a loss of their cohesiveness and traditional lifestyle in connection with the land.

IOI RSPO certification and state-led mediation with communities, 2015-16

November 2015 – ongoing: State-led mediation
In 2015 the Sarawak state took over as mediator in the long-standing land conflict between the Long Teran Kanan communities and the IOI-Pelita joint venture. In one of several meetings held, an indigenous rights expert acted as an independent observer.[83] According to RSPO the minutes from these meetings and the reports by the independent observer, have been deemed confidential by the Sarawak government and therefore cannot be shared with external stakeholders.[84]

April 2016: RSPO suspends IOI's certification (not related to IOI-Pelita)
In April 2016, RSPO suspended IOI's sustainability certificate, mainly due to shortcomings in environmental protection in their Indonesian plantations.[85]

May 2016: IOI takes legal action towards RSPO (not related to IOI-Pelita)
Claiming that its business operations had been 'unfairly affected' by RSPO's suspension

of its certification, IOI took legal action towards RSPO[86] in May 2016. About one month later, the company dropped the lawsuit.[87]

5 August 2016: IOI regains RSPO certification
In August, the company regained its RSPO certificate[88] on the condition that it provide quarterly progress reports in relation to an outlined sustainability action plan.[89] This plan includes a commitment to "An open and transparent approach to resolving outstanding grievances with the involvement of affected stakeholders, including successfully concluding the mediation process with the affected longhouse communities in Sarawak, to the satisfaction of all parties".[90] IOI did provide the quarterly progress reports as committed, and the content of the January 2017 report[91] is described below (see section on 'Status of mediation process as of February 2017').

Community perspectives on the company proposal

During Swedwatch's interviews in early August 2016, the mediation process between IOI-Pelita and the affected communities was ongoing. In the fifth mediation meeting, according to a community member who attended the meeting, IOI-Pelita presented what the community perceived as a final offer that it said must be signed within two weeks.[92] The community members' understanding was that the proposal would grant them access to their traditional land for another 18 years. After this time, their traditional land rights would be 'extinguished' and they would be relocated to the other side of the river. The company offered a compensation of one hectare[93] of land per household in the new location on the neighbouring indigenous Berawan community's traditional land. In addition, the traditional landowners would be given a symbolic compensation sum for the loss of earlier land use.[94]

The communities were concerned that the Berawan village, where it was proposed that they move, did not agree with the proposal to receive other communities on their traditional land. The interviewees were troubled by the idea of settling all communities in one fairly small area and were concerned that this could lead to tensions.

> *"If the chief signs this proposal there will be big problems in the community",* said one of the interviewed elders.

Community perspectives on the mediation process

The interviewed community members highlighted their intention to pursue a constructive dialogue to find a long-term solution to the conflicting land claims inside the concession. At the same time, they were concerned about the way the negotiation process was conducted.

> *"The company's negotiation is not fair, and our interests are not represented",* said one community elder.

Only two persons from their communities had been invited to the mediation meetings during 2015 – 2016, and no female representatives were included.[95] One of the village chiefs who had been invited to a few of the meetings stated that most of what was dis-

cussed during the process was not documented or properly disseminated to the community members. He had only been provided with minutes from one of the meetings. The interviewees explained that they would have liked the process to be in line with the community's traditional decision-making format.

> *"They should have informed us in advance and given us time to discuss the agenda points and who we shall appoint as our representatives. We want all the landowners to be present and give their views in a larger meeting",* said one male elder.

Other concerns raised included that no neutral civil society representatives were present in four out of five meetings, and that their representatives had insufficient time to report back and discuss with the whole community. In the first mediation meeting on 5 November 2015, they were given only three days to submit their land claims. Considering both the practicalities of obtaining all land owners' views, and the traditional decision-making format which includes thorough discussions and deliberations, this time-frame made it near impossible for the community to submit a claim which was well grounded. Throughout the subsequent three meetings, the IOI-Pelita general manager presented a range of different proposals and alternatives to the communities. The villagers felt that the company line had not been consistent, and that their submitted land claims had not been adequately considered.

The communities' own proposals

The Kayan and Kenyah communities are aware of their rights and status as indigenous peoples. During interviews, they referred to both the EIA report from 1997 and the 2010 court ruling, which acknowledge their indigenous rights to land-based livelihoods under the Malaysian constitution. During the three decades that have elapsed since the bulldozing of their traditional land, the villagers have had ample time to discuss and consider compromises with the company and constructive ways forward. The respondents presented suggestions that they feel would be fair and guarantee a reasonable livelihood for them.

The villagers emphasised that they are committed to finding solutions in dialogue with the company.

> *"If we are not able to solve this, if we lose everything, where can we go? We are not animals, we have a purpose and we have our way of life",* said one man.

All interviewed villagers stand firm on the point that the company should not further expand the plantation onto their traditional land. One man in his 80s says that they all want to keep their rights to their traditional garden land within the concession boundaries.

> *"I still go to my garden and work every day. How can the company say that in 18 years they will take control of our land? I don't agree with this",* he said.

The community would like to be adequately compensated for the land and livelihoods lost, and they refer to the state-approved EIA, which recommends that each indigenous family should get seven hectares per household. The EIA report also states that the community should not be relocated from their current longhouse village. In addition, the villagers are seeking to discuss a profit-sharing agreement between the communities and the company for the existing palm oil plantation.

Status of mediation process as of February 2017

After Swedwatch's interviews with the Kayan and Kenyah communities in July and August 2016, IOI published updates on the progress of the mediation process. According to the company, a meeting in August resulted in a "consensus on land use",[96] and a few months later, IOI announced that a settlement agreement would be submitted to the mediator before 30 December 2016.[97]

According to the Malaysian NGO/consultancy Grassroots[98], which filed a complaint on behalf of the community against IOI-Pelita to the RSPO Complaints Panel since 2009,[99] another round of meetings was conducted as part of the state-mediated process with seven affected communities in December 2016. Based on its interviews and observations carried out during field research in Sarawak, Grassroots states that IOI-Pelita does not appear to have fulfilled the RSPO complaints system requirements calling for the company to respect the communities' rights to informed decision-making, adequate representation or structured negotiation involving the affected parties – i.e., the directly impacted indigenous landowners.

Grassroots reports that the company's formal offer submitted to the communities in late 2016 was written in technical legal language, and that the community sought legal advice on the exact content and implications of the proposal. The community's resulting understanding was that the "land rights" offered by the company in this proposal would expire in 18 years' time, e.g. in the year 2034, after which the community members would have to individually apply for individual titles for their land. After a series of discussions and deliberations between the indigenous land owners in the community, while still hoping for new opportunities for fair negotiations to find a sustainable solution, the Kayan and Kenyah communities of Long Teran Kanan village rejected IOI-Pelita's offer.

IOI's perspectives

Over the period covering November 2016 – January 2017, IOI did not respond to Swedwatch invitations to give their views on the IOI-Pelita case, comment on the report findings or share documentation (see Table 5).[100] In an early February 2017 email communication[101] IOI underlined that, in their reading, the Swedwatch report contained several important factual errors. The most important mistake in the report, according to IOI, was the omission to fully recognise that Malaysian courts had declared that the contested land is not under so-called Native Customary Rights – the Malaysian term for officially acknowledged indigenous lands and territories.

IOI further stated that the indigenous communities had been illegally taking over the land and gone into the company's plantations and harvested palm fruits. Finally, IOI explained that – in spite of company staff suffering from harassment and intimidation by the communities – they have been trying hard to solve the issues by meeting with the communities' official representatives and offering solutions to resolve the land conflict.

In a subsequent email communication in mid-February 2017, IOI provided a large amount of detail on the chronology of events in the case, and in addition referred to the time-line published on RSPO's website[102]. For example, IOI clarified its reading of the Miri High Court ruling from 31 March 2010, and stated that the court ruled that the community have traditional rights to Lots 3 and 8. However, IOI-Pelita is still entitled to the said lots, but they have to pay stipulated damages to the communities. IOI further shared more details of the challenges they have experienced with community members harvesting crops inside their concession.

In relation to the expansion of the plantation within the concessions, IOI shared data on the areas planted with oil palm by the company, the area claimed by the indigenous communities, and the area inside the concession which remained undeveloped to date. For details, see table 4 below. According to IOI, the clearing had focused on lands for which compensation has been paid to community members. The company stated that compensation for land was paid in 2007, 2008 and 2011. IOI highlighted that there were employment opportunities provided by the plantation and also that their development activities resulted in better road access for the communities.

Category of land within IOI-Pelita land concessions	**Sejap Estate (Lot 3) (Ha)**	**Tegai Estate (Lot 8) (Ha)**	**Total (Ha)**
Plantation area with mature oil palms			
6 to 19 years	2,128	1,601	3,507
Below 6 years	0	537	759
Total Planted Area	**2,128**	**2,138**	**4,266**
Area claimed and planted by indigenous communities	494	741	1,235
Undeveloped area	2,380	1,159	3,539
TOTAL	**5,002**	**4,038**	**9,040**

Table 4: Data table on land development inside the IOI-Pelita land concessions in focus for this study provided by IOI on 15 February 2017. Area measures are expressed in hectares (Ha).

Commenting on the media reports that the company took legal action towards RSPO, IOI clarified that it merely mounted a legal challenge that would lead to mediation. Only if the mediation failed would the case be taken to the next level where steps would be to start proceedings to sue RSPO. In its communication to Swedwatch, IOI underlineed that the 2016 RSPO suspension of its Group certification had nothing to do with the IOI-Pelita case but with accidental clearing in one of its concessions in Ketapang, Indonesia.

Finally, IOI shared summary overview of their records of the mediation process and the proposals presented to the communities during the period November 2015 – January 2017. This information is included in Annex 2: IOI information on state-led mediation process.

Swedwatch analysis: IOI's actions matched against international good practice

According to Colchester and Chao (2013), in 2006, in the midst of the drawn-out court process between the traditional landowners and Rinwood-Pelita, IOI acquired majority shareholdings from Rinwood and formed the new joint venture IOI-Pelita. Instead of seeking ways to respect the traditional landowners' rights to a process of Free, Prior and Informed Consent (FPIC) and rectify the omissions by the former joint venture as part of IOI's risk assessment or due diligence measures before taking over the plantation, the company allegedly sought legal advice from the ex-attorney general for Sarawak. He assured IOI that the indigenous communities' claims to their traditional land and forests and to compensation for impacts to date were not valid.[103]

Based on Swedwatch's interviews with the Kayan and the Kenyah, and a review of publicly available information, there is no evidence that IOI has established a solid FPIC process, ensured adequate remediation or proposed adequate compensation to the affected communities. No participatory mapping of land use and tenure has been carried out, and the company has not engaged in a Community-Based Human Rights Impact Assessment in line with emerging good practice.

Stakeholder	Requested documents and information (none of which were provided):
IOI	• Reports from EIA, participatory HCV assessment and mapping of land use and tenure; • Documentation and minutes from community consultation and engagement meetings as part of the mediation process, November 2015 – ongoing at the time of writing.
RSPO	• Report by RSPO's independent observer, documentation and minutes from community consultation and engagement meetings as part of the crucial mediation process, November 2015 – ongoing at the time of printing this report.[104]

Table 5: Requested documentation and information that was not shared with Swedwatch as part of the research for this study.

The aerial view of previously forested Borneo landscape now dominated by oil palm plantations. WWF projects that if current deforestation rates continue, Borneo could lose most of its lowland rainforests outside of protected areas by 2020.

Comparing the 2013 appeal court ruling to interpretations of ILO 169 and UNDRIP where the right to FPIC is derived from indigenous peoples' basic rights to self-governance, territorial, cultural and livelihoods (for details see section 3 on international standards), it becomes clear that the Kayan and Kenyah's indigenous rights to Free, Prior and Informed Consent (FPIC) cannot be 'extinguished', as the company claims. This holds true even if they have been denied formal land rights in the Malaysian court. Table 6 gives an overview of documents that confirm the communities' indigenous rights to FPIC and compensation which ensures their continued traditional livelihoods and connection to the land, as outlined in international standards.

Document	Relevance
EIA	A comprehensive EIA was undertaken, and the resulting report was approved by the Sarawak government in June 1997. This EIA confirmed the community's indigenous rights to forests and land, established a standard of compensation at seven hectares per family and stated that the community has the right to stay in their current location.
Historical records	The EIA refers to historic records confirming the communities' indigenous rights.
Miri High Court ruling, 2010	The court ruling again confirmed the communities' indigenous rights to land and livelihoods, in line with the Malaysian constitution and international law.
Report by the UN Special Rapporteur on Indigenous Peoples[105]	Confirms the communities' indigenous rights to land and livelihoods.

Table 6: Overview of documents supporting the Kayan and Kenyah indigenous rights in the IOI-Pelita case.

Based on this analysis, current company negotiations with the communities should be carried out in the spirit of FPIC, even if they are no longer 'prior' to the initiation of the project. In accordance with good practice standards they should be fair, inclusive, open, free of coercion, well documented, and based on traditional representation and decision-making structures. The compensation for irreversible damage should be based on special considerations of traditional livelihoods. The fact that the mediation process is led and facilitated by a state actor in Sarawak, where the state generally does not consistently protect indigenous peoples' rights, may pose challenges to conducting a solid FPIC process.

Swedwatch concludes that, in line with the documents in table 6, at a minimum, the community should not be relocated, and compensation at the level of seven hectares per household in line with the state-approved EIA would be reasonable. The company proposal, which offers land that is claimed by the indigenous Berawan community, does not clearly align with international standards. The company should also heed the communities' call to halt future oil palm expansion across their traditional lands.

Swedwatch overview of good practice in the project cycle	Indicative gaps in IOI Group's course of action
Cease detrimental practices	Based on interview results from this study and publicly available information, there are no indications that IOI Group has committed to halting future expansion of the palm oil plantation onto indigenous land.
Ensure remediation and provide adequate compensation	Based on information available to Swedwatch, these good practice elements have not been implemented by IOI Group in order to rectify omissions during earlier project stages.
Consultation in the spirit of FPIC and Community Human Rights Impact Assessment (HRIA)	
Participatory HCV assessment and mapping of land use and tenure	

Table 7: Swedwatch analysis of gaps in IOI's course of action, matched against international standards summarised in this report.

5.2 Case 2: The Dayak Murung affected by coal mining

This section presents the results of Swedwatch's field interviews with the Dayak Murung indigenous community in Maruwei 1 village, Central Kalimantan, which has been impacted by the establishment of the Haju Mine in the Lahai Coal concession, which is part of the Australian-British company BHP Billiton's IndoMet Coal project. Accompanying historic satellite imagery illustrates how the mine has affected the land cover, and the company's key actions are matched against internationals standards.

Haju Coal Mine, IndoMet Coal mining project, Central Kalimantan, Indonesia

BHP Billiton is one of the world's largest producers of iron ore, metallurgical coal,[106] copper and uranium. The company also has substantial interests in oil, gas and energy coal[107] and employs over 65,000 staff and contractors globally.[108] In 2010 BHP Billiton entered into a formal joint venture agreement with the Indonesian company Adaro[109] for the IndoMet Coal project in Central and East Kalimantan, Indonesia.

The project extends over a large area of mostly forested land, including remaining primary rainforest areas,[110] in the centre of the island of Borneo and is being developed in stages. Each of the seven concessions is managed under a separate Coal Contracts of Work.[111] In 2015 the project's first coal was extracted from the Haju mining area under the Lahai contract. Coal has since been transported along a hauling road from the mine to a river port on the Barito River, then barged downriver for loading onto customer vessels for export.[112]

On 7 June 2016, BHP Billiton announced that it had entered into an agreement to sell its 75 percent interest in IndoMet Coal to its joint venture partner Adaro.[113] The sale was concluded in October 2016.[114]

The head of Maruwei 1 village, Suwanto, explained to Swedwatch during an interview that his indigenous community was not consulted during the preparation stages of the Australian-British mining company BHP Billiton's large IndoMet Coal project.

Swedwatch interviews with impacted communities

In August 2016, Swedwatch conducted research in Maruwei 1 village together with staff from WALHI Kalteng,[115] an NGO with long-standing cooperation with the community. Interviews were conducted with community members and leaders. Members of the community guided the Swedwatch team to sites of cultural and religious significance and through parts of their traditional forests.

Identity as Dayak Murung

Elders and religious leaders in the community described how the Dayak Murung indigenous group in Maruwei 1 village share a common language, history and a number of traditional, cultural and religious practices that are still alive today. A female community elder explained that her great grandfather was a spiritual leader, a so-called Damang, and one of the founders of the village. She stated:

> *"I am proud to be Dayak Murung, and proud that we have survived even though we are small in numbers. We still have a strong culture and cohesion within our community."*

An interviewed school teacher, who is not originally from the village, observed that the Dayak Murung still follow their traditions:

"There are the special marriage ceremonies, their close bond with the forest, and they still follow customary rules about what is right and what is wrong."

According to the interviewed female elder, the greatest moment in the history of the Dayak Murung in Maruwei 1 was the large, prophetic ceremony conducted in 1906:

"The leader of the ceremony had strong spiritual abilities. I was told that this ceremony brought hope and power to our community."

A male community elder showed Swedwatch a 1934 hand-drawn map of the extent of the Dayak Murung's traditional land, which was developed by a Dutch colonial officer. This colonial map has been used to indicate the approximate extent of the Dayak Murung's traditional land and forests, depicted in green in Figure 6. The community voices from the interviews illustrate how the Dayak Murung have a strong sense of identity-as indigenous peoples, and a long-standing connection to their traditional land and forests.

