

# Rainforest Action Network: Comments provided to the TNFD on version 3. February 2023

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## Introduction

In this document, Rainforest Action Network seeks to provide feedback on the Taskforce on Nature-related Financial Disclosure (TNFD) *Beta v0.3 Nature-Related Risks and Opportunity Management and Disclosure Framework*. We note that while version Beta v.03 has curbed some of the more alarming aspects of Beta v.02 and v.01 – we continue to have serious concerns about TNFD’s framework, processes and broader adverse implications for public policy.

First and foremost is a concern that TNFD is undermining the proposals and solutions by those on the frontlines of the biodiversity crisis on what is needed to address it (explored in Section 3). Secondly, is that TNFD’s processes do not adhere to the tenets of evidence-based decision-making – including recommendations by IPBES and UN agencies (explored in Section 2). This has led to the TNFD itself having a narrow remit that does not examine, for example, the role of impunity for corporate harms in the biodiversity crisis.

This submission is divided into three sections:

- Section 1: Provides comment on the TNFD framework
- Section 2: Provides comment on the TNFD process which underpins the framework’s development
- Section 3: Provides generalized concerns on the adverse impact of TNFD, and other disclosure initiatives, on public discourse and policy

We note that many of the issues discussed in this submission have already been raised directly to the TNFD, often multiple times, in prior public statements by NGOs and networks. For example: [May 2022](#): A joint NGO letter by 28 NGOs and networks, Rainforest Action Network also provided a nearly 100-page technical submission, [September 2022](#): Four organizations and networks write to TNFD outlining

concerns. Rainforest Action Network also provides a 20+ draft technical brief on double materiality and [October 2022](#): 48 NGOs and networks also raised high-level concerns.

## Section 1: Comment on Proposed Framework

1.a. A rights-based approach is needed not vague language of ‘engagement’

Section C of the Kunming-Montreal Global Biodiversity Framework clearly states: *“The implementation of the framework should follow a human rights-based approach respecting, protecting, promoting and fulfilling human rights”*.

Over a decade ago, the UN Guiding Principles on Business and Human Rights articulated a minimum standard that businesses are expected to respect on human rights. In version 3, TNFD has incorporated a new disclosure on stakeholder engagement. This is likely in response to significant pushback on the issue of human rights – which is a key call of frontline defenders, is an entire body of international law, and also integrated into at least 20 of the most prominent standards for high-risk industries of biodiversity harms (listed in the footnote).<sup>1</sup>

For anyone familiar with international human rights law and the evolution of sector standards, the current proposed wording of Risk & Impact Management, Recommended Disclosure E – even if well-intended – is highly problematic. We acknowledge the spirit of what TNFD is attempting to do – and that it has included this new recommended disclosure in its framework provided language in this draft to comment on – and urge the importance of TNFD acknowledging human rights and rights-holders but doing it in a more appropriate way.

Human rights are an objective framework, defined and articulated in law over decades and through an evolving system of norms – such as casework, interpretative statements and legal findings. Whereas ‘engagement’ is a loosely articulated term – it can range from sending survey questions to a rights-holder group as part of a materiality assessment, to an investor talking to a company to encourage it to change its policies and exposures. A company can ‘engage’ a rights-holder – for example, exchange letters or hold a dialogue – while still continuing to violate their rights. This issue is sensitive because it is what happens all too frequently – where a company is prepared to talk to a community’s representatives, but not act on potential or actual rights violations. Similarly, presenting ‘rights-holder’

