# Clarifications and response to the banks' statements on the report "Silent Approval"

**In their responses to the report "Silent Approval", some of the investigated banks largely defended their sustainable investment processes and methods. Drawing on the report's findings and recommendations, Swedwatch and Fair Finance Guide argue that the banks' systems are clearly insufficient. More resources and improved investment approaches are urgently needed to ensure zero tolerance for developments on indigenous peoples' traditional land and forests without consultation and consent.**

In connection with the report launch, the Scandinavian banks Nordea, SEB and Skandia chose to submit their own statements to be published on Swedwatch's website. In response to the report findings, over 1800 bank retail customers have sent emails to the seven banks in the study (Danske Bank, Handelsbanken, Länsförsäkringar, Nordea, SEB, Skandia and Swedbank), and received responses from the banks' respective sustainability department. Below, under topic headings, are Swedwatch's and Fair Finance Guide's clarifications in response to some of the banks' views and responses.

In summary, our analysis of the banks' responses indicates that they do not actually address the key findings and recommendations of the report. Instead, in many instances, the banks give information about general actions or initiatives which are outside of the scope of the report.

Finally, the banks' use of some formulations such as for example consultants not having "verified serious norm breaches" or portfolio companies acting "in line with local authorities' demands", may open up for ambiguities and misunderstandings, especially amongst persons without a background in the fields of finance and sustainable investments.

### Urgent need for more resources and stronger processes

A number of banks state that they take the report findings on company impacts on Borneo's indigenous peoples' rights and their traditional forests seriously and will take them into consideration.

However, the banks have not commented on the report's analysis on the identified weaknesses in the banks' sustainable investment systems and processes, and the need to allocate more resources to the sustainable investment departments.

Many of the banks use similar wording in the way they describe their current processes for sustainable investments as systematic, structured and solid. Some banks also state that the cases in the report have not been picked up by their systems, or that they have not been considered as serious or "verified".

All the banks in the study employ:

(i) so-called norm-based screening (NBS),
(ii) strict prioritization systems between incidents where portfolio companies are suspected of human rights abuse or environmental impacts, and
(iii) some company engagement and joint investor action.

The cases in the study, where companies which the banks invest in have not respected indigenous rights, illustrate clearly that a “business as usual” approach is not going to ensure zero tolerance for developments on indigenous land and forests without proper consultation and forest protection.

Instead the report describes the urgent need for the banks to allocate enough resources – both to be able to track and respond to malpractice in *all companies* they are invested in, and to ensure that also cases which concern impacts on small groups of people or smaller forest areas are addressed.

The report analysis also highlights the urgent need to revamp the current responsible investment systems to become proactive, efficient, and meaningful in line with A. – G. below.

### A. Investors should uphold international conventions and standards

According to the UN Guiding Principles on Business and Human Rights, banks and companies should adhere to international conventions throughout their investments and operations – even in cases where national legislation or its implementation fall short. The report gives ample evidence and analysis which shows that in Borneo, states and court systems do not protect indigenous rights. Still, some banks claim in their statements that companies in the study have not admitted to any wrong-doing.

For example, Swedbank states about the Malaysian palm oil company IOI that their consultant has not been able to verify that IOI has committed any “serious breach of human rights” – according to their verification criteria - and that “IOI has acted responsibly and in line with local authorities’ demands”. The report clearly shows that, in this case, the local authorities and the company are not protecting or respecting the affected community’s indigenous rights in line with international conventions and standards.

This is similar to Nordea’s statements on its website from December 2016 regarding its investments in companies behind the Dakota pipeline in the United States. At this time, Nordea stated that – based on its review of project documentation – the companies had acted ”in line with relevant regulations for this type of project” - likely referring to local and national regulations. Later it was shown that the companies’ actions were not in line with international conventions and regulations. Nordea changed its position and reactively withdrew its investments from the companies.

### B. Criteria for “verification” need to be revised

One challenge, which is at the core of the banks’ current systems is the very high burden of proof on the affected communities or on civil society. The criteria chosen for “verification” lead to a situation where banks very rarely consider it “verified” that a company for example has impacted on indigenous rights or forests.

An illustrative example is from Swedbank’s response, which states that the report Silent approval has not “found any example where the bank does not follow its own guidelines.” The report clearly shows cases where Swedbank and the other six banks have not acted in line with international conventions and standards on FPIC, HCVs and UNGPs. In addition, the analysis of Swedbank’s policies shows that they only have a partial commitment to the standards.

C. **Investors should use their leverage to proactively *prevent* companies from taking indigenous peoples' land and forests without consultation and consent**

The report highlights the fact that the banks rely to a large extent on their norm-based screening method, which is reactive. In the study, there were cases when the banks became aware of companies impacting on indigenous land several years after the event. With a reactive approach, banks miss crucial opportunities to prevent companies from destroying indigenous communities' forest values and taking their land without consultation and consent. When land has been dispossessed, it is very rare that communities will ever get it back, and unique forests cannot be recreated.

The recommendation to banks is to develop and strengthen proactive measures, checking if companies are initiating adequate consultation processes and obtaining consent, and identifying and protecting High Conservation Values – at a minimum when companies enter into new projects or joint venture agreements with new partners.

D. **Investors should allocate resources to act on all important cases – many "small" cases lead to a large cumulative impact**

The banks confirm the report finding that their very strict prioritization between companies suspected of norm breaches in their investment portfolios means that the cases in the report have not been in focus for their analysis and engagement. The report points out that banks need to allocate sufficient resources in order to identify and act on cases which concern indigenous peoples – even when the communities may be small and their land and forests may not cover extensive areas. The impact on Borneo's forests and indigenous peoples from the multitude of logging, plantation, mining and hydropower projects is a cumulative impact where many small projects leads to massive deforestation and dispossession of indigenous land.

E. **Investors need to capture and understand community perspectives**

The report shows a number of weaknesses in the banks' analysis of the cases. They do not obtain and review key project documentation from the companies, they trust company statements to a large extent. The banks do not adequately assess the situation in the field through for example community surveys, cooperation with local civil society or analysis of satellite images. There is an urgent need for banks to become better informed and to recognize the power imbalance between the voices of the affected communities versus the voices of companies and industry associations.

For example, in the case of Swedbank's investments in BHP Billiton, the bank states in its email communication to retail customers that, according to their consultants, BHP Billiton has started a "fair" process to solve the land conflict with local communities. The statement does not define what a "fair" process constitutes, and this statement is in stark contrast to report findings which show that in October 2016 BHP Billiton exited the project without ensuring remedy and compensation to the affected community.

F. **Investors should not close cases before communities have obtained access to remedy and compensation**

In some cases, the banks state that a case is “old” or that a company has exited a project as reasons for banks not to take action. For the affected communities, a case is on-going until they have obtained access to remedy and compensation. If a company exits a project without a strategy to take responsibility for its impacts, it is in breach of the UN Guiding Principles on Business and Human Rights.

## G. Conduct engagement and joint investor action efficient and meaningful

Many of the bank responses highlight the fact that they are in dialogue with problematic companies in order to instigate positive change. The report shows clearly that in instances where the banks have engaged with the four companies, they had not addressed the issue of indigenous rights. Neither had the banks put down specific, time bound requirements to the companies. The banks who had participated in joint investor initiatives on human rights had failed to raise issues of indigenous peoples’ rights.