The Biriwit forest at the heart of Maruwei village

The interviewed Dayak Murung community members described the important role that their traditional forests used to play in their livelihoods. A middle-aged man told Swedwatch that the area along the Biriwit River used to be the 'heart' of Maruwei village:

"This area was our treasure since the time of our ancestors. We did rotational shifting cultivation, planting, hunting, wood collection and fishing there. The main source of our livelihoods was in Biriwit."

The current Damang describes the multitude of ways in which the Dayak Murung used their forests before the mining project was established on their traditional land:

"We used to hunt for wild pigs and deer. We fished in the river, and collected medicinal plants, roots, rattan and so many wild fruits."

The community used to derive income through the sale of forest products, including, for example fish, wild meat and resin from the Tenkawang tree, which was described as 'natural rubber'.[116] Since the Haju mine was established on their land, their access to this forest has been restricted and they can no longer depend on forest products for agriculture, hunting, and gathering.

Community consultation

Most interviewees were not aware of any community consultation as part of project preparation during the first half of the 2000s. One female village leader who is now in her 30s remembered the first time she heard about the project from people in neighbouring villages, recalling that it was probably in 2003:

"After that, BHP representatives just came and went in this village for many years. It was difficult for us as a community to interact with them. They just met some people like the chief of the village, the custom leader and staff in the village office."

None of the interviewees were aware of any community consultation as part of the Enviromental and Social Impact Assessment (ESIA) carried out during the project preparation phase. A number of interviewed community members recalled the first 'socialisation meeting' with the community. According to the villagers, in this meeting the BHP Billiton officer informed the community about the project. He raised the issue of land compensation[117] and presented future employment opportunities at the mine and community development programmes to be implemented.

According to some interviewees, around the same time there was also a decision-making process in which selected public figures were asked whether the community was in favour of the project. However, this process did not include the broader community.

The head of the village stated that in 2010 BHP Billiton carried out some type of biodiversity survey in the area but that this had not included consultation with them:

"We just found out after they surveyed. We didn't know before; they didn't tell us."

After the socialisation meeting and related gatherings in the mid-2000s, BHP Billiton has held regular three-monthly project meetings inviting selected members from Maruwei 1.

"The chief of the village, the head of the village development agency, one religious leader, one youth leader and one female representative is invited from each of the four affected villages", said the village chief.

The location of the meeting rotates, and the company pays the transport costs of all invited representatives.

"They just inform us about the good news but never inform us about the impact of mining", said the village chief.

Minutes from the meetings are not shared with the representatives, but the village chief informs the community of the main points by memory when he comes back to the village.

"The villagers don't trust that the company will do the things that they said. The important thing for the company is to be able to say 'they have already talked to the community'", said the village chief.

In summary, the results from Swedwatch's interviews indicated that company engagement with the community had been limited. Interview respondents who were not official village leaders did not feel they had been consulted and informed, or that the company had taken their perspectives into consideration.

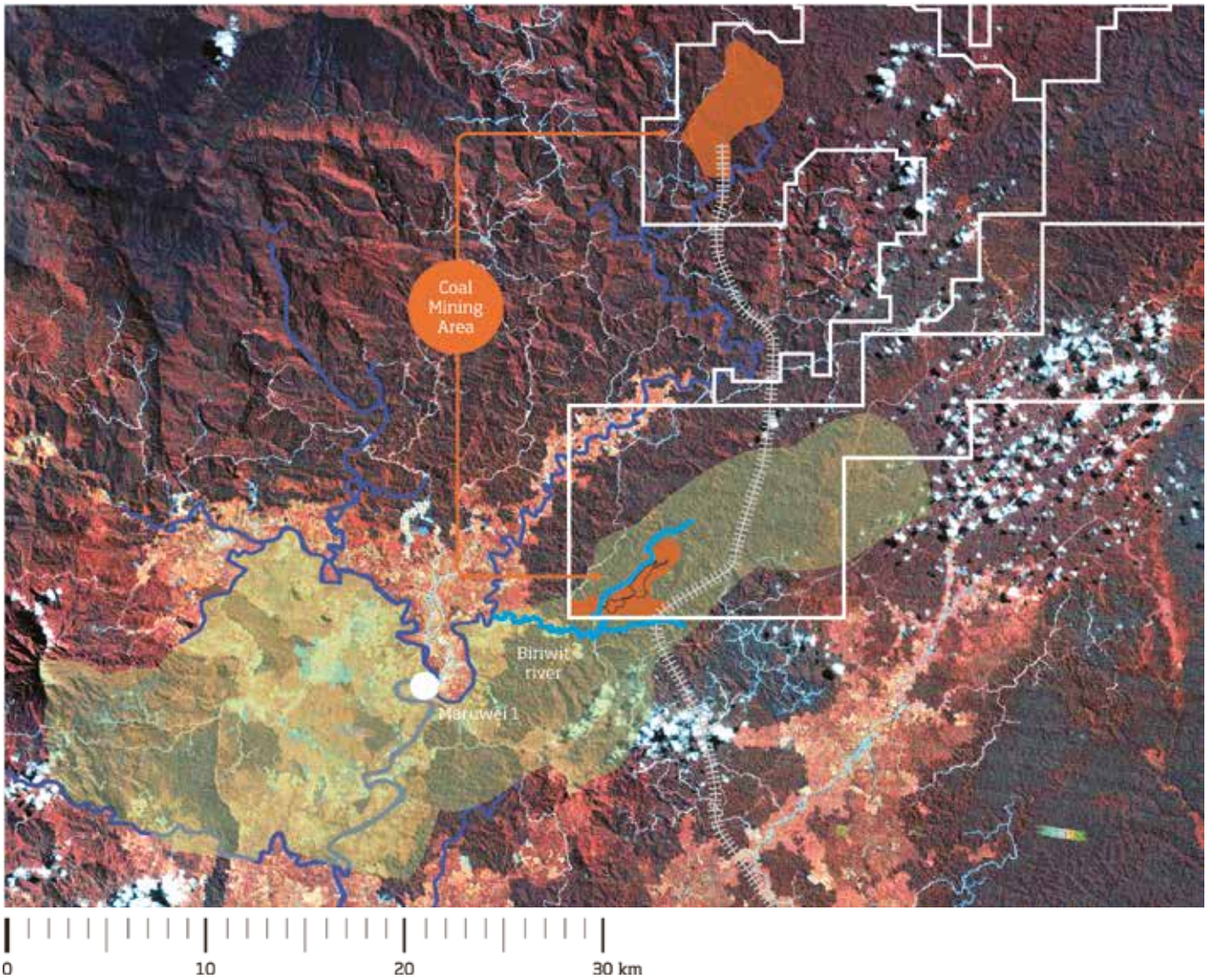

Figure 6: Impact of coal mining on the Dayak Murung's traditional land and forests, which is represented in green. The white line represents the mining concession border and the hauling road is shown as a barred white line. The orange fields show the areas allocated to open coal mining pits, and the narrow black lines show mining activities as of 2016. The area along the Biriwit river is the Biriwit forest, which was formerly used for hunting, gathering and shifting cultivation. The Biriwit forest area outside the concession is reportedly patrolled and inaccessible to the community. Landsat 5 image from 1991 ((c) USGS/Nasa).

Impacts and benefits from the coal mining project

The interviewed villagers stated that they have been affected in two main ways by the mining project. Firstly, they have lost access to their traditional cultivation land inside the mining concession, for which some landowners received a low level of compensation.[118] Secondly, the area along the Biriwit River, which was used for hunting and gathering, is now patrolled by security guards and is out of bounds for the villagers. The villagers have not been given an explanation as to why they are not allowed to access their traditional hunting and gathering area.

The loss of access to traditional land for shifting cultivation and crop plantations is impacting negatively on the livelihoods of the community, since few community members have the required education and skillsets to be employed by the mining company.

"In the socialisation meeting they said we would get jobs, but now only about ten people from our village work with the company", said one man.

The decreased access to wild foods is felt across the community, and has changed the diets especially of poorer households. The hunters in the village must go to other forest areas further from the village, since their traditional hunting grounds are now inaccessible.

"Before we just needed half a day to a day to get a wild pig, but today sometimes we need a week", explained one man.

The village nurse and the school teacher informed Swedwatch that the children in the area, especially those from the poorer half of the village, are not healthy. The nurse said that before the mining projects in the greater area, the children would consume a diverse diet including fruits, wild pig, deer and fish, and that the families could also sell these foods to get cash income. Today it is difficult to find these forest foods, and the weight and health of the children is decreasing.

"I see from their check-up every month that the weight of children under five is below the standard for their age, and sometimes the lack of healthy foods makes them sick", said the nurse.

The Damang and other interviewed community members pointed out that the mine has impacted on their use of traditional medicines. In the past, they could find a range of medicinal plants in the forest, but now they cannot access and use them to stay healthy.

The mine has also affected their ceremonial practices. For example, it has become difficult to find the ironwood tree species,[119] which is central to the Dayak Murung's funeral ceremony traditions and establishes the link between the deceased person and the spirit world.

"Now we can't get ironwood for the funerals from our forest anymore, so we have to buy it or try to find it in other villages", said an interviewed man.

Community efforts at securing traditional land rights

The village chief informed Swedwatch that 72 of the community members who lost individual land parcels to the mining project and received little compensation are submitting a land claim to local government bodies. The community has also submitted a claim for another area of land that is located inside the current mining concession, but is not affected by the coal mining open pit or the tailings area.

They hope to get formal land rights to this area under the local Dayak Misik scheme, under which indigenous communities can apply for government recognition of their rights to land and forests, and for it to be excised from the mining concession. If the claim is approved, they intend to use part of the area for communal activities such as

hunting and gathering, and allocate other plots as individual land parcels for agricultural activities.

The village chief is very concerned about the recent information that BHP Billiton has sold its shares to their Indonesian Joint Venture partner company Adaro.

> *"They told us in a meeting that they had sold their shares in the mining project. It looked like they want to deny their responsibilities to our community; they just hand them over to the new company, Adaro",*
> said the village chief.

BHP Billiton's perspectives

According to publicly available information, BHP has established a Forum on Corporate Responsibility that provides expert advice to the company on social and environmental aspects of its business operations. This group of experts travelled to the IndoMet Coal project in March 2015 but did not visit Maruwei 1 village or examine issues that were relevant to this community.[120]

In 2016 BHP Billiton responded with brief, general information to Swedwatch's request for details and perspectives on the IndoMet Coal project's impacts on the Dayak Murung in Maruwei 1. The company referred to how it integrates indigenous rights into its global operations through its Indigenous Peoples Policy Statement[121] and an Indigenous Peoples Strategy.[122] In its communication, BHP Billiton underlined the fact that it had sold its stake in the IndoMet Coal project in October 2016.[123]

In February 2017, BHP Billiton stated in email communication with Swedwatch[124] that, overall in the whole Murung Raya region, extensive consultation was conducted with the communities during exploration, project studies, construction and into operation, which included BHP Billiton environmental staff and consultants. The company did not provide details or documentation on such consultation activities in Maruwei 1 village.

BHP Billiton provides general information on its biodiversity work related to the IndoMet Coal project on its website,[125] and the company clarified in its communication with Swedwatch that a landscape level HCV assessment was carried out separately to the ESIA and was used to inform that IndoMet Coal Biodiversity Strategy. BHP Billiton explained that the HCV assessment report cannot be shared with Swedwatch because it contains confidential and sensitive information.

BHP Billiton made the general statement that 'the majority of environmental and biodiversity surveys in the Murung Raya region were conducted by locals who were familiar with the area and species'. According to BHP Billiton, the results from the HCV assessment, together with specific biodiversity surveys, informed the Haju Operations Biodiversity Management Plan, which has as its first priority mitigation measures the 'setting aside of no-go areas, large tree avoidance, and no hunting policy'.

In response to Swedwatch's interview findings that the Maruwei 1 villagers describe that their forest area outside the concession is patrolled by guards, the company stated that they used 'defensive security forces in line with our commitments to The Voluntary Principals on Security and Human Rights (VPSHR) to guard and patrol physical infrastructure and to prevent unauthorised access into the active mining area for safety purposes'. It further explained that it did not restrict community access to areas 'within their tenement', except to the 'active mining areas'. The statement from the company does not mention the Biriwit forest area, but clarifies that the IndoMet Coal project did not restrict access to the Biriwit River itself.

BHP Billiton informed Swedwatch that the total area that had been disturbed by the IndoMet project at the time when the company exited the project was approximately 300 hectares, and that a number of other non-BHP Billiton owned coal mines in close proximity to Haju have disturbed larger areas of forest. In addition, much of the area of BHP Billiton's coal leases were also covered by active timber concessions over which BHP Billiton had no control under the terms of the mining concession.

On this basis, the company deems it unlikely that the development of the relatively small Haju mine could have materially decreased access to food, to the extent of causing malnutrition in children, or that traditional trees for medicine or cultural practices cannot be sourced. Furthermore, BHP Billiton stated that it had previously highlighted that local communities would derive income from crops such as rubber. However, the decline in global rubber price will also have affected the revenue of local communities. This coincided with an increase in the local population which has further impacted the agricultural industry.

In the February 2017 email communications,[126] BHP Billiton underlined that they had been delivering social benefits such as clean water, education assistance and health and wellbeing programs to communities impacted by the IndoMet project, and that clean water is currently delivered to the Maruwei village.

Swedwatch analysis: BHP Billiton policy and actions matched against international standards

BHP Billiton's Indigenous Peoples Policy Statement is largely based on the corresponding ICMM statement[127] and contains a provision on 'working to obtain the consent of Indigenous Peoples to BHP Billiton activities', in cases where this is supported by national legislation. The compliance between this commitment and national legislation is determined by the BHP Billiton Chief Legal Counsel, and the commitment does not apply to 'operations or major capital projects for which approvals and permitting processes have commenced prior to May 2015'.

Idonesian legislation does not require Free, Prior and Informed Consent (FPIC) for mining projects with potential impacts on indigenous communities. This, combined with the fact that the IndoMet Coal project had a long preparation phase whereby contacts with the communities started in the early 2000s and the first production from the Haju mine was obtained in 2015, gives a strong indication that the FPIC pro-

vision in BHP Billiton's Indigenous Peoples' Statement does not apply to the IndoMet Coal project.

The company did not disclose its due diligence measures, and did not share basic project information and reports with Swedwatch (see Table 8).

Company	Requested documents and information (none of which were provided):
BHP Billiton	• Reports from ESIA, participatory HCV assessment and mapping of land use and tenure; • Documentation and minutes from community consultation and engagement meetings; • Indigenous rights due diligence measures as part of the exit from the IndoMet Coal project in October 2016.

Table 8: Requested documentation and information that was not shared with Swedwatch as part of the research for this study.

Swedwatch's findings from its consultations with the Dayak Murung community in Maruwei 1, together with media reports, and minutes from a meeting between the company and the heads of affected villages in 2006 which also includes a signed agreement,[128] indicate that the contacts that the company reportedly had – mainly with very few selected community leaders – could not be described as fair, inclusive, open, free of coercion, well documented and based on traditional representation and decision-making structures.

According to interviews with the Dayak Murung, the indigenous community had minimal involvement in the ESIA process in Maruwei 1. There is no indication that the ESIA results and the report was disseminated to the community, let alone in an appropriate format and language.

According to Swedwatch's interviews with the community and with the NGO WALHI Kalteng, no community and cultural forest values have been protected and excised from the mining concession, and the community states that they no longer have access to their former area for hunting, gathering and shifting cultivation. According to WALHI Kalteng who have reviewed the IndoMet project ESIA, the biodiversity section does not contain reference to any assessment of community or cultural High Conservation Values (HCVs).[129]

The company's comment on the alleged patrolling of the Biriwit area is ambiguous since it avoids mention of the Biriwit *forest* area, and instead states that IndoMet Coal project did not restrict access to the Biriwit *River*. According to WALHI Kalteng, the river itself is considered as a public transport corridor, and is therefore open to public access.[130]

Coal mining in Kalimantan. Since 2000, Indonesian coal production has increased five-fold to meet growing domestic demand for electricity and for export markets in Asia. The intensive mining is leading to the clearing of rainforest and the pollution of rivers and rice paddies. Source: Yale Environment 360 (2015). ©JATAM. THE IMAGE IS NOT RELATED TO THE CASES IN THIS REPORT.

BHP Billiton's description of the social benefits delivered to the Maruwei 1 village stand in contrast to Swedwatch's observations in August 2016 when village water delivery was not functioning and interviewees described how the company's earlier interventions for scholarships, delivery of nutrition supplements to children and support to microfinance activities had been brief and limited and ceased several years before BHP Billiton exited the project.

In Swedwatch's analysis, the small sums provided to some landowners in Maruwei 1 would not constitute appropriate compensation for the mine's impacts on indigenous land, forests and livelihoods. To Swedwatch's knowledge, BHP Billiton has made no attempts to support the community's claims for new communal and individual land rights inside the current mining concessions. These claims have been submitted to the government under the Dayak Misik scheme. Neither has the company ensured renewed access to its forest area for hunting and gathering along the Biriwit River.

BHP Billiton has exited the IndoMet Coal project without re-engaging with the Maruwei 1 community in the spirit of FPIC, and without ensuring remediation and providing compensation for impacts on the Dayak Murung community's access to land, forests and livelihoods. This type of exit is in breach of the UNGPs, which state that proper Human Rights Due Diligence (HRDD) to protect indigenous rights clearly requires a company to first remediate impacts, and then to tranparently identify and handle residual indigenous rights risks in the project. No Community-Based Human Rights Impact Assessment had been carried out that would provide community members the space to communicate the ways in which their indigenous rights had been impacted by the mining project.