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<sup>1</sup> We have also previously provided TNFD with a list of other relevant international law statements and collective statements by frontline communities and movements highlighting the centrality of human rights. We wish to reiterate: “A sample of corporate-led initiatives in high-risk industries that incorporate human rights within, or alongside, environmental requirements include: **The Aluminium Stewardship Initiative, The Initiative for Responsible Mining Assurance, International Finance Corporation Performance Standards, Equator Principles III, World Bank Environmental and Social Framework, Accountability Framework Initiative, Forest Stewardship Council, International Petroleum Industry Environmental Conservation Association, International Council on Mining and Metals, Roundtable on Sustainable Biomaterials, Advice from the World Commission on Dams, Roundtable on Sustainable Palm Oil, Roundtable on Responsible Soy, Bonsucro, Fairtrade International, High Carbon Stock Approach, No Deforestation, No Peatland, No Exploitation policies, Marine Stewardship Council, Responsible Jewellery Council**. While several of these are far from perfect, these precede TNFD and highlight the risk that TNFD will undermine or distract from the headway made on human rights over many years. The centrality of human rights is emphasized in collectively developed statements led by those whose rights are most likely to be impacted by the trillions of dollars in financial flows being directed to supply chains, operations or projects that harm nature.”

as a sub-set of stakeholders is seen to diminish their rights, suggesting that the interests of someone whose Indigenous territory may be threatened, for example, is no more or less important than someone who holds shares in a company or is an industry analyst.

Rights-holders will see this language as offering little guarantee that their rights will be respected, and may even create confusion by conflating rights with engagement. Rights-holder organizations and human rights experts have, for years, worked meticulously to align language across standards, laws, policies etc. This consistency also provides certainty to business. Where other language sneaks through (for example in certain investor initiatives) it usually reflects that an initiative has had little to no meaningful role for rights-holders within them.

(Noting, that as articulated under international human rights law, businesses have specific and robust duties on due diligence, accountability, redress and other areas. A corporate-led disclosure initiative does not fulfil these duties, and we do not expect or want TNFD itself to be an arbiter of human rights. However – we do not want TNFD to undermine gains already made, that took decades to achieve, in the recognition that environmental outcomes and human rights are intertwined and inter-dependent. If TNFD excludes human rights, this will damagingly promote the false idea that we can address biodiversity loss and adverse harms without respecting the rights of those who most depend on, or protect it – which contravenes and undermines the expertise of those on the frontlines of the nature crisis, the Kunming-Montreal Global Biodiversity Framework, and a now substantial evidence base. It is therefore critical that TNFD incorporate relevant specific disclosures (for example, on grievances and traceability) as well as higher level reference to key human rights frameworks and due diligence bodies).

As [28 civil society NGOs and networks](#) have previously outlined, the centrality of human rights as a [key demand of frontline communities](#) and as critical to biodiversity outcomes cannot be overstated. In this context, relegating language on a rights-based approach to a guidance is not appropriate – but necessary to include in the top-line recommended disclosure.

#### *Recommendation i*

Below is an example of current wording (in black) which is problematic and should be changed. Alternate language should be consulted on, prioritizing input from human rights experts – particularly those with lived experience of abuses. Below is an illustrative example of the types of language that could be explored and consulted on (in red).

We note, particularly on this issue, it is vital to consult further on draft proposed text with relevant rights-holder groups and human rights experts.

Risk & Impact Management, Recommended Disclosure E:

Describe how stakeholders, including rights-holders, are engaged by the organisation in its assessment and response to nature-related dependencies, impacts, risks and opportunities.

**Risk & Impact Management, Recommended Disclosure E:**

Describe how the organization has ensured that it is respecting human rights and rights-holders, in its assessment and response to nature-related dependencies, impacts, risks and opportunities, and disclose a grievance list of any environmental or social complaints raised.

If this language is chosen, it's important to provide an interpretative note or guidance that further stipulate that this:

- Covers individual and collective human rights
- Cover Indigenous rights
- Covers environmental complaints and those related to the rights of nature
- Should be as inclusive as possible - noting that there is often an inter-relationship between fraud and corruption, and harms to nature etc.

A draft technical briefer on grievance mechanisms and grievance reporting – still under development – is attached in the Annex.