Summary analysis of available information on BHP Billiton's course of action matched against good practice in line with international standards:

Swedwatch overview of good practice in the project cycle	**Indicative gaps in IOI Group's course of action**
Proactive assessments and consultation	
FPIC consultation	Based on information available to Swedwatch, no evidence could be found that these good practice elements have been implemented by BHP Billiton as part of project preparation for Maruwei 1 village.
Participatory HCV assessment	
Participatory mapping of land use and tenure	
Reactive measures	
Cease detrimental practices	During the period when BHP Billiton was the majority joint venture partner in the IndoMet project (2010–16), based on interview results and available information, no evidence could be found by Swedwatch that efforts were made to stop the expansion of project activities that affect the Dayak Murung in Maruwei 1's indigenous land and forest values.
Ensure remediation and provide compensation	Based on information available to Swedwatch, there is no evidence that these good practice elements have been implemented by BHP Billiton to rectify omissions during early project stages.
Consultation in the spirit of FPIC	
Community HRIA	
Participatory HCV assessment	
Participatory mapping of land use and tenure	
Human Rights Due Diligence (HRDD) for a responsible project exit	According to information available to Swedwatch, there are no indications that BHP Billiton tried to ensure remediation and compensation to the Maruwei 1 community of the impacts on their access to land and forests and their livelihoods, to ensure HRDD for indigenous rights as part of its exit from the project in 2016.

Table 9: Swedwatch analysis of available information and evidence on BHP Billiton's course of action, matched against international standards summarised in this report.

5.3 Case 3: Risks for indigenous rights impacts in the palm oil supply chain

This case is based on a review of the Swedish palm oil importer AAK's[131] supply chain practices when sourcing palm oil from Borneo, and is based on results from an email interview with company representatives. Swedwatch focuses the analysis on the company's proactive measures at identifying risks and impacts, and then transparently managing and mitigating those risks, in line with the UNGPs. No field study has been conducted in the Borneo plantations from which AAK source their palm oil.

AAK policies and transparency in palm oil sourcing from Borneo

AAK's Group Policy for Sustainable Palm Oil is based on RSPO principles and criteria, with an additional commitment to sourcing palm oil that has been produced "without deforestation or destruction of peatland, and where plantation development only takes place with the FPIC of any affected local communities".[132] The policy mentions Indonesia and Sarawak as high-risk sourcing areas from a sustainability point of view.

In February 2017 AAK informed Swedwatch that this policy – although not yet public – has been updated and the specific reference to Indonesia and Sarawak has been withdrawn. AAK states that the reason for the change is that they are taking a more systematic and detailed approach to risk assessment.

In response to Swedwatch's email survey, Anne Mette Olesen, chief marketing officer at AAK, states that less than 2 percent of its global palm oil purchases are from Sarawak and Kalimantan.[133] AAK states that all sourcing from Sarawak and Kalimantan is through suppliers, with no direct sourcing from mills.

The company does not disclose details on the degree of traceability to mills and plantations in Borneo and, according to Olesen, it is not planning to do so in the future. AAK declined to share the names of its Borneo suppliers or locations of plantations, as a matter of policy and commercial confidentiality. AAK states that in their global operations, traceability to mill was 98%, while no breakdown figure was provided for sourcing from Borneo.

AAK's Supplier Code of Conduct makes general reference to the respect for human rights, however it does not mention indigenous rights, FPIC or HCVs, or RSPO principles and criteria.[134] However, Olsen clarified that suppliers in Sarawak are assessed through the AAK Sustainable Palm Policy, which contains all these provisions.

Supply chain management

Jonathan Escolar, project manager at Proforest[135] – AAK's sustainability consultant, explained to Swedwatch[136] that AAK's Borneo suppliers have their own sustainability policies and due diligence programmes, and therefore are considered to have low sustainability risk.

The Borneo suppliers were assessed by Proforest; on the basis of mill location, volumes sourced, and specific supplier information – including reported grievances – they were not prioritised for intervention.

The risk assessments are performed on an annual basis and AAK's priorities are re-evaluated at the same periodicity. Escolar explains that the assessments encompass a range of sustainability issues. In order to capture impacts on forest ecosystems, Proforest has developed a comprehensive geospatial analysis tool, which detects changes in forest cover and forest quality in connection with oil palm development.

Escolar explained that human rights form an important part of the general risk assessment, and includes for example reference to NGO reports. Regarding the more detailed geospatial analysis, there are still challenges in incorporating social and human rights risks – including impacts on indigenous rights - since currently there are no readily available datasets, which can be referenced in this type of analysis. Proforest describes how they are currently working to address this challenge by developing social risk mapping tools in cooperation with organisations such as Daemeter, WRI and Rainforest Alliance.

Anne Mette Olesen explains that, through the above-mentioned risk assessments, AAK has not become aware of any impacts on indigenous rights to Free, Prior and Informed Consent (FPIC) and High Conservation Values (HCVs) for palm oil mills or plantations in the Borneo supply chain. According to Proforest, given the absence of identified impacts and the low volumes sourced from Borneo, AAK has no plans to carry out HRIAs or other types of human rights-focused risk assessments in its Borneo supply chain.

As a consequence, AAK does not engage with any of their Borneo suppliers. However, Escolar pointed out that stakeholders may raise concerns through the AAK's grievance procedure, which would then be investigated, and action potentially taken.

On the question of AAK using its leverage to encourage private and state actors in Borneo to better respect and protect indigenous rights in the palm oil industry, Olsen stated that "AAK's leverage and influence in Sarawak and Kalimantan is limited". She explained that it is important that AAK exert influence where it has the most leverage in order to make the most effective use of resources, and added that this approach is common to other leading companies within the sector.

Swedwatch analysis: AAK actions matched against international norms

AAK and its consultant Proforest responded to Swedwatch's email survey, and welcomed the focus on human rights. Although AAK and Proforest shared some interesting and relevant information on their supply chain management, including how they are in the process of developing geospatial approaches also for assessing human rights and indigenous rights risks, key information necessary for understanding AAK's due diligence has not been shared:

- AAK did not provide information on its Borneo suppliers, sourcing areas, and degree of traceability of palm oil from Borneo.
- The company clarified that Borneo suppliers are considered low risk because of the due diligence programmes that they have in place, however did not disclose what programmes it referred to.
- AAK described that the human rights part of the general risk assessment includes, for example, reference to NGO reports, but did not give a description of its other elements.

In line with the UNGPs, AAK should conduct a human rights impact assessment for all of its operations. As for its supply chain in Borneo – since it is a high-risk area from an indigenous rights perspective – a focus on risks and impacts on indigenous communities should be included. The assessment should include consultation with affected stakeholders, including indigenous communities. Based on the results from the assessment, high-risk suppliers and areas should be identified, and management systems and tools designed to prevent, detect and mitigate impacts. All of the due diligence measures should be transparently communicated. [137]

It is possible that the current AAK systems include some of the HRDD elements required. However, low transparency makes it difficult to assess whether this is the case. For example, the company's statement that Borneo suppliers have low sustainability risk is difficult to evaluate since there is no information about who the suppliers are, where they operate and what due diligence programmes they have in place. Likewise, based on the information provided by the company, it is not possible to judge how strong the current assessment of supply-chain impacts on indigenous rights is.

Finally, in line with the UNGPs, if a company is linked to risks and impacts on human rights, it is responsible for maximising its leverage and putting pressure on other actors towards stopping and preventing further breaches of, for example, indigenous rights. This is required regardless of volumes of palm oil sourced from a location such as – in this case - the island of Borneo.

5.4 Case 4: Financial services to disputed Sarawak regime

This section describes alleged links between Deutsche Bank and the former Sarawak Chief Minister Abdul Taib bin Mahmud and his family (see description of allegations against the former Chief Minister in section 4). The seven Scandinavian banks in this study are all invested in Deutsche Bank, as well as global actors such as Bank of America and the American finance company Goldman Sachs.[138] Some of the allegations against Deutsche Bank made by Straumann (2014) concerning its financial services to the Taib regime are:

- Deutsche Bank's investment bankers have allegedly helped the Taib regime access the capital markets. In 2005, Deutsche Bank issued a 600 MUSD bond for the Sarawak government in Labuan, Malaysia's offshore finance centre.

- Deutsche Bank administrated the Jersey-based Sogo Holdings Ltd, an offshore company that has allegedly been involved in laundering Taib family assets that were reinvested in Canadian real estate.

- Deutsche Bank held shares in the Malaysian broker company K&N Kenanga Holdings Bhd where the Taib family is the majority shareholder. In 2014 Deutsche Bank declared its intention to sell its stake in the company[139], and in its 2015 annual report, Deutsche Bank states it does no longer hold shares in K&N Kenanga Holdings Bhd.[140]

In email communication with Swedwatch[141] Deutsche Bank expressed its general support for Swedwatch's work to improve awareness and adherence to international norms on human rights and the environment. The bank stated that it is not able to comment on the specific case, and instead referred to its Statement on Human Rights,[142] which includes a commitment to International Finance Corporation Performance Standards[143], but lacks specific references to ILO 169 or UNDRIP.

6. Bank survey: commitments and actions

This chapter starts with an overview of investors' responsibilities, ways of exerting leverage and available responsible investment approaches. Sections 6.2 and 6.3 summarise the banks' own perspectives and priorities of the issues, based on interview results. Details on the banks' actions in the four cases from Borneo are available in Section 6.4.

6.1 Responsibilities and approaches

The OECD Guidelines for Multinational Enterprises[144] and the UNGPs[145] state that all business relations entail responsibilities for risks and impacts on human rights – including the special rights of indigenous peoples – which may result from business activities. Both the UN Office of the High Commissioner for Human Rights and the OECD's Directorate for Financial and Enterprise Affairs underline that investors, including minority shareholders, have responsibilities to ensure that the companies they invest in respect human rights.[146]

Investor responsibilities according to the UNGPs

The UNGPs outline that investors in companies and projects – such as banks, fund management companies or credit agencies – which act in breach of the right to FPIC can be considered 'linked' to the violations – provided adverse impacts on indigenous rights are present in their business operations. As part of their Human Rights Due Diligence (HRDD), they are required to use and increase their leverage and influence in order to ensure improved adherence to indigenous rights.

During an interview with Swedwatch, an elder from the indigenous Dayak Murung community in Maruwei 1 village, Borneo, explained to Swedwatch that her great grandfather was one of the village founders. She described how the traditional 'Kaharingan' religion is upheld by key families, and that the whole community supports these families' practices and ceremonies - many of which need special forest products for their realisation.

The UNGPs specifically state that a business entity that exerts leverage on a non-performing company should ensure that the company is responding and improving within a set time frame. Where the company in question has breached several norms, the remediation of and compensation for irreversible impacts should always be prioritised. For investors linked to cases of irreversible impacts, contribution to remediation and compensation is not required under the UNGPs, but may be provided on a voluntary basis. In cases where governments do not protect human rights, individual investors or joint initiatives should use their leverage to put pressure on governments.

Sustainable investment approaches

An increasing number of banks and fund managers world-wide have systems in place for sustainable investments in order to integrate safeguards for the environment, social aspects and good company governance (ESG factors) in their investment practices. There is still no broad international standard that governs how this should be done, but a common approach is to apply various international standards, norms and conventions when assessing companies' investment decisions. Participation in sector initiatives is also common, the largest of which is the United Nations-supported Principles for Responsible Investments (PRI).[147]

Amongst banks globally, the processes and methods for sustainable investments include:

- Exclusion of controversial sectors and companies;
- Identification of companies which act in breach of international sustainability standards;
- Positive selection of companies which perform well financially and from a sustainability point of view;
- Engagement with companies through dialogues, shareholder proposals and voting; and joint investor initiatives such as appeals or pooled engagement.

There are different processes for ensuring that ESG factors are considered and integrated into investment decisions, for example when individual fund managers buy and sell shares in companies on the stock market. [148]

Active consideration to sustainability issues is easiest to apply in actively managed funds where the fund manager more freely selects companies to invest in and usually has fewer companies in the portfolio to keep track of. Several of the processes and methods described above can also be applied in passively managed funds, often so-called index funds. Engagement can always be conducted, also in strict index funds. However, in order to exclude companies or make positive selections of companies based on ESG criteria the bank has to develop a tailored index that reflects the fund's sustainability criteria.

Norm-based screening

Norm-based screening[149] identifies and analyses companies that allegedly breach international conventions and standards related to the environment, human rights, labour rights and corruption, and can include breaches of ILO 169 and UNDRIP. The research involved in the process consists of a review of publicly available information including, but not limited to, media and NGO reports and dialogue with companies and stakeholders.

When accusations have been found against a company in a bank's investment universe, the norm-based screening provider will first decide whether the incident seems severe enough to warrant continued research and analysis.

In cases that are deemed more significant, i.e. severe or systematic, the provider will gather more information and documentation, and contact the company and other stakeholders for their input. In a final analysis, the service provider concludes whether the company's actions are in line with international standards. If a company is suspected of, for example, negative impacts on indigenous rights, but the impacts have not been 'verified' according to the service provider's specified criteria, it could be put on a watch list, which means that there is an indication that it has may have violated international norms. Once it has been verified that a company has acted in breach of international standards, it would be given a 'confirmed violation' status.

The sources of verification used by different norm-based screening providers may vary, but in summary the following types of sources are considered to be valid:

- Sanctions against the company issued by international, regional or national courts or other official bodies;
- Admission of norm breaches by the company itself;
- Examination by an official and credible body that confirms the connection between the company and the reported violation, such as incident-specific statements by a UN Special Rapporteur;
- In some cases, a combination of several 'independent and credible sources' confirm the connection between the company and the reported violation – so-called 'triangulation'.

Company incident ratings

Banks may purchase historic information about companies' sustainability incidents, and the degree of each incident's severity, from a range of providers. The information, often in the form of a 1–10 severity rating, is used as background information – together with large data sets of other information on companies' financial and sustainability performance – which individual fund managers have access to as a basis for their investment decisions.

Company engagement

A bank with investments in a company may decide to engage in order to influence it to improve its sustainability policies and practices. Dialogue is the most common form of engagement and can entail repeated contact, meetings and putting pressure on the company by publicly expressing clear demands for change, and sending letters with pertinent questions.

Banks can engage with companies either proactively, often as part of an on-going broader dialogue, or reactively in response to a problem, for example if the norm-based screening has revealed a problematic incident or practice. Some banks use consultancy firms in the engagement phase, which then contact the company as representatives of a group of customers. If engagement proves unsuccessful, the bank may decide to divest its shares in order to disassociate from the company. The bank may publicise its divestment to put added pressure on the company to improve its practices.

Joint investor initiatives

Investors may join forces to increase their leverage and put pressure on companies to contribute to positive change in industry associations or in whole sectors through so-called pooled engagement dialogues or appeals. Examples of ways to increase leverage include:

- Through collaboration with other investors and multi-stakeholder platforms with peers, government representatives and civil society representatives;
- Through engagement with relevant industry organisations, which can influence the standards and compliance of multiple companies in a sector, such as mining or palm oil development.

6.2 Banks' policies

A review of the seven banks' policy commitments[150] shows that all banks have committed to policies that require companies to have human rights policies in place and to conduct Human Rights Due Diligence (HRDD) across their operations. Regarding the principle of Free, Prior and Informed Consent (FPIC) for indigenous peoples, and protection of High Conservation Values (HCVs), Länsförsäkringar has the strongest policies. The other six banks have partial policy commitments in these areas – some do not cover all the banks' financial activities, and some represent weaker or incomplete commitments to the principles. For details, see table 10. below.

The banks' policy commitments, Fair Finance Guide 2016	Danske Bank	Handels-banken	Läns-försäkringar	Nordea	SEB	Skandia	Swedbank
Overarching policies							
Human Rights #4: Companies have a policy commitment to meet their responsibility to respect human rights.	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Human Rights #5: Companies have a human rights due diligence process to identify, prevent, mitigate and account for how they address their impact on human rights.	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Human Rights #6: Companies have processes to enable the remediation of any adverse human rights impacts which they cause or to which they contribute.	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Human Rights #7: Companies prevent conflicts over land rights and acquire natural resources only by engaging in meaningful consultation with local communities and obtaining FPIC when it concerns indigenous peoples.	Partly	Partly	Yes	Partly	Partly	Partly	Partly
Nature #1: Companies prevent deforestation and protect natural forests including old growth forests, bogs, mangroves and rainforests, as described in the HCV concept, with a focus on forest-based livelihoods and cultural forest values.	No	Yes	Yes	Partly	Yes	Yes	Partly

Table 10: Policy commitments by the seven banks regarding human rights in general and indigenous rights to FPIC and HCVs specifically.

6.3 Prioritising sustainable investment efforts

During the survey and interviews the banks shared information and experiences from their work with sustainable investments and indigenous rights. A large portion of the responses consisted of descriptions of the banks' own systems and tools for responsible investments. The banks elaborated on the challenges that the comparatively small[151] sustainability teams had in prioritising their efforts. In general, the banks make priorities at four levels and rely to a large extent on screening, analysis and engagement services from sustainable investment consultants.

Level 1: The banks prioritise their efforts amongst a multitude of different ESG issues. Some banks work on selected themes for a few years at a time. Swedwatch and Fair Finance Guide interview results indicate that the risks and impacts on indigenous peoples is not currently seen as a special priority amongst the ESG issues that the banks aim to integrate into their systems and practices.

Level 2: The banks prioritise between the many reports of company breaches of ESG norms and conventions related to the companies they invest in. The banks in the study stated that they engage two different norm-based screening service providers that dominate the Swedish market in this area. The banks rely mainly on their service providers' media alert systems, supplemented by other information sources, to determine which companies are suspected of breaching binding international norms and conventions. Out of the multitude of global media alerts, the consultants select cases of suspected norm violations for deeper analysis.

Level 3: The banks decide which of the selected incidents are most serious – both within the investment universe and where one company is facing many different allegations. Here, the banks draw on advice from their norm-based screening consultants' analysis, which uses publicly available information and sometimes consults with NGOs, experts, government bodies and often the company itself to collect information and assess the company's actions in comparison to international conventions and select voluntary standards. Sometimes this is complemented with results of a company incident rating.

If the norm-based screening analysis concludes that there is a 'suspected' norm breach that cannot be 'verified', the companies will typically be put on a watch-list, and sometimes engagement is initiated. When the service providers have 'verified' a norm breach, and if the company does not respond positively, the banks state that they may divest and put the company on a 'blacklist'.

Level 4: Based on the selection of incidents and the results of the analysis, the banks decide on a path of action and determine whether they have the resources to engage directly with the company. Some banks conduct their own proactive dialogues with selected companies, which partly cover sustainability issues, but mostly they purchase engagement services from external providers. Most banks in this study had also allocated resources to participate in the following joint investor initiatives that have some relevance for indigenous rights:

- PRI-coordinated engagement on human rights in the extractive sector;[152]
- PRI-coordinated engagement on sustainable palm oil, targeting growers;[153]
- Joint letter from investors and brands that are part of the Ceres network[154] to RSPO, encouraging the industry association to review and improve its principles and criteria for sustainable palm oil, and to ensure improved transparency, auditing and enforcement.[155]

FPIC and HCV assessments

During the interviews, few bank representatives offered thoughts or comments on the specific issues covered by this report, namely the challenges and opportunities for companies operating in Borneo to implement good practice FPIC processes and participatory HCV assessments in cooperation with indigenous rights holders in their projects. The details provided on the four specific cases were almost exclusively in the form of direct references to (and excerpts from) norm-based screening consultant inputs and reports.

Helena Larsson, senior investment analyst ESG at Skandia, stated that community consultation is a challenging area for companies:

> *"Incomplete consultation with communities is very common. There are few companies that get consultation and FPIC right in practical implementation."*

There were some general comments that reflected an understanding of indigenous peoples' marginalised position in many societies.

> *"We are aware that indigenous communities are especially vulnerable, and they have far-reaching rights supported by the United Nations",*
> said Sasja Beslik, head of sustainable finance at Nordea Wealth Management.

6.4 Investments and actions on the four cases

This section summarises the seven Scandinavian banks' investment links and actions regarding the four cases, based on results from the written survey and face-to-face interviews. Most of the information provided by the banks was in the form of references to, or excerpts from, their sustainable investment consultants' reports. The banks' investments in the four companies were found in 94 of their investment funds, of which 24 were passively managed funds. The total value amounted to just under 450 million USD (4.2 billion SEK)[156]. In table 11. the amount per Scandianvian bank and company is listed. A number of large, global actors are also invested in the four companies, which makes the findings in this section relevant to a large number of investors world-wide. For examples, please see table 11. below.

Company	Investment amount per Scandinavian bank 30 June 2016 (MSEK)							Examples of global investors which are shareholder in the four companies
	Danske Bank	Handels-banken	Läns-försäkringar	Nordea	SEB	Skandia	Swedbank	
IOI Corp	0.2	1	1	0	5	0	4	US registered investment companies BlackRock and Vanguard.[157]
BHP Billiton	21	21	55	230	50	40	120	Bank of America and the American finance company Goldman Sachs.[158]
AAK	13	1,039	158	359	538	143	692	–
Deutsche Bank	5	27	20	427	67	5	182	Bank of America and the American finance company Goldman Sachs.[159]
TOTAL	**39**	**1,089**	**232**	**1,015**	**662**	**189**	**997**	–

Table 11: Investment amounts per bank in each of the four companies in million SEK (MSEK), based on data from 30 June 2016.[160]

Case 1: IOI-Pelita palm oil plantation

Five Scandinavian banks - Danske Bank, Handelsbanken, Länsförsäkringar, SEB and Swedbank - had investments in IOI, although relatively small amounts. All investments were found in the banks' index funds. At SEB one of the funds was a so-called ethical fund. Nordea and Skandia had no holdings in the company but it was not clearly an active choice due to sustainability concerns.

During the interviews, when discussing the IOI-Pelita case, invested Scandinavian banks describe how they have relied to a large extent on norm-based screening services provided by external consultants. The banks were first alerted to the company's alleged norm breaches between 2010 and 2013 - several years after IOI took over as majority Joint Venture partner in the palm oil plantation. All five banks received a deeper analysis of the situation from their respective consultant and all banks except for Swedbank, i.e. Danske Bank, Handelsbanken, Länsförsäkringar and SEB, consequently put the company on a watch-list to monitor the case further. They also

employed resources to conduct engagement dialogues with IOI, again through a norm-based screening consultant.

Danske Bank, Handelsbanken and SEB were still in dialogue with the company during 2016. Länsförsäkringar, however, concluded that – as of 2014 – IOI 'complies with the Sarawak Land Code, which proclaims recognition of customary rights to land and corresponds with the ILO Indigenous and Tribal Peoples Convention 169'. As a result Länsförsäkringar ceased its engagement with the company on this case in 2015.

Information which the banks have provided Swedwatch and Fair Finance Guide on their engagement dialogue with the company, shows no indication that they have communicated any of the following to IOI:

- A time-frame as to when IOI is expected to fulfil the banks' engagement goals;
- A requirement that the company commits to a complete halt of any further plantation developments on indigenous land;
- A request for documentation which shows that the mediation process is conducted in the spirit of FPIC with respect for the community's indigenous rights to a fair, transparent consultation, which draws on their own traditional decision-making structures, and that the company proposals for compensation enable the indigenous community to maintain their livelihoods and connection to their traditional land and forests, with no relocation from their current location.

SEB and Swedbank participated in a joint investor initiative through UN-PRI[161], and Skandia signed a letter to RSPO, together with other investors and brands.[162] These joint investor initiatives addressed a spectrum of human rights issues in the palm oil sector and weaknesses in the RSPO standard and its implementation. However, based on the information provided to Swedwatch and Fair Finance Guide, the three banks did not take opportunities to raise particular concerns around the IOI-Pelita case, nor did they underline the importance of indigenous rights and good practice in implementation of FPIC and HCV assessments.

These findings illustrate that in spite of being relatively small shareholders in IOI, the banks have allocated resources to the analysis and engagement in the IOI-Pelita case. However, Swedwatch's findings and analysis highlight a number of factors which may have obscured the banks' understanding of the nature and severity of the company's norm breaches and responsibilities:

1. IOI's assurances and lack of transparency

A number of banks described that they had been reassured by IOI's public statements that the current mediation process would 'give communities land rights' and that an agreement with the communities was 'being concluded' and the parties were 'in the process of drafting an agreement'.[163] No bank in the survey reflected on whether the current mediation process was conducted in the spirit of FPIC. No bank had requested documentation from the process such as minutes from meetings, docu-

mentation of community claims and company proposals, or access to the report by the independent RSPO observer.

2. RSPO certification not withdrawn

No bank commented on the fact that, in order to fulfill RSPO's so-called 'Partial Certification Requirements', companies should have no on-going land conflicts across their operations. At the time of publishing this report, the IOI-Pelita conflict was unresolved, while IOI still maintained their RSPO certification.

3. Verification criteria

None of the banks in the study considered whether or not IOI's 'alleged norm breaches' had been verified, referring to the criteria used by their norm-based screening consultants. When asked during interviews if they thought that the company had acted in line with international norms, bank representatives stated that the company was on a watch-list and had not been cleared of the allegations, while others were satisfied that the allegations were 'not verified'.

4. Documentation and basis for assessment

During the interviews, no bank representatives confirmed whether they had had access to and analysed key documents such as historical land records, the project EIA, the 2010 Miri High Court ruling or the report by the UN Special Rapporteur (see table 6. in section 5.). In Swedwatch's analysis, these documents constitute a solid basis for the communities' rights to FPIC, livelihoods and forest values

No bank in the survey gave any indication that they had complemented their consultants' review of publicly available information by requesting basic project documentation from the company. None either provided information regarding contact with the RSPO to obtain a full set of letters and communication received from the communities and from NGOs working closely with the communities over recent years.

During the survey and interviews, none of the banks communicated that they saw a need to commission their own field surveys to hear the communities' perspectives. None of the banks in the study informed that they had raised concerns over the initiation of a state-led mediation in light of the weak state protection of indigenous rights described throughout this report.

As a consequence of the weaknesses and omissions above, the banks do not consider it 'verified' that IOI has failed to respect the communities' indigenous rights. Hence, they have not clearly requested IOI-Pelita to cease and remediate its negative impacts in line with international norms for FPIC and HCVs within a set time-frame.

Bank actions - Case 1: IOI

	Danske Bank	Handels-banken	Läns-försäkringar	Nordea	SEB	Skandia	Swedbank
Type of investment fund	Index	Index	Index	No investment	Index Ethical	No investment	Index
Assessment of the bank's course of action **Maximum score: 10** Awareness 1 Analysis 1 Case on watch-list 1 Company engagement 3 Sector engagement 3 Documen-tation 1	Aware of allegations (1) Deeper but insufficient analysis (0.5) Case currently on watch-list (1) Weak company engagement and no clear pressure to comply with FPIC and HCV standard. On-going (1) No documenta-tion (0) Not involved in related sector engagement (0)	Aware of allegations (1) Deeper but insufficient analysis (0.5) Case currently on watch-list (1) Weak company engagement and no clear pressure to comply with FPIC and HCV standard. On-going (1) Provided docu-mentation (1) Not involved in related sector engagement (0)	Aware of allegations (1) Deeper but insufficient analysis (0.5) Case previously on watch-list, resolved and taken off list in May 2015 be-fore resolution of issue (0.5) Active company engagement but no clear pres-sure to comply with FPIC and HCVs, and dia-logue concluded in 2015 before resolution of issue (1) Provided docu-mentation (1) Not involved in related sector engagement (0)	Aware of allegations No investment, but not be-cause of poor sustainability Field visit to Borneo 2011 with focus on palm oil industry	Aware of allegations (1) Deeper but insufficient analysis (0.5) Case currently on watch-list (1) Weak company en-gagement and no clear pres-sure to comply with FPIC and HCV standard. On-going (1) Provided docu-mentation (1) Participates in UN PRI-coordinated engagement on sustainable palm oil target-ing growers (1)	Aware of allegations No investment, but not be-cause of poor sustainability Has black-listed five forestry/ palm oil com-panies due to violations, but not IOI Signed Ceres joint investor letter to RSPO. Had opportuni-ty to comment on RSPO draft	Aware of allegations (1) Deeper but insufficient analysis (0.5) Case not on watch-list (0) Company engagement through joint investor initia-tive but no clear pressure to comply with FPIC and HCVs. On-going (1) Provided docu-mentation (1) Participates in UN PRI-coordi-nated engage-ment on sus-tainable palm oil targeting growers. Field visit to Borneo 2011 with focus on palm oil industry (2)
Total score out of maximum 10	3,5	4,5	4	No investment	5,5	No investment	5,5
Overall as-sessment of the bank's course of action	Short-comings	Short-comings	Short-comings	No investment but not clearly an active deci-sion due to sustainability concerns	Short-comings	No investment but not clearly an active deci-sion due to sustainability concerns	Short-comings

Table 12: Overview of the five banks' investment practices in Case 1: IOI-Pelita palm oil plantation.

Case 2: BHP Billiton - Haju mine, IndoMet Coal project

All seven Scandinavian banks were invested in BHP Billiton through their active or passive funds, or both. Danske Bank invested in the company through one of its ethical funds. The total holdings by the banks amounted to MUSD 60.4 (537 MSEK).

Based on inputs from their norm-based screening consultants, all the banks in the study had concluded that the allegations against BHP Billiton in the IndoMet project did not warrant watch-listing or further action. Swedbank also based their assessment on company incident rating data purchased from global service providers who had assessed the situation at IndoMet to be of low seriousness.

Skandia explained that it had received little information on the Haju mine – the mine inside the IndoMet project, which overlaps with the Maruwei 1 village indigenous Dayak Murung community's traditional land.

> *"The problem seems to be that the community is expressing opposition and dissatisfaction with the mining project. The case is not well documented and transparent",* said Helena Larsson, senior investment analyst, ESG at Skandia.

Skandia added that BHP Billiton has an Indigenous People Policy Statement and has committed to obtaining FPIC, and that regarding the IndoMet Coal project, BHP states that "none of their licenses overlaps with protected areas".

The banks informed Swedwatch and Fair Finance Guide that they had assessed the preliminary information on BHP Billiton's alleged impact on indigenous rights in the IndoMet Coal project, and concluded there was not enough information to warrant further analysis. They also underlined that, in June 2016, the company entered into an agreement to sell all of its 75 per cent interest in the project.

Swedbank stated that it acknowledges the sensitivities associated with developing a large coal operation in Kalimantan, which overlaps with traditional lands. In its view, very few people have sufficient insight into the company's practices in the IndoMet Coal project – perhaps only the company itself and sources closely involved in the project.

According to the interviewed banks, BHP Billiton had been contacted to answer follow-up questions in relation to the IndoMet project. Representatives from Danske Bank explained to Swedwatch that they were reassured by the company's responses that the project was developed on 'state land', that an HCV assessment had been conducted 'to understand conservation values in the Maruwei area', and that the company had provided 'good-will payments' for land and clean water for the village. Consequently, the company was not put on a watch-list.

No bank in the study engaged in a structured dialogue to put pressure on BHP Billiton to remediate for the omission to conduct FPIC and protect HCVs in Maruwei 1

Sunset over Maruwei 1 village. Across Borneo island, indigenous communities are being displaced by development projects – some of which pollute river systems and destroy remaining pockets of primary rainforests belonging to indigenous land owners.

village as part of its exit from the IndoMet Coal project. The banks had not encouraged the company to provide adequate compensation for the community's loss of access to land, or to use its leverage to support the community's land claims under the Dayak Misik scheme, or looked at possibilities to excise this land from the current concession.

Handelsbanken, Nordea, SEB, Skandia and Swedbank all participate in the UN PRI-coordinated engagement on human rights in the extractive sector, under which the IndoMet project has been up for discussion. Swedbank informed that the meeting included discussions on human rights, environmental management and responsible divestment issues related to the company's IndoMet Kalimantan project. The discussion did not include a specific focus on indigenous rights.

In 2014 and 2015 Nordea visited extractives and infrastructure companies in Brazil to research environmental and social risks and opportunities related to indigenous people. In a resulting report, which was communicated to investee companies, Nordea stated about FPIC that "the 'consent' element can be contentious, in the sense that indigenous peoples could in practice withhold their consent. And although best practice companies commit publicly to FPIC, in practice this tends to be 'strive to achieve'."[164]

Bank actions - Case 2: BHP Billiton

	Danske Bank	Handels-banken	Läns-försäkringar	Nordea	SEB	Skandia	Swedbank
Type of investment fund	Index Ethical	Index	Active Index	Active Index	Active	Active Index	Active Index
Assessment of the bank's course of action **Maximum score: 10** Awareness 1 Analysis 1 Case on watch-list 1 Company engagement 3 Sector engagement 3 Documen-tation 1	Aware of allegations (1) No deeper analysis (0) Case not on watch-list (0) Some contact with the com-pany about the case (0.5) No documen-tation (0) Not involved in related sector engagement (0)	Aware of allegations (1) No deeper analysis (0) Case not on watch-list (0) No engagement dialogue about the case (0) No documen-tation (0) Participates in the UN PRI engagement on human rights in the extrac-tive sector.* Failed to bring up indigenous rights (1)	Aware of a llegations (1) No deeper analysis (0) Case not on watch-list (0) No engagement dialogue about the case (0) No documen-tation (0) Not involved in related sector engagement (0)	Aware of allegations (1) No deeper analysis (0) Case not on watch-list (0) No engagement dialogue about the case (0) No documen-tation (0) Participates in the UN PRI engagement on human rights in the extrac-tive sector.* Failed to bring up indigenous rights. (1) Trips to Brazil to study indig-enous issues in 2014 and 2015. Published re-port (1)	Not aware of allegations (0) No deeper analysis (0) Case not on watch-list (0) No engagement dialogue about the case (0) No documen-tation (0) Participates in the UN PRI engagement on human rights in the extrac-tive sector.* Failed to bring up indigenous rights (1)	Aware of allegations (1) No deeper analysis (0) Case not on watch-list (0) One contact but no further engagement dialogue (0.5) No documen-tation (0) Participates in the UN PRI engagement on human rights in the extrac-tive sector.* Failed to bring up indigenous rights (1)	Aware of allegations (1) No deeper analysis (0) Case not on watch-list (0) No engagement dialogue about the case (0) Documentation provided (1) Participates in the UN PRI engagement on human rights in the extrac-tive sector.* Failed to bring up indigenous rights (1)
Total score out of maximum 10	1,5	2	1	3	1	2,5	3
Overall assessment of the bank's course of action	Significant short-comings	Significant short-comings	Significant short-comings	Significant short-comings	Significant short-comings	Significant short-comings.	Significant short-comings
Other ac-tion, partly related to the case.	Engages with BHP regarding the Samarco ac-cident in Brazil	Engages with BHP regarding the Samarco ac-cident in Brazil			Engages with BHP regarding the Samarco ac-cident in Brazil	Engages with BHP regarding the Samarco ac-cident in Brazil	Voted on sus-tainability-relat-ed shareholder resolutions at company's annual gen-eral meetings in 2014 and 2015 Engages with BHP regarding the Samarco ac-cident in Brazil

*Table 13: Overview of the seven banks' investment practices regarding Case 3, the BHP Billiton – Haju mine, IndoMet Coal project. * BHP Billiton is one of the target companies in the engagement.*

Case 3: AAK palm oil sourcing from Borneo

All seven banks had investments in AAK as part of their actively managed funds, and in many passive funds. Four banks also had investments in the company through its ethical funds. At the end of 2016, Handelsbanken, Nordea, SEB and Swedbank were amongst the ten largest shareholders in the company.[165]

While some banks in the study underlined that AAK needs to be more transparent regarding its sourcing practices, none of them had picked up on the clear lack of information on supply chain measures taken in response to the heightened risks of sourcing palm oil from Borneo, which are underlined in AAK's own policies. This is despite, for example, Handelsbanken, SEB and Swedbank, having engaged in regular dialogue with AAK in recent years. No bank had recommended that AAK conduct HRIA or supply chain risk assessment that included a focus on indigenous rights.