#### 1.b. TNFD cannot be “gender responsive” without centering the voices of grassroots women

To the best of our knowledge, TNFD – or the UN agencies that co-founded it - has not undertaken a process to examine gender in its work and proposals. While the gender action plan requires gender to be considered in recruitment of TNFD staff and taskforce members – there does not appear to be any requirement or structured process for working with feminist organizations, female environmental defenders or grassroots women leaders advocating to the financial sector about cases or companies undermining their rights, undertaking a gender analysis of its proposals, or ensuring that TNFD doesn’t allow forms of greenwashing that present a company as an environmental leader while at the same time undermining the rights and expertise of women, girls and people of other marginalized genders. This appears to contravene existing UN policies and recommendations, and contradicts UNDP’s [gender equality strategy](#) claims which includes a stated aim to “put gender equality at the heart of caring for people and the planet”. UNDP also discusses the need to center women from the outset of processes.

The rights of women, girls and peoples of other marginalized genders are already articulated in international human rights law. Additionally, Target 22 of the Kunming-Montreal Global Biodiversity Framework is to “Ensure the full, equitable, inclusive, effective and **gender-responsive representation and participation** in decision-making, and access to justice and information related to biodiversity by indigenous peoples and local communities, respecting their cultures and their rights over lands, territories, resources, and traditional knowledge, as well as by **women and girls**, children and youth, and persons with disabilities and ensure the full protection of environmental human rights defenders.”

We note that organizations with strong credentials on working on gender, rights and nature – such as the Women’s Earth and Climate Action Network, as well as the Global Forest Coalition – have expressed serious concern about TNFD’s structure, work and proposals.

#### 1.c. Addressing intergenerational equity

The Kunming-Montreal Global Biodiversity Framework highlights the need for efforts to address biodiversity to encompass intergenerational equity. It is vital that TNFD details its process for addressing the issue of inter-generational equity – including how it will provide structured, specific opportunities to ensure meaningful contributions from children and young people. To the best of our knowledge, there is no intergenerational equity analysis of TNFD.

The issue of intergenerational equity is the crux of addressing the biodiversity crisis. We cannot speak on behalf of young people or children, but as a reflection, we find it difficult to tally what we have observed youth movements are demanding, which is urgent and decisive action on climate, biodiversity and

human rights, with the TNFD model. Youth movements have called for a just transition, they have rallied in support of low status peoples whose rights, lands, waters or forests are under threat; they have spoken out against fossil fuel lobbyists at Climate COPs; they have led the divestment movement; and spear-headed bold thinking of more inclusive, equitable, sustainable and resilient economies. More broadly, this raises the question of whether the millions of species at threat from the extinction crisis will survive in future, let alone achieve the ‘equity’ to thrive as prior generations did.

The Global Forest Coalition has also warned about a reductive approach to biodiversity, that is focused on “sacrificing 70% of the planet to safeguard the remaining 30%”. This is also relevant for intergenerational equity – as ‘sacrificing the 70%’ deprives future generations of biodiversity beyond, for example, protected areas’.

Thinking in narrower terms, the [International Land Coalition](#) has raised the alarm that in most parts of the world land is being concentrated into fewer and fewer hands. This affects the rights of future generations to enjoy, share and make decisions about land, water and forests. Tangible ways of capturing this in a reporting framework could include requiring reporting on land footprint (to identify if a corporation is using more or less land) and land bank.

#### *Recommendation ii*

TNFD guidance and other structures need absolute clarity that certain harmful industries are fundamentally incompatible with intergenerational equity. For example, we already know that fossil fuels are a fundamental and existential threat to the rights of future generations of human and other life. There are clear scientific and energy policy positions – from the IPCC to the International Energy Agency – about the need to halt any new oil and gas field developments, to phase out existing fossil fuels and to support a just transition. Children and youth movements have been at the forefront of pressing for urgent change and treating the climate crisis as an emergency.

#### *Recommendation iii*