Länsförsäkringar explained to Swedwatch that since their norm-based screening provider has not alerted them to any suspected norm breaches, they have not initiated any dialogue with AAK specifically on palm oil sourcing from Borneo.

In 2011, Nordea went on a field trip to Borneo and visited palm oil plantations and a range of stakeholders. Nordea stated that the trip confirmed their view that the industry faces sustainability risks – especially when plantations are expanded. Swedbank also visited an AAK sourcing plantation in 2010 and summarised their findings from the field trip in a publication.[166] Both Nordea and Swedbank see the need for companies to develop solid policies and management practices in order to handle the risks present in their supply chains.

A number of banks responded that although they saw some opportunities for improved traceability, transparency and assessment of suppliers, they were very content with the way the company's sustainability work had developed, and saw AAK as an industry leader in sustainability.

In connection with the interviews, Swedbank shared detailed information on their analysis of AAK's supply chain measures and their dialogue with the company during the period 2010 – 2012. Swedbank concluded that AAK needed to increase transparency on, for example, the number of suppliers in high-risk countries, and improve processes for following up on suppliers' adherence to the Code of Conduct. Swedbank's documentation refers to risks for local communities in general terms, however does not specifically highlight indigenous communities' special rights.

Bank actions - Case 3: AAK

	Danske Bank	Handels-banken	Läns-försäkringar	Nordea	SEB	Skandia	Swedbank
Type of investment fund	Active Index	Active Index Ethical	Active	Active Index	Active Index Ethical	Active Index Ethical	Active Index Ethical
Assessment of the bank's course of action **Maximum score: 10** Awareness 1 Analysis 1 Case on watch-list 1 Company engagement 3 Sector engagement 3 Documen-tation 1	Aware of the supply chain risks in palm oil (1) Failed to iden-tify the due diligence gap in high-risk sourc-ing from Borneo (0) Case not on watch-list (0) No proactive engagement (0) No documenta-tion (0) Not involved in related sector engagement (0)	Aware of the supply chain risks in palm oil (1) Failed to iden-tify the due diligence gap in high-risk sourc-ing from Borneo (0) Case not on watch-list (0) Has discussed risk factors in sourcing with AAK, but not specifically in relation to Borneo (1) No documenta-tion (0) Not involved in related sector engagement (0)	Aware of the supply chain risks in palm oil (1) Failed to iden-tify the due diligence gap in high-risk sourc-ing from Borneo (0) Case not on watch-list (0) No proactive engagement (0) No documenta-tion (0) Not involved in related sector engagement (0)	Aware of the supply chain risks in palm oil (1) Failed to iden-tify the due diligence gap in high-risk sourc-ing from Borneo (0) Case not on watch-list (0) Has discussed risk factors in sourcing with AAK, but not specifically in relation to Borneo (1) No documenta-tion (0) Field visit to Borneo 2011 with focus on palm oil indus-try (1)	Aware of the supply chain risks in palm oil (1) Failed to iden-tify the due diligence gap in high-risk sourc-ing from Borneo (0) Case not on watch-list (0) SEB's fund managers meet regularly with AAK and raise general issues around sustain-able palm oil sourcing but failed to raise high-risk sourc-ing in the dia-logue (1) No documenta-tion (0) Participates in UN PRI-coordinated engagement on sustainable palm oil target-ing growers (1)	Aware of the supply chain risks in palm oil (1) Failed to iden-tify the due diligence gap in high-risk sourc-ing from Borneo (0) Case not on watch-list (0) No proactive engagement (0) No documenta-tion (0) Signed Ceres joint investor letter to RSPO; had opportunity to comment on RSPO draft (1)	Aware of the supply chain risks in palm oil (1) Failed to iden-tify the due diligence gap in high-risk sourc-ing from Borneo (0) Case not on watch-list (0) Has met and discussed sus-tainability issues regularly with AAK, especially during 2009 – 2014 (1) Provided docu-mentation (1) Participates in UN PRI-coordi-nated engage-ment on sus-tainable palm oil targeting growers. Field visit to Borneo 2011 with focus on palm oil industry (2)
Total score out of maximum 10	1	2	1	3	3	2	5
Overall as-sessment of the bank's course of action	Significant short-comings	Significant short-comings	Significant short-comings	Significant short-comings	Significant short-comings	Significant short-comings	Short-comings

Table 14: Overview of the seven banks' investment practices regarding AAK's palm oil sourcing practices from suppliers in Borneo.

Case 4: Deutsche Bank's financial services to Taib regime, Sarawak

All Scandinavian banks in the study held shares in Deutsche Bank, either in index funds or in actively managed funds, or both. The banks total investments amounted to million USD 82.7 (733 MSEK).

Handelsbanken and Swedbank had received a deeper analysis of the Borneo-related accusations against Deutsche Bank from their consultants. Swedbank's consultant had investigated Deutsche Bank's alleged money laundering and links with Chief Minister Abdul Taib bin Mahmud's regime in Sarawak since 2011 and found no evidence of wrongdoing. As a result, Deutsche Bank had not been put on a watch-list and Swedbank had not conducted engagement dialogue focusing on these allegations.

Handelsbanken was provided with a deeper analysis by its consultant. However, the focus was on one specific aspect of the links to the corrupt practices by the Taib regime – a German court case on Deutsche Bank's money laundering for the former chief minister, which was settled in 2014. Handelsbanken subsequently closed the case.

SEB, Skandia and Swedbank had been in contact with Deutsche Bank in connection with other cases of corruption and money laundering, but not about any issues relating to the provision of financial services to corrupt regimes or linked to impacts on indigenous rights.

Danske Bank explained that the main reason why they did not act on the allegations against Deutsche Bank was that, while Abdul Taib bin Mahmud and his family's businesses have been investigated by authorities in several countries, as of late September 2016, according to Danske Bank, the investigations had not yet resulted in convictions on corruption or money-laundering.

Bank actions – Case 4: Deutsche Bank

	Danske Bank	Handels-banken	Läns-försäkringar	Nordea	SEB	Skandia	Swedbank
Type of investment fund	Index Ethical	Index Ethical	Index	Active	Active Index Ethical	Index	Active Index
Assessment of the bank's course of action **Maximum score: 10** Awareness 1 Analysis 1 Case on watch-list 1 Company engagement 3 Sector engagement 3 Documen-tation 1	Aware of allegations (1) No deeper analysis (0) Case not on watch-list (0) No engagement dialogue (0) No documenta-tion (0) Not involved in related sector engagement (0)	Aware of allegations (1) No deeper analysis, closed the case 2014 after settlement of a related money-launder-ing case with BaFin (0) Case not on watch-list (0) No engagement dialogue (0) No documenta-tion (0) Not involved in related sector engagement (0)	Aware of allegations since 2011 but no fur-ther action (1) No deeper analysis (0) Case not on watch-list (0) No engagement dialogue (0) No documenta-tion (0) Not involved in related sector engagement (0)	Not aware of allegations (0) No deeper analysis (0) Case not on watch-list (0) No engagement dialogue (0) No documenta-tion (0) Not involved in related sector engagement (0)	Not aware of allegations (0) No deeper analysis (0) Case not on watch-list (0) No engagement dialogue about the case but contacts regarding cases of corruption and money laundering (1) No documenta-tion (0) Not involved in related sector engagement (0)	Not aware of allegations (0) No deeper analysis (0) Case not on watch-list (0) No engagement dialogue about the case but contacts regarding cases of corruption and money laundering (1) No documenta-tion (0) Not involved in related sector engagement (0)	Not aware of allegations (0) No deeper analysis (0) Case not on watch-list (0) No engagement dialogue about the case but contacts regarding cases of corruption and money laundering (1) No documenta-tion (0) Not involved in related sector engagement (0)
Total score out of maximum 10	1	1	1	0	1	1	1
Overall as-sessment of the bank's course of action	Significant short-comings	Significant short-comings	Significant short-comings	Significant short-comings	Significant short-comings	Significant short-comings	Significant short-comings

Table 15: Overview of the seven banks' investment practices in Case 4: Deutsche Bank's financial services to the former regime in Sarawak.

7. Discussion and conclusions

This section compares international standards with the results from Swedwatch literature study, Borneo field interviews and interviews with the Scandinavian banks. The resulting conclusions outline considerations and possible investor strategies for exerting positive leverage on companies and projects to enhance their respect for indigenous rights to Free, Prior and Informed Consent (FPIC) and High Conservation Values (HCV).

Large global investors also hold shares in BHP Billiton, Deutsche Bank and IOI. Although different investors may vary in their policies and approaches to responsible investment, the key points of this analysis section would be relevant for all investors in these companies.

7.1 Impacts on indigenous communities

The case study findings give strong indications that BHP Billiton and IOI have not respected the indigenous Dayak Murung, Kayan and Kenyah communities' rights in their projects despite the fact that affected communities self-identify as indigenous, and their traditional use of land and forests is well documented.

During the feasibility and project preparation project phases, the communities' rights to being consulted through a reiterative FPIC process, were not protected and respected. No participatory HCV assessments or mapping of land use and tenure were carried out in cooperation with the communities.

In 2006, IOI formed a joint venture with the Malaysian state-owned company Pelita for the palm oil plantation. Similarly, in 2010, BHP entered into a joint venture with Indonesian mining company Adaro to develop the IndoMet Coal mining project. Neither IOI nor BHP identified the impacts on indigenous rights as a risk in the joint venture formation, and no efforts were made to rectify the FPIC and HCV omissions by the earlier majority project owners.

During the project implementation phase, the coalmine and the palm oil plantation dispossessed communities of their traditional land. Agriculture land, crops and forests were cleared with no regard for HCV destruction, as confirmed by the historic satellite imagery presented in this study. There are strong indications that the communities' livelihoods deteriorated as their ability to engage in agriculture decreased, and they lost access to their forests for hunting, gathering, and traditional ceremonies and practices.

Especially for the more vulnerable households within the communities, results of this study indicate that this has impoverished them and led to decreased food security. In the case of the Kayan and the Kenyah, younger members of the community are migrating away from the village to the district town in search of income-generation opportunities, and the community is concerned about the survival of its common identity and culture.

Demand for palm oil is expected to more than double by 2030 and globally, more than 2,000 companies are members of the industry initiative Roundtable on Sustainable Palm Oil (RSPO). However, in 2015 the NGO EIA described important weaknesses in RSPO's respect for indigenous rights, and a 2016 Amnesty International report warned that even products containing RSPO certified palm oil could be tainted by labour rights abuses. Sources: Environmental Investigation Agency (EIA) 2015 and Amnesty International 2016.

Neither company has ensured remediation and provided adequate compensation to the communities. The companies have not responded to the communities' claims and proposals to regain access and rights to their traditional land and forests. BHP Billiton has exited the IndoMet Coal project without ensuring remediation and providing compensation for impacts which Swedwatch describes in this report. These impacts are largely denied or not specifically commented on by both IOI and BHP Billiton, for details on their perspectives, see sections 5.1 and 5.2.

7.2 Supply chain risks and role of financial service providers

Sourcing of palm oil and other commodities from Borneo is a driver for the expansion of commercial plantations, which – if left unchecked – can have wide-reaching impacts on indigenous communities. AAK's consultant acknowledges that the current geospatial screening method does not pick up on indigenous rights issues, however adds that its general risk assessment, which includes a review of NGO reports, in combination with the grievance mechanisms, are used to analyse these aspects. As long as AAK does not disclose its Borneo sourcing locations and suppliers, data on traceability to mill and plantation, and a clear overview of their suppliers' impacts on human rights, there are no guarantees that their palm oil products are produced without negative impacts on indigenous communities and their forests.

The report also describes the potential scale and seriousness of the actions by the regime of Chief Minister Abdul Taib bin Mahmud in Sarawak. In collusion with companies, he is accused of facilitating the large-scale destruction of forests and the displacement of indigenous peoples. The Scandinavian banks in the study hold shares in Deutsche Bank, a relationship which may be described as 'bank-in-bank' investments. Deutsche bank, in turn, is one of several international financial actors which stand accused of supporting the corrupt activities through its banking and business activities with the Taib family. None of the Swedish banks have acted adequately to address this and Deutche Bank continues to receive high ESG scores by rating agencies and is even found in some of the banks' ethical funds.

7.3 Crucial role of investors

The study shows that in Borneo, the Indonesian and Malaysian states do not consistently respect indigenous rights. In addition, in Sarawak in particular, civil society and the media are struggling to raise concerns over the serious impacts on indigenous rights and forests. International bodies lack opportunities to document and advise on the way forward, as exemplified by Malaysia's failure to invite the UN Special Rapporteur on Indigenous Rights to the country.

In this situation, it could be argued that financial actors and investors are amongst the few powerful actors who could potentially have the ear of companies and governments, and who could exert their leverage to improve the situation of the affected indigenous communities.

In cases where investors have substantial shareholdings or provide credit and loans to companies or projects, leverage is strong. But even small index holdings in companies should be seen as entry tickets for banks to promote good practice, raise issues and propose constructive improvements and solutions.

7.4 Investor awareness of opportunities and challenges

For investors to be effective at instigating positive change, they need to be aware and informed of what international standards require of companies (for a summary overview, see table 2. in section 3.), and understand the marginalised voice of indigenous peoples and the uneven power relationships that need to be balanced in any company–community dialogue.

In Borneo, massive tracts of land and forests have already been approved for logging, industrial plantations, mining and hydropower. Concessions and licences have been awarded to companies and investors. However, a large part of the land and forests within the concessions has not yet been cleared, and many projects are still in the pipeline stages.

Investors should be aware of the importance of protecting indigenous rights in new and planned projects. However, it is critical to realise that the largest wins for indigenous peoples' rights and forests lie within existing concessions and in on-going projects.

Examples of interventions that can have positive effects at any project stage include companies re-engaging with communities in the 'spirit of FPIC' to carry out participatory HCV assessments and mapping of land use and tenure. In cases of on-going conflicts or overlapping land claims, these good practice measures can help parties to re-engage and find a constructive way forward. One of the most important roles that investors can play is to support affected indigenous communities in voicing their concerns and obtaining remedy and adequate compensation for irreversible impacts.

7.5 Strengths and gaps in the banks' policies, systems and methods

Not all banks in the study have fully incorporated clear FPIC and HCV requirements into their sustainable investment policies. However, the fact that all seven banks purchase norm-based screening consultant services is a strong and positive reflection of their commitment to respect for international standards in their investment practices.

The norm-based screening library of international conventions and norms – against which bank investments are screened and analysed – contains ILO 169, UNDRIP and the HCV methodology. This sends a strong signal to companies that the banks expect them to respect indigenous rights and protect HCVs, including where governments or industry associations fail to do so. The banks' references to international standards are in line with the UNGPs, which clearly state that businesses should adhere to inter-

national norms in all their global business activities and relations, regardless of, for example, weak national legislation.

The study shows that much remains to be done to improve the banks' processes and systems before they can exert a strong, positive influence on their portfolio companies. Judging from the very strict prioritisation between ESG issues, between different allegations against specific companies, and between possible engagement dialogues and joint investor initiatives, it also seems clear that the banks need to allocate more resources to make their sustainable investment work more solid, efficient and credible.

Regardless of whether banks work solely through their own in-house sustainability teams or if they employ consultants, the banks are fully responsible for their courses of action in each case, and management teams should ensure that enough resources are allocated to responsible investment departments to ensure that they can live up to international standards and to their own policies.

The report findings illustrate that in a high-risk environment like Borneo, it is not sufficient to rely on public sources of information and company statements. The norm-based screening method relies almost solely on such publicly available information – to some extent complemented with contacts with companies and other stakeholders. The responsibility for alerting banks to company misconduct lies heavily with the communities themselves, via the media and NGOs. The banks do not appear to have required companies to provide basic information to assist the analysis – such as reports from EIAs, participatory HCV assessments, and mapping of land use and tenure or documentation from FPIC processes.

The banks do not indicate that they double-check or verify the quality and accuracy of the companies' information, documents and statements that form the basis of the incident assessments. Government and company documents such as EIAs, HCV assessments and court rulings – and RSPO statements and audits – are not triangulated or verified. The banks take government documents and company statements at face value, and trust the norm-based screening consultants' access to and interpretations of these documents – in spite of the fact that the norm-based screening clearly draws mainly on publicly available information.

Since norm-based screening is incident-based and reactive, it is not designed to pick up on important weaknesses in company practice at early project stages – not even at crucial times, such as when a company enters into a joint venture without identifying current impacts on indigenous peoples. Here, there is a need to put Human Rights Due Diligence requirements into practice and for banks to clearly communicate to companies that they require, for example, solid assessments of human rights risks and impacts, with sufficient detail on risks and impacts for affected indigenous communities.

The banks' systems are not designed to identify supply chain risks or multipronged financial relationships that consist of a multitude of transactions, loans and co-ownership. In addition, several banks in the study stated that they do not engage or

Coal fragments in the Biriwit River from mines upstream in Central Kalimantan, Indonesia.

try to influence other banks on sustainability issues, which limits their ability to instigate positive change in this sector.

No bank brought up challenges related to Malaysian and Indonesian governments' low level of protection of indigenous rights. A number of banks mentioned the weaknesses in the implementation of the RSPO standard, but still considered it to be an important initiative, and did not see the need to conduct their own checks and balances.

For verification, norm-based screening relies mostly on national court systems, the UN and other internationally recognised bodies, and cases where a company confirms norm breaches when assigning responsibility for verifying or writing off alleged company malpractice. As outlined in this report, national legislation and its practical implementation in the courts often fail to protect indigenous rights. This is the case in Sarawak, as exemplified in the overturned court verdict in the Long Teran Kanan case (IOI-Pelita palm oil plantation).

Because of how the criteria for 'degree of harm', 'scale of impact' and 'risk' are formulated, the banks' incident rating also seems to fail to raise flags for cases that affect small groups of indigenous peoples' rights to self-determination and forest use.

In the instances in which the banks engaged with companies in this study, it is not clear that efforts were made to assess and encourage the respect for international standards on Human Rights Due Diligence (HRDD), indigenous rights and High Conservation Values (HCV) assessments.

During the interviews, it also became clear that the integration of ESG issues in the banks' fund management process has gaps. Most banks explained that their fund managers "should" take ESG issues into account in their investment decisions, in order to live up to the bank's policy commitments. However, except for the ban on investing in companies on the "black-list", no bank had introduced clear incentives or formal follow-up systems to put effective integration into practice.

The active participation of Handelsbanken, Nordea, Skandia, SEB and Swedbank in joint investor initiatives focusing on human rights in the palm oil and mining sectors are very positive signs of the banks' commitment to come together with other actors to influence companies. Within these initiatives, there are windows of opportunity to specifically promote respect for indigenous peoples' rights, and to prioritise efforts at ensuring that companies cease detrimental practices, and ensure adequate remediation and provide compensation.

Going forward, banks should seek to participate in joint investor action with a specific focus on conducting good practice FPIC and HCV assessments, and find ways to increase pressure on governments. For example, they could pressure the Malaysian government to invite the UN special rapporteur to Sarawak in order to examine the situation of indigenous peoples and engage in dialogue with the government, civil society and communities.

In all company engagement and joint investor initiatives, care needs to be taken to ensure that there are clear, time bound and specific expectations on improved adherence to international norms. Banks are also encouraged to be open and transparent about the focus, content and results of their engagement efforts. The banks in the study provided some information on their engagement, but there is room for improvement in this area.

Annex 1:
Case assessment criteria and bank scores

The banks' courses of action in each of the four cases have been assessed using the criteria described below. A bank can receive a maximum of 10 points per case. In the tables, each case is coloured according to the number of points the bank received (0–3 = red, 4–7 = yellow, 8–10 = green).

Awareness **1 point**
Was the bank aware of the specific allegations against the company? Requires proper monitoring systems.

Analysis **1 point**
Has the bank made a proper analysis of the allegations, identified all the key issues, and ensured adequate basis for 'verification'?

Monitoring/watch-list **1 point**
Is the case on the bank's watch-list to monitor for further information and developments?

Company engagement **3 points**
Has the bank credibly engaged the company to try and influence it to act responsibly? A number of sub-criteria are used in this assessment.

- Has the bank been in contact with the company about the allegations?
- Has the bank started an engagement process and put forward demands that are in line with international standards?
- Can the bank present a structured process and time plan for the engagement?
- How long has the engagement lasted?
- How many (and what type of) contacts have taken place in the last two years?
- Is the engagement still ongoing?
- Can the bank declare any results?
- Has the bank actively participated in the engagement, or is it conducted through pooled engagement via a consultancy firm?
- Has the bank tried other ways to influence the company than through direct dialogue?
- Has the bank initiated or supported shareholder resolutions linked to the specific issue?
- Has the bank collaborated with other investors in the engagement?
- Can the bank declare a credible outlook for influencing the company that can motivate continued engagement?

Sector and government engagement **3 points**

- Has the bank participated in related initiatives to address and influence the sector's sustainability issues?
- Does the initiative address the rights of indigenous people?
- Has the initiative engaged with governments and/or industry associations regarding the issue?

Documentation **1 point**

Can the bank present documentation of the engagement process?

Annex 2: IOI information on state-led mediation process

Information shared by IOI in email communication to Swedwatch 15 February 2017. The text is published in the wording submitted by IOI.

Engagement and Dialogue with LTK Community Summary of Meetings conducted by the Resident of Miri from November 2015 to Current.

No. Date Event Details

1) 9th Nov 2015

1st Meeting: Mediation Session Chaired by Resident of Miri – Mr Antonio Kahti Galis.

- IOI Pelita discussed various solution options with the representatives from the LTK Community;
- The Resident requested the LTK representatives to discuss the options with their respective community and to provide a written response and feedback after 2 weeks.

2) 1st Dec 2015

2nd Meeting: Mediation Session Chaired by Resident of Miri – Mr Antonio Kahti Galis.

- The Resident encouraged the LTK Community to share their views and comments regarding the solution options from the previous meeting held on the 9th November 2015;
- The representatives from the 7 Longhouses provided their inputs, comments and clarifications.

Attended by RSPO observers: i. Ravin Krishnan ii. Dr Ramy Bulan

3) 5th Dec 2015

Report: Dr Ramy Bulan prepared a Report for RSPO on the 5th Dec 2016.

4) 28 March 2016

Consultative Session: (IOI Pelita was not invited to this session).
A consultative session was organised by the Resident to discuss various issues including obtaining demographic census update of the LTK Community and to ensure that the representatives are formally appointed by their respective longhouses.

5) 24th May 2016

3rd Meeting: The Resident called this meeting to continue the dialogue with the LTK Community. IOI Pelita provided further solution suggestions to the LTK representatives and hope that they will seek the views from their respective community to obtain feedback and comments.

6) 30th June 2016

4th Meeting: The Resident met with LTK Community to continue the discussion on the suggestions put forwarded during the meeting of the 24th May 2016.
The LTK representatives provided their views and responses.

7) 5th August 2016

5th Meeting: The Resident chaired this meeting with IOI Pelita and the LTK Community.

Consensus was reached between IOI Pelita and the LTK community on various issues concerning the usage of land and also on the palms that have been previously cultivated by the affected parties; the parties are now in the process of drafting an agreement to formalise the understanding.

8) 1st December 2016

6th Meeting: IOI-LTK Settlement Agreement briefing meeting at Miri Resident Office. RSPO was present with an independent observer appointed by RSPO.

9) 20th December 2016

7th Meeting: Negotiation meeting between IOI-Pelita and communities (7 Ketua Kampung). RSPO was present with an independent observer appointed by RSPO. It was agreed that the communities would submit their additional requirements in writing to the resident of Miri before 31st December 2016

10) 6th January 2017

Information from all KKs has been obtained and collected by Pelita. A meeting between Pelita and IOI is proposed in the third week of January to discuss on the extra demand by each community (7 Ketua Kampungs)

IOI-Pelita with assistance from Resident's Office of Miri have undertaken series of dialogues session with the natives to discuss the offer for settlement.

The proposal would grant the natives access to the planted land for 18 years was under the third offer which was proposed on 5th August 2016 but subject to the condition as follows;

3rd OFFER

On 5th August 2016, the Joint Venture Company (JVC) will allow the natives to occupy and harvest the Fresh Fruit Bunches (FFB) planted by them within the Provisional Leases for the next period of 18 years.

The above offer **shall subject to the following condition:**

1. **Stop illegal harvesting** of FFB on oil palm planted by the JVC within the said land;
2. **Cease all acts of intimidation** on the JVC's workers/personnel and destruction or damage to the JVC's properties; and
3. **Stop immediately from further planting** of oil palm within the said land.

Endnotes

1 Straumann, S., Money Logging, On the Trail of the Asian Timber Mafia, 2014, Bergli Books, an imprint of Schwabe AG, Basel, Switzerland. ISBN: 978-3-905252-68-2.

2 WWF website, Borneo deforestation, http://wwf.panda.org/about_our_earth/deforestation/deforestation_fronts/deforestation_in_borneo_and_sumatra/, retrieved 13 February 2017.

3 Fair Finance Guide Sweden, website, http://fairfinanceguide.se/, retrieved 29 November 2016.

4 United Nations, State of the World's Indigenous Peoples, ST/ESA/328, 2009. http://www.un.org/esa/socdev/unpfii/documents/SOWIP/en/SOWIP_web.pdf, retrieved 22 November 2016.

5 The term 'traditional land and territories' refers to indigenous peoples' ancestral, historic connections to a geographic area, to land, landscapes and forests, as well as their present use and links to these territories. Indigenous peoples' right to land and territories is outlined in international law in the ILO Convention 169 on Indigenous and Tribal Peoples. Article 13 of this convention states that governments shall respect the special importance of indigenous peoples' cultures and spiritual values of their relationship to the lands and territories which they occupy or use, with particular attention to the collective aspects of the communities' connection to the land. The concept of 'territories' covers the total environment of the areas which the indigenous peoples occupy or use. ILO, C169 Indigenous and Tribal Peoples Convention, 1989 (No. 169). Convention Concerning Indigenous and Tribal Peoples in Independent Countries (Entry into force: 5 September 1991). http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169 , retrieved 23 November 2016; International Labour Standards Department, International Labour Organization. Indigenous and Tribal Peoples' rights in Practice, A Guide to ILO convention 169. 2009. http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@normes/documents/publication/wcms_106474.pdf, retrieved 14 December 2016.

6 World Bank, The Role of Indigenous Peoples in Biodiversity Conservation, The Natural but Often Forgotten Partners, 2005. https://siteresources.worldbank.org/INTBIODIVERSITY/Resources/RoleofIndigenousPeoplesinBiodiversity-Conservation.pdf, retrieved 21 November 2016.

7 'Wild forest products' refers to non-wood forest products. The Food and Agriculture Organization of the United Nations (FAO) defines these as 'goods of biological origin other than wood derived from forests, other wooded land and trees outside forests. Around 80 percent of the population in developing countries use these products for food and to maintain their health, and women

from poor households in particular, rely more on them for their livelihoods and income generation'. FAO website, http://www.fao.org/forestry/nwfp/6388/en/, retrieved 23 November 2016.

8 United Nations Environment Programme (UNEP), Food and Agriculture Organization of the United Nations (FAO) and United Nations Forum on Forests Secretariat, Vital Forest Graphics, 2009. http://www.unep.org/vitalforest/Report/VFG_full_report.pdf, retrieved 21 November 2016.

9 Globally, national statistics on health, poverty and access to education show that in many societies, indigenous peoples are still the poorest of the poor. Indigenous peoples form 5 percent of the world's total population, yet constitute 15 percent of the group experiencing poverty. Victoria Tauli-Corpuz, special rapporteur on the rights of indigenous peoples, Statement to the 14th Session of the UN Permanent Forum on Indigenous Issues, 27 April 2015. http://unsr.vtaulicorpuz.org/site/index.php/statements/65-unpfii-2015, retrieved 22 November 2016.

10 Oxfam Australia, Still banking on land grabs, Australia's big four banks and land grabs, 2016. http://resources.oxfam.org.au/?r=1734&k=a99ea07b2b, retrieved 13 February 2017; Ives, M, YaleEnvironment360, Indonesian Coal Mining Boom is Leaving Trail of Destruction, 17 December 2015. http://e360.yale.edu/features/indonesian_coal_mining_boom_is_leaving_trail_of_destruction, retrieved 13 February 2017; Global Witness, Rubber Barons, How Vietnamese companies and international finances are driving a land grabbing crisis in Cambodia and Laos, May 2013. https://www.globalwitness.org/documents/10525/rubber_barons_lores_0_1.pdf, retrieved 13 February 2017.

11 Straumann 2014.

12 Swedwatch interviews with human rights lawyers, civil society representatives, and environmental and human rights defenders during field work in Borneo in July and August 2016.

13 Malaysian-registered IOI Corporation Berhad is part of the IOI Group. Hereinafter in the report, IOI Group and IOI Corporation Berhad are both referred to as 'IOI'. IOI Group website, About Us. http://www.ioigroup.com/Content/CI/Corp_About, retrieved 10 February 2017.

14 WALHI Kalteng is the Central Kalimantan branch of the NGO Friends of the Earth Indonesia. WALHI Kalteng website, http://walhikalteng.org/, retrieved 28 November 2016.

15 Fair Finance Guide Sweden's report on the seven banks' sustainability policy scores has been used to evaluate their commitment to the FPIC principle and HCV methodology. http://fairfinanceguide.se/media/373474/betygstabeller-2016.pdf, retrieved 13 December 2016. The banks included in study – which are all in focus of the Fair Finance Guide Sweden initiative - are: Danske Bank, Handelsbanken, Länsförsäkringar, Nordea, SEB, Skandia and Swedbank. The

study focuses on investments managed by respective banks' fund management company: Danske Capital AB, Handelsbanken Fonder AB, Länsförsäkringar Fondförvaltning AB, Nordea Fonder Aktiebolag, SEB investment Management AB, Skandia Fonder AB, and Swedbank Robur Fonder AB. The term 'bank' and the names of the seven banks are used throughout the study instead of referring to the less well-known names of the fund management companies.

16 Fair Finance Guide Sweden website, http://fairfinanceguide.se/, retrieved 29 November 2016.

17 Friends of the Earth Malaysia, Memorandum on Recommendations to Revamp the Environmental Impact Assessment Process in Sarawak, 5 June 2014. https://d3n8a8pro7vhmx.cloudfront.net/foemalaysia/pages/24/attachments/original/1475851034/140605_Memorandum_on_Improving_EIA_Process_in_Sarawak_(Final).pdf?1475851034, retrieved 10 February 2017.

18 United Nations Human Rights Office of the High Commissioner, Guiding Principles on Business and Human Rights, Implementing the United Nations "Protect, Respect and Remedy" Framework, 2011. http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf, retrieved 6 June 2016.

19 United Nations General Assembly, The International Bill of Human Rights, 1948. http://www. ohchr.org/Documents/Publications/Compilation1.1en.pdf, retrieved 6 June 2016.

20 ILO 1989.

21 UN, United Nations' Declaration on the Rights of Indigenous Peoples, 2008. http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf, retrieved 3 October 2016.

22 United Nations Global Compact website, https://www.unglobalcompact.org/, retrieved 14 February 2017.

23 United Nations Global Compact, Indigenous Peoples' Rights and the Role of Free, Prior and Informed Consent, A Good Practice Note endorsed by the United Nations Global Compact Human Rights and Labour Working Group on 20 February 2014. http://solutions-network.org/site-fpic/files/2012/09/FPIC_Indigenous_Peoples_UN-global-compact.pdf, retrieved 22 November 2016.

24 The Food and Agriculture Organization of the United Nations (FAO). Numbers of forest 'dependent' peoples and types of people forest relationships. http://www.fao.org/docrep/w7732e/w7732e04.htm, retrieved 21 November 2016; Oxfam International, Custodians of the land, defenders of our future, A new era of the global land rush, 2016. https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/land_rights_en_final.pdf, retrieved 14 February 2017; Oxfam International, International Land Coalition and Rights and Resources Initiative, Common ground, Securing land rights and safeguarding the

earth, 2016. https://landrightsnow.contentfiles.net/media/assets/file/GCA_REPORT_EN_FINAL.pdf, retrieved 14 February 2017.

25 United Nations, Convention on Biological Diversity, 1992. https://www.cbd.int/doc/legal/cbd-en.pdf, retrieved 2 October 2016; Secretariat of the Convention of Biological Diversity, Akwé: Kon Guidelines, 2004. https://www.cbd.int/doc/publications/akwe-brochure-en.pdf, retrieved 3 October 2016.

26 High Conservation Value Resource Network, Common Guidance for the Identification of High Conservation Values, 2013. https://www.hcvnetwork.org/resources/folder.2006-09-29.6584228415/cg-for-hcv-identification, retrieved 4 October 2016.

27 Food and Agriculture Organization of the United Nations (FAO), Governance of Tenure Technical Guide No. 3, Respecting free, prior and informed consent, Practical guidance for governments, companies, NGOs, indigenous peoples in relation to land acquisition, 2014. http://www.fao.org/3/a-i3496e.pdf, retrieved 6 February 2017; Inter-American Commission on Human Rights. Indigenous and Tribal Peoples' Right over their Ancestral Lands and Natural Resources, Norms and Jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 56/09, paragraph 333, 20 December 2009. http://www.oas.org/en/iachr/indigenous/docs/pdf/ancestrallands.pdf, retrieved 6 February 2017; RSPO 2015; RSPO, Principles and Criteria for the Production of Sustainable Palm Oil, 2013. http://www.rspo.org/publications/download/224fa0187afb4b7 , retrieved 4 October 2016.

28 The UNGPs state that business enterprises should respect the human rights of individuals belonging to specific groups or populations that require particular attention, where they may have adverse human rights impacts on them – for example indigenous peoples. United Nations Human Rights Office of the High Commissioner 2011.

29 OECD and FAO, OECD-FAO Guidance for Responsible Supply Chains, 2016. http://mneguidelines.oecd.org/OECD-FAO-Guidance.pdf, retrieved 27 January 2016.

30 Solberg, E., "What Role Do Indigenous Peoples and Forests Have in a Sustainable Future?" Thomson Reuters Foundation News, 11 May 2015. http://news.trust.org//item/20150511110113-ow589, retrieved 21 November 2016.

31 Colchester, M. and Chao, S. (eds). Conflict or Consent? The Oil Palm Sector at a Crossroads, November 2013. http://www.forestpeoples.org/sites/fpp/files/publication/2013/11/conflict-or-consentenglishlowres.pdf, retrieved 29 November 2016; FAO 2014; FAO, Free Prior and Informed Consent, An Indigenous Peoples' Right and a Good Practice for Local Communities, Manual for Project Practitioners, 2016. http://www.fao.org/3/a-i6190e.pdf, retrieved 27 January 2016; Forest Stewardship Council. FSC Guidelines for the Implementation of the Right to Free, Prior and Informed Consent (FPIC), 2012. https://ic.fsc.org/

download-box.1243.htm , retrieved 27 January 2017; Initiative for Responsible Mining Assurance, Standard for Responsible Mining Draft v 1.0, 2014. http://www.responsiblemining.net/images/uploads/IRMA_Standard_Draft_v1.0(07-14).pdf, retrieved 28 November 2016; Organisation for Economic Cooperation and Development (OECD), OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector, 2016. https://mneguidelines.oecd.org/OECD-Guidance-Extractives-Sector-Stakeholder-Engagement.pdf, retrieved 3 February 2017; RSPO 2015; RSPO, Principles and Criteria for the Production of Sustainable Palm Oil, 2013. http://www.rspo.org/key-documents/certification/rspo-principles-and-criteria#, retrieved 4 October 2016; UN REDD Programme, Guidelines of Free, Prior and Informed Consent, 2013. http://www.uncclearn.org/sites/default/files/inventory/un-redd05.pdf, retrieved 27 January 2017. w

32 Kusters, K. et al., Both Ends and World Agroforestry Centre, Formalising Participatory Land-use Planning – Experiences from Sanggau District, West Kalimantan, Indonesia, 2013. https://www.researchgate.net/publication/272824091_Formalising_participatory_land-use_planning_-_Experiences_from_Sanggau_District_West_Kalimantan_Indonesia, retrieved 27 January 2017.

33 RSPO, Free, Prior and Informed Consent Guide for RSPO Members, 2015. https://www.rspo.org/news-and-events/announcements/free-prior-and-informed-consent-guide-for-rspo-members-2015-endorsed#, retrieved 3 October 2016.

34 Oxfam and the International Federation for Human Rights, Community-based Human Rights Impact Assessment: The Getting it Right Tool, Training Manual, 2011. https://www.fidh.org/IMG/pdf/cobhra_training_manual.pdf, retrieved 27 January 2016.

35 RSPO 2013.

36 RSPO 2015.

37 Environmental Investigation Agency website, https://eia-international.org/, retrieved 23 November 2016.

38 Environmental Investigation Agency UK Ltd., Grassroots. Who watches the watchmen? Auditors and the breakdown of oversight in the RSPO, November 2015. https://drive.google.com/viewerng/viewer?url=https://eia-international.org/wp-content/uploads/EIA-Who-Watches-the-Watchmen-FINAL.pdf, retrieved 4 October 2016.

39 Environmental Investigation Agency, Exposé of Dodgy Audits Inspires RSPO Resolve to Overhaul “Sustainable Palm Oil” Safeguards, 2016. https://eia-international.org/wp-content/uploads/EIA-Investigator-Spring-2016-ONLINE-FINAL.pdf, retrieved 28 January 2017; RSPO, RSPO RT14 Conference Emphasises Quality, Human Rights and Smallholder Inclusivity, 29 November 2016.

http://www.rspo.org/news-and-events/news/rspo-rt14-conference-emphasises-equality-human-rights-and-smallholder-inclusivity, retrieved 28 January 2017.

40 Ring, M., Reducing Swedish Banks' Negative Impacts on Biodiversity, An Analysis of Possible Strategies. Swedwatch, 2015. http://www.swedwatch.org/sites/default/files/tmp/reducing_swedish_banks_negative.pdf, retrieved 28 November 2016.

41 International Council on Mining and Minerals, Indigenous Peoples and Mining Position Statement, May 2013. https://www.icmm.com/en-gb/members/member-commitments/position-statements/indigenous-peoples-and-mining-position-statement, retrieved 25 November 2016.

42 United Nations General Assembly, Human Rights Council, Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya. Extractive Industries and Indigenous Peoples, 1 July 2013. http://unsr.jamesanaya.org/docs/annual/2013-hrc-annual-report-en.pdf, retrieved 29 November 2016.

43 According to 2010 Malaysian government statistics, Sarawak is home to 1,809,856 indigenous people belonging to the main groups Malay, Iban, Bidayuh, Melanau and 'other natives'. Nelson, J., Muhammed, N. and Abdul Rashid, R., "Native Customary Rights: Does It Hold the Future of Sarawak's Natives?" Journal of Forest and Environmental Science 32(1):82–93, February 2016. http://ocean.kisti.re.kr/downfile/volume/ifsknu/SRGHBV/2016/v32n1/SRGHBV_2016_v32n1_82.pdf, retrieved 23 November 2016. According to the Indonesian government 2015 population census, the total population of Kalimantan's provinces exceeds 15.3 million people. No data are available on the number of indigenous citizens. Badan Pusat Statistik, Population of Indonesia: Result of the 2015 Intercensal Population Survey, 2015. http://bps.go.id/website/pdf_publikasi/Penduduk-Indonesia-hasil-SUPAS-2015_rev.pdf, retrieved 28 January 2017. According to Minority Rights Group international, the number of indigenous Dayak people in Kalimantan's four provinces on Borneo is estimated at 2–4 million. Minority Rights Group International, World Directory of Minorities and Indigenous Peoples website, http://minorityrights.org/minorities/dayak/, retrieved 28 January 2017.

44 Minority Rights Group International, World Directory of Minorities and Indigenous Peoples website.

45 Straumann 2014; Ross, M. L., Timber Booms and Institutional Breakdown in Southeast Asia, 2001, Cambridge University Press, United States of America. ISBN: 0-521-79167-7.

46 Minority Rights Group International, World Directory of Minorities and Indigenous Peoples website.

47 Straumann 2014.

48 This figure is an average comprising numbers for both Sarawak and the neighbouring Sabah state.

49 Bryan, J. E., Shearman, P.L., Asner, G.P., Knapp, D.E., Aoro, G. and Lokes, B. 2013. "Extreme Differences in Forest Degradation in Borneo: Comparing Practices in Sarawak, Sabah, and Brunei." PLoS ONE 8(7): e69679, 2013. http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0069679 , retrieved 24 November 2016.

50 Suwarno, A., Hein, L. and Sumarga, E., "Governance, Decentralisation and Deforestation: The Case of Central Kalimantan Province, Indonesia", Quarterly Journal of International Agriculture 54(1):77–100, 2015. http://ageconsearch.umn.edu/bitstream/206297/2/4_Suwarno.pdf , retrieved 24 November 2016.

51 Forest Watch Indonesia put the annual deforestation rates at 619,000 hectares during the period 2009–13. http://fwi.or.id/publikasi/pokok-pokok-temuan-potret-keadaan-hutan-indonesia-periode-2009-2013/, retrieved 14 December 2016.

52 WWF website, Borneo deforestation, http://wwf.panda.org/about_our_earth/deforestation/deforestation_fronts/deforestation_in_borneo_and_sumatra/, retrieved 13 February 2017.

53 Bryan et al 2013.

54 UN 2009; United Nations Permanent Forum on Indigenous Issues, Indigenous Peoples, Indigenous Voices. Fact sheet: Who Are Indigenous Peoples? http://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf, retrieved 13 December 2016.

55 Feiring, B., International Land Coalition, Indigenous peoples' rights to lands, territories, and resources, 2013. http://www.landcoalition.org/sites/default/files/documents/resources/IndigenousPeoplesRightsLandTerritoriesResources.pdf, retrieved 14 February 2017.

56 Nelson, Muhammed and Abdul Rashid 2016.

57 United Nations General Assembly, Human Rights Council, Eighteenth session. "Agenda item 3, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development." Report by the Special Rapporteur on the rights of indigenous peoples, James Anaya. Addendum Communications sent, replies received and follow-up. A/HRC/18/35/Add.1 (Annex VII Malaysia: Situation of the Long Teran Kanan village and native customary rights in Sarawak), 22 August 2011. http://www.ohchr.org/Documents/Issues/IPeoples/SR/A-HRC-18-35-Add-1_en.pdf , retrieved 24 November 2016.

58 Straumann 2014.

59 Global Witness, Inside Malaysia's Shadow State: Backroom deals driving the destruction of Sarawak, March 2013. https://www.globalwitness.org/en/campaigns/forests/inside-malaysias-shadow-state/, retrieved 1 February 2017; Global Witness, In the future there will be no forests left, November 2012. https://www.globalwitness.org/sites/default/files/HSBC-logging-briefing-FINAL-WEB.pdf, retrieved 15 February 2017.

60 Global Witness website. https://www.globalwitness.org/en/, retrieved 1 February 2017.

61 In the Federal Court of Malaysia (Appelate Jurisdiction) Civil Appeal No: 01-27-04/2015(Q). http://www.kehakiman.gov.my/directory/judgment/file/01(f)-27-04-2015_(Q)-Majority.pdf (retrieved 28 January 2017). Gartland, A., "Malaysia's Federal Court rules against Dayaks on Native Customary Rights", Changing Times, 21 December 2016. https://time2transcend.wordpress.com/2016/12/21/malaysias-federal-court-rules-against-dayaks-on-native-customary-rights/, retrieved 28 January 2017.

62 Carlson, K.M. et al., "Carbon Emissions from Forest Conversion by Kalimantan Oil Palm Plantations", Nature Climate Change 3:283–87, 2013. http://www.nature.com/nclimate/journal/v3/n3/full/nclimate1702.html, retrieved 24 November 2016.

63 JakartaGlobe, "Indonesia Court Ruling Boosts Indigenous Land Rights", May 2013. http://jakartaglobe.id/news/indonesia-court-ruling-boosts-indigenous-land-rights/, retrieved 28 November 2016.

64 Mongabay, "Jokowi Grants First-ever Indigenous Land Rights to 9 communities", 4 January 2017. https://news.mongabay.com/2017/01/jokowi-grants-first-ever-indigenous-land-rights-to-9-communities/, retrieved 28 January 2017.

65 Swedwatch interview with Arie Rompas, Director of the NGO WALHI Kalteng, August 2016.

66 He was succeeded by Mr. Datuk Amar Abang Johari Abang Openg. Malay Mail Online, "Abang Johari is Sarawak's new chief minister", 13 January 2017. http://www.themalaymailonline.com/malaysia/article/abang-johari-sarawaks-new-chief-minister#sthash.nIjV1MEj.dpuf, retrieved 28 January 2017.

67 Sarawak Report, No More Timber Concessions, Palm Oil Plantations Or Corruption – SR/RFS Welcome to Sarawak? 6 May 2015. http://www.sarawakreport.org/2015/05/no-more-timber-concessions-palm-oil-plantations-or-corruption-srrfs-welcome-to-sarawak/, retrieved 28 November 2016.

68 Results from Swedwatch interview survey in Sarawak, July and August 2016.

69 BHP Billiton website, http://www.bhpbilliton.com/aboutus/ourcompany, retrieved 18 November 2016.

70 In 2010 BHP Billiton entered into a joint venture agreement with Indonesian company PT Adaro Energy Tbk. (Adaro) for the IndoMet Coal project in Central and East Kalimantan, Indonesia. On 7 June 2016, BHP Billiton announced that it had entered into an agreement to sell its 75 percent interest in IndoMet Coal to Adaro, and the sale was concluded in October 2016. PT Adaro Energy Tbk. website, http://www.adaro.com/about-adaro/our-business-at-a-glance/, retrieved 14 December 2016; BHP Billiton, IndoMet Coal and Indonesia, A mutually beneficial relationship, PowerPoint presentation by Rock Funston, president director, IndoMet Coal, 17 April 2012; BHP Billiton website, Sale of interest in IndoMet Coal, 7 June 2016. http://www.bhpbilliton.com/media-and-insights/news-releases/2016/06/sale-of-interest-in-indomet-coal, retrieved 24 November 2016; Adaro website, Share Sale Agreement for IndoMet Coal Project, 7 June 2016. http://www.adaro.com/share-sale-agreement-imc/ and http://www.adaro.com/wp-content/uploads/2016/06/ADRO-20160607-SSA-IMC-POJK31-English.pdf, retrieved 18 November 2016; Email communications to Swedwatch from Jennifer Dawson, Principal Communities Group Sustainability & Public Policy, BHP Billiton, 3 November 2016.

71 The IOI-Pelita joint venture company was formed in 2006 and is officially registered as 'IOI Pelita Plantations Sdn. Bhd'. The partners are the Malaysian private enterprise IOI Group (70 percent equity interest) and the state-owned Malaysian company Land Custody and Development Authority (Pelita) (30 percent equity interest). Land Custody and Development Authority (Pelita) website, http://www.pelita.gov.my/modules/web/index.php, retrieved 12 December 2016; IOI Group website, http://www.ioigroup.com/, retrieved 14 December 2016. Colchester and Chao 2013.

72 IOI Group website, http://www.ioigroup.com/, retrieved 14 December 2016.

73 AAK website, http://www.aak.com/en/This-is-AAK/, retrieved 14 December 2016.

74 Deutsche Bank website, http://www.deutschebank.co.in/about_us.html, retrieved 14 December 2016.

75 Straumann 2014. Global Witness 2012 and 2013.

76 In this report, the term 'traditional land' is used to describe the 'Native Customary Rights' area, which is mapped out in the state-approved EIA report for the palm oil plantation. EIA Consultant PSS Resources Sdn. Bhd., Kuching, Sarawak, Preliminary Environmental Impact Assessment for the Proposed Development of Rinwood Pelita Oil Palm Plantation at Lang Tabeng, Tinjar, Miri Division, Sarawak. Submitted to the Natural Resources and Environment Board, Sarawak on 22 March 1997. Approved by James Dawos Mamit, Controller of Environmental Quality, Natural Resources and Environment Board, Sarawak on 18 June 1997.

77 The state-led mediation process included not only the LTK community, but comprised of a total of seven communities (so-called Ketua Kampung), affected by the company's business activities I the area. For more detail, see Annex 2 of this report 'IOI information on state-led mediation process'.

78 Swedwatch's analysis of historic satellite imagery indicates that the clearing for the plantation started in 1997–98 and that the plantation within lots 3 and 8 reached its maximum land cover around 2005. According to Colchester and Chao 2013, IOI-Pelita was engaged in clearing and expansion across the two concessions until 2009.

79 Email communication to Swedwatch from Dr. Surina Binti Ismail, Group Head of Sustainability, IOI Corporation Berhad. 15 February 2017.

80 In line with RSPO standards, any existing land conflicts should be addressed and resolved through a mutually agreed process, e.g. the RSPO Grievance procedure or the Dispute Settlement Facility, in accordance with RSPO standards, which detail principles and criteria for indigenous peoples' rights during negotiation processes for compensation. RSPO, Principles and Criteria for the Production of Sustainable Palm Oil, 2013. http://www.rspo.org/publications/download/224fa0187afb4b7 , retrieved 4 October 2016. RSPO, RSPO Generic Checklist for audits against RSPO Principles and Criteria 2013, January 2015. http://www.rspo.org/key-documents/certification/rspo-principles-and-criteria#, retrieved 16 February 2017.

81 Grassroots website, http://www.onegrassroots.org/what-we-do/campaigns/palm-oil-land-grab/, retrieved 14 December 2016.

82 This interview statement is echoed and supported in Colchester and Chao 2013.

83 RSPO, Mediation by the Sarawak State Government – IOI Pelita Sdn Bhd/Long Teran Kanan, 1 January 2016. http://www.rspo.org/files/download/9bcaa4f470758ff, retrieved 18 October 2016.

84 In email communication with Swedwatch 17 October 2016, Ravin Krishnan, complaint coordinator at the Complaints Panel of RSPO, stated that the report and minutes from the meetings were deemed confidential by the Sarawak State Legal Department, and that the RSPO was bound by that; In email communication to Swedwatch from Soo Chin Oi, Impacts and Evaluation Director at RSPO, 15 February 2017, she underlined that the confidentiality of documentation from a mediation process is in line with both Malaysian national and international rules of mediation and non-disclosure of information and communications.

85 RSPO, Notice to RSPO Members on the Suspension of IOI Group's Certification, 1 April 2016. http://www.rspo.org/news-and-events/announcements/notice-to-rspo-members-on-the-suspension-of-ioi-groups-certification, retrieved 28 November 2016.

86 Vaughan, A., "Top Palm Oil Producer Sues Green Group over Deforestation Allegations", The Guardian, 9 May 2016. https://www.theguardian.com/environment/2016/may/09/top-palm-oil-producer-sues-green-group-over-deforestation-allegations, retrieved 28 November 2016.

87 Mathisen, K. "Malaysian Palm Oil Giant IOI Drops Lawsuit against Green Group", The Guardian, 7 June 2016. https://www.theguardian.com/sustainable-business/2016/jun/07/palm-oil-ioi-rspo-unilever-nestle-kelloggs-mars-deforestation-indonesia, retrieved 25 November 2016.

88 RSPO, Update on the Status of IOI Group's Certification, 5 August 2016. http://www.rspo.org/news-and-events/announcements/update-on-the-status-of-ioi-groups-certification, retrieved 25 November 2016; Cuff, M., "Palm Oil Giant IOI Group Regains RSPO Sustainability Certification", The Guardian, 8 August 2016. https://www.theguardian.com/environment/2016/aug/08/palm-oil-giant-ioi-group-regains-rspo-sustainability-certification, retrieved 28 November 2016.

89 IOI Group, Sustainability Implementation Plan, 2016. http://www.ioigroup.com/Content/S/PDF/SustainabilityImplementationPlan.pdf, retrieved 9 December 2016.

90 Ibid.

91 IOI Group, First Quarterly Sustainability Progress Update, 9 January 2017. http://www.ioigroup.com/Content/NEWS/NewsroomDetails?intNewsID=828, retrieved 24 January 2017.

92 According to email communication to Swedwatch from Dr. Surina Binti Ismail, Group Head of Sustainability, IOI Corporation Berhad. 15 February 2017, this statement by the community member is incorrect.

93 According to the interviewed community members, different options had been presented, one referring to 1 hectare per household, and another offer of 3 acres.

94 Later in August 2016, one of the communities summarised their objections and concerns in a letter to IOI-Pelita and RSPO. The letter again underlined the need for a fair, transparent mediation process that considered their rights to livelihoods, cultures and a safe future for their community.

95 In email communication to Swedwatch 15 February 2017, Soo Chin Oi, Impacts and Evaluation Director at RSPO, stated that in one of the meetings she had attended with representatives from all the seven communities included in the mediation process, she had observed women being present. Regarding the number of representatives from each of the seven communities who had attended the meetings, she suggested that attendance sheets would be available from IOI or from the Resident of Miri office. Given the timeframe for printing this report, Swedwatch did not request this information from the indicated sources.

96 IOI Group. Update from IOI Pelita, Engagement and Dialogue with Long Teran Kanan Community, Summary of Meetings conducted by the Resident of Miri from November 2015 to current, 16-08-16. RSPO Case Tracker, IOI – IOI Pelita Sdn Bhd. http://www.rspo.org/files/download/ed188dcfb756f27, retrieved 18 October 2016.

97 IOI Group January 2017.

98 Grassroots email communications to Swedwatch. 14 February 2017.

99 Grassroots website, Palm Oil Land Grab by RSPO Executive Board Member in Sarawak, Malaysia, http://www.onegrassroots.org/what-we-do/campaigns/palm-oil-land-grab/#Chronology, retrieved 24 January 2017.

100 Swedwatch email and phone communications to IOI Group on 31 October, and 9, 15 and 25 November 2016.

101 Email communications to Swedwatch from Dr. Surina Binti Ismail, Group Head of Sustainability, IOI Corporation Berhad. 10 February 2017.

102 Roundtable on Sustainable Palm Oil (RSPO), website, Status of current disputes, DSF 004: IOI-Pelita vs LTK Community, Sarawak. https://www.rspo.org/members/dispute-settlement-facility/status-of-disputes#004, retrieved 15 February 2015.

103 Colchester and Chao 2013.

104 Email communication Ravin Krishnan, October 2016 and Soo Chin Oi, February 2017.

105 United Nations General Assembly. Human Rights Council, Eighteenth session, A/HRC/18/35/Add.1.

106 Metallurgical coal – also referred to as 'coaking coal' – is used to produce 'coke', which is a necessary fuel in iron and steel making. http://www.worldcoal.org/coal/uses-coal/how-steel-produced and http://globalnews.ca/news/627069/the-coal-facts-thermal-coal-vs-metallurgical-coal/, retrieved 18 November 2016.

107 Energy coal is also referred to as 'thermal coal' and is used to fire coal power plants to generate electricity. http://www.worldcoal.org/coal/uses-coal/coal-electricity, retrieved 18 November 2016.

108 BHP Billiton website, http://www.bhpbilliton.com/aboutus/ourcompany, retrieved 18 November 2016.

109 PT Adaro Energy Tbk. (Adaro) is an Indonesian energy group that focuses on coal mining, transporting and shipping from its operations in South and Central Kalimantan, through 21 subsidiary companies. Adaro is listed on the

Indonesia Stock Exchange. http://www.adaro.com/about-adaro/our-business-at-a-glance/, retrieved 18 November 2016. Members of five Indonesian families hold nearly 65 percent of the company shares, while the remaining 35 percent is owned by a number of other Indonesian and foreign investors. http://www.adaro.com/shareholder-information/, retrieved 18 November 2016.

110 According to a fact-finding report by the NGO Friends of the Earth Australia, drawing on Global Information Systems information from WALHI Kalteng, the Ratah Coal concession – one of the seven concessions that constitute the Indo-Met project – consists of 96 percent primary forest, 2 percent secondary forest and 2 percent other land use. McClean, N., Report on Central Kalimantan field research in support of coal mining and infrastructure campaigns, July 2015.

111 BHP Billiton 2012.

112 Adaro Energy, IMC: Metallurgical Coal Joint Venture. http://www.adaro.com/operation/our-operating-subsidiaries/mining-assets/, retrieved 18 November 2016.

113 BHP Billiton website, "Sale of Interest in IndoMet Coal", 7 June 2016. http://www.bhpbilliton.com/investors/news/sale-of-interest-in-indomet-coal, retrieved 24 November 2016. Share Sale Agreement for IndoMet Coal Project, http://www.adaro.com/share-sale-agreement-imc/ and http://www.adaro.com/wp-content/uploads/2016/06/ADRO-20160607-SSA-IMC-POJK31-English.pdf, retrieved 18 November 2016.

114 Email communications to Swedwatch from Jennifer Dawson, Principal Communities Group Sustainability & Public Policy, BHP Billiton, 3 November 2016.

115 WALHI Kalteng website, http://walhikalteng.org/, retrieved 28 November 2016.

116 According to Olle Forshed, Rainforest expert at WWF Sweden, 'Tengkawang' is the common name referring to a number of tree species from the genus Shorea, which is part of the Dipterocarpaceae family. The Dipterocarps are the most common tree group of species on Borneo, often covering 50% of the basal area in a typical Borneo lowland rain forest area. The resin from these trees, sometimes referred to as 'Damar', has multiple uses in producing lacquers and ignition materials. The seeds from some Shorea tree species contain fats, which can be used as oil for human consumption.

117 This study does not further elaborate on earlier allegations of project staff 'tricking' villagers into accepting low levels of compensation for traditional land and forests, which have been covered in media articles and a BHP company statement. Instead, the focus is on describing the extent to which the community's rights to FPIC have been met, and the company's adherence to the HCV methodology, in line with the scope of this study.

Denton, J., "Kalimantan Villagers Lodge Land Claim against BHP Billiton Coal Project", JakartaGlobe, 14 June 2015. http://jakartaglobe.id/news/kalimantan-villagers-lodge-land-claim-bhp-billiton-coal-project/, retrieved 28 November 2016; Denton, J. "Resentment Lingers in Village 'Tricked' Out of Its Land", JakartaGlobe, 14 June 2015. http://jakartaglobe.id/news/resentment-lingers-village-tricked-land/, retrieved 28 November 2016. Business & Human Rights Resource Centre, Indonesia: Kalimantan villagers file customary land rights claim for area within BHP Billiton's IndoMet coal mine; BHP responds. BHP Billiton Response, 30 June 2015. https://business-humanrights.org/en/indonesia-kalimantan-villagers-file-customary-land-rights-claim-for-area-within-bhp-billitons-indomet-coal-mine-bhp-responds#c124994, retrieved 28 November 2016.

118 Ibid.

119 According to Olle Forshed, rainforest expert at WWF Sweden, it is likely that the tree species that the interviewees refer to is Borneo ironwood, Eusideroxylon zwageri. The wood from this tree is extremely durable, and may be unaffected by weathering and decay up to three or four decades after it has been harvested.

120 BHP Billiton website, IndoMet Coal Project Forum Visit, 2015. http://www.bhpbilliton.com/society/ourcontribution/forum-on-corporate-responsibility-field-visit-to-indomet-coal-project, retrieved 28 November 2016.

121 BHP Billiton website, Indigenous Peoples Policy Statement. http://www.bhpbilliton.com/our-approach/operating-with-integrity/indigenous-peoples/bhpbilliton-indigenous-peoples-policy-statement, retrieved 18 November 2016.

122 BHP Billiton, Integrity Resilience Growth, Sustainability Report 2016, 2016. http://static.globalreporting.org/report-pdfs/2016/44555af3257002153c39a6c5c86ccdb0.pdf, retrieved 13 February 2017.

123 Email communications to Swedwatch from Jennifer Dawson, 3 November 2016.

124 Email communications to Swedwatch from James Upton, Head of ESG Policy and Engagement, Group Governance, BHP Billiton, 10 February 2017.

125 BHP Billiton website, IndoMet Coal Biodiversity Strategy. http://www.bhpbilliton.com/society/environment/indomet-coal-biodiversity-strategy, retrieved 28 November 2016.

126 Email communications to Swedwatch from James Upton, Head of ESG Policy and Engagement, Group Governance, BHP Billiton, 10 February 2017.

127 International Council on Mining and Metals (ICMM) 2013.

128 Denton, 2015 and Business & Human Rights Resource Centre, 30 June 2015; PT Lahai Coal, signed meeting minutes, Minutes from meeting between PT Lahai Coal and the community members as well as leaders of Maruwei 1,

Maruwei II, Tawai Haui and Penda Siron villages. 5 January, 2006. PT Lahai Coal was a contractor employed in the IndoMet project by the BHP Billiton – Adaro Joint Venture for the execution of the Lahai Coal Contract of Work, where the Haju mine is located. The Australian Business Review, BHP go-ahead for IndoMet coalmine, 4 November 2011. http://www.theaustralian.com.au/business/mining-energy/bhp-go-ahead-for-indomet-coalmine/news-story/d31c3fbbeef26c284fff5bc23695622d (retrieved 8 February 2017).

129 Email communication to Swedwatch from Arie Rompas, Director WALHI Kalteng, 26 January 2017.

130 Swedwatch interview with Arie Rompas, Director of the NGO WALHI Kalteng, August 2016.

131 AAK website, http://www.aak.com/en/This-is-AAK/, retrieved 14 December 2016.

132 AAK AB, AAK Group Policy: Sustainable Palm Oil, June 2014. http://www.aak.com/Global/Policys/AAK%20Group%20Policy%20Sustainable%20Palm%20Oil.pdf, retrieved 24 November 2016.

133 Email communications to Swedwatch from Anne Mette Olsen, chief marketing officer, Business Development & Marketing, AAK AB, 7 September and 18 November 2016 and 11 February 2017.

134 AAK, AAK Group Supplier Code of Conduct, June 2010. http://www.aak.com/Global/Policys/AAK%20Group%20Supplier%20Code%20of%20Conduct%20-%20September%202016%20-%20web.pdf, retrieved 24 November 2016.

135 The Proforest Group is a non-profit organization that supports and provides consultancy services in the area of technical support for companies and other organisations to implement their commitment to responsible production and sourcing. http://www.proforest.net/en/about-us/the-proforest-group, retrieved 24 November 2016.

136 Email communications from Jonatan Escolar, project manager at Proforest, 18 November 2016.

137 OECD and FAO 2016.

138 Nasdaq, website, Deutsche Bank AG Ownership Summary, 1 February 2017. http://www.nasdaq.com/symbol/db/ownership-summary, retrieved 1 February 2017.

139 Sarawak Report, BMF Press Statement – Victory for NGO campaign as Deutsche Bank is about to dump Taib family company stake, 10 March 2014. http://www.sarawakreport.org/campaign/bruno-manser-foundation-press-statement-victory-for-ngo-campaign-as-deutsche-bank-is-about-to-dump-taib-family-company-stake/, retrieved 29 November 2016.

140 Deutsche Bank, Annual Report 2015, https://annualreport.deutsche-bank.com/2015/ar/servicepages/downloads/files/dbfy2015_entire.pdf, retrieved 15 February 2015.

141 Email communications to Swedwatch from Jana Stahl, communications and CSR, Group Sustainability Department, Deutsche Bank, 18 November 2016.

142 Deutsche Bank, Deutsche Bank Statement on Human Rights. https://www.db.com/cr/img/Deutsche-Bank-Human-Rights-Statement.pdf, retrieved 18 November 2016.

143 International Finance Corporation (IFC), IFC Performance Standards on Environmental and Social Sustainability, effective 1 January 2012. https://www.ifc.org/wps/wcm/connect/c8f524004a73daeca09afdf998895a12/IFC_Performance_Standards.pdf?MOD=AJPERES, retrieved 14 February 2017.

144 OECD, OECD Guidelines for Multinational Enterprises, 2011 Edition. http://www.keepeek.com/Digital-Asset-Management/oecd/governance/oecd-guidelines-for-multinationalenterprises_9789264115415-en#page1, retrieved 6 July 2016.

145 United Nations Human Rights Office of the High Commissioner 2011.

146 United Nations Human Rights Office of the High Commissioner, Letter: Request form the Chair of the OECD Working Party on the Responsible Business Conduct, 27 November 2013. http://www.ohchr.org/Documents/Issues/Business/LetterOECD.pdf, retrieved 23 November 2016; Gillard, T., Bijelic, B. and van Lindert, E., Global Forum on Responsible Business Conduct: Due Diligence in the Financial Sector: Adverse Impacts Directly Linked to Financial Sector Operations, Products or Services by a Business Relationship, Investment Division of the OECD Directorate for Financial and Enterprise Affairs, 26–27 June 2014. http://mneguidelines.oecd.org/global-forum/GFRBC-2014-financial-sector-document-1.pdf, retrieved 22 November 2016.

147 United Nations Principles for Responsible Investments website, https://www.unpri.org/about, retrieved 22 November 2016.

148 Sjöström, E., Hållbara Investeringar, om ansvar, risk och värde på finansmarknaden. Stockholm: Sanoma Utbildning, 2014.

149 Globally there is a number of providers of norm-based screening. This section is based on publicly available descriptions by two Swedish service providers.

150 The policy review is based on the Fair Finance Guide Sweden's 2016 Policy ranking of Swedish banks. http://fairfinanceguide.se/media/373401/ffg-policygranskning-2016.pdf, retrieved 16 November 2016. Policy commitments were double-checked and discussed with bank representatives during Swedwatch's and Fair Finance Guide's interviews with Danske Bank, Handelsbanken, Läns-

försäkringar, Nordea, SEB, Skandia and Swedbank conducted during 11–28 October 2016.

151 The banks in the study stated that they had the following number of staff in their sustainable investment teams, expressed as full-time equivalents (FTEs): Danske Bank: 4 FTEs; Handelsbanken: 3.5 FTEs; Länsförsäkringar: 3 FTEs; Nordea: 14 FTEs; SEB: 2.75 FTEs; and Swedbank: 4.3 FTEs. The banks also rely on external consultants, data providers and fund managers to a verying extent.

152 Principles for Responsible Investment (PRI), PRI-coordinated engagement on human rights in the extractive sector. https://www.unpri.org/group/pri-coordinated-engagement-on-human-rights-in-the-extractive-sector-2352, retrieved 16 November 2016.

153 Ibid.

154 Ceres is a non-profit organization that brings together institutional investors, companies and public interest groups in a network that promotes the adoption of sustainable business practices and solutions for the benefit of the global economy. https://www.ceres.org/, retrieved 16 November 2016.

155 Joint letter to Secretary General of Roundtable on sustainable Palm oil (RSPO) from investors and companies. 1 June 2015. http://www.ceres.org/files/rspo-letter , retrieved 16 November 2016.

156 The figures used for amounts in USD throughout this report have been converted from SEK and other currencies using the following currency converter: European Commission, website, INFOREURO Currency Converter, http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/index_en.cfm, retrieved 10 February 2017.

157 Financial Times website, Equities, IOI Corporation Bhd, https://markets.ft.com/data/equities/tearsheet/profile?s=IOICORP:KLS, retrieved 2 February 2017.

158 Investopedia, website. Top 6 Shareholders of BHP Billiton (BHP, BAC), 15 August 2016. http://www.investopedia.com/articles/insights/081516/top-6-shareholders-bhp-billiton-bhp-bac.asp, retrieved 1 February 2017.

159 Nasdaq, website, Deutsche Bank AG Ownership Summary, 1 February 2017. http://www.nasdaq.com/symbol/db/ownership-summary, retrieved 1 February 2017.

160 Publicly available data from the Swedish Financial Supervisory Authority was used to determine which of the seven banks held investments in the four case study companies IOI Group, BHP Billiton, AAK and Deutsche Bank during the period January to July 2016. http://www.fi.se/, retrieved 17 November 2016

161 Principles for Responsible Investment (PRI) website, PRI-coordinated engagement on sustainable palm oil targeting growers. https://www.unpri.org/group/pri-coordinated-engagement-on-sustainable-palm-oil-targeting-growers-2285, retrieved 16 November 2016.

162 Joint letter to Secretary General of Roundtable on sustainable Palm oil (RSPO) from investors and companies. 1 June 2015. orghttp://www.ceres.org/files/rspo-letter, retrieved 16 November, 2016; Roundtable on Sustainable Palmoil (RSPO) website, RSPO response to Ceres letter from institutional investors and brands, 2 June 2015. http://www.rspo.org/news-and-events/news/rspo-response-to-ceres-letter-from-institutional-investors-and-brands, retrieved 1 February 2017.

163 IOI Group. Update from IOI Pelita, Engagement and Dialogue with Long Teran Kanan Community, Summary of Meetings conducted by the Resident of Miri from November 2015 to current, 16 August 2016. RSPO Case Tracker, IOI – IOI Pelita Sdn Bhd. http://www.rspo.org/files/download/ed188dcfb756f27, retrieved 18 October 2016; IOI Group website, First Quarterly Sustainability Progress Update, 9 January 2017. http://www.ioigroup.com/Content/NEWS/NewsroomDetails?intNewsID=828, retrieved 24 January 2017.

164 Nordea Asset Management. Protecting shareholder value and securing the license to operate; managing community risk. February 2015. http://www.nordea.com/Images/37-70001/managing_community_risk_feb_2015.pdf, retrieved 28 January 2017.

165 AAK website, Shareholder structure in AAK AB (owner structure by group), 30 December 2016. http://www.aak.com/en/Investor/Shareholder-structure/, retrieved 1 February 2017.

166 Swedbank. Hållbara investeringar, Vårt arbete 2010, 2010. http://www.swedbankrobur.se/idc/groups/public/@i/@sc/@all/@robur/documents/article/cid_327514.pdf, retrieved 9 February 2017.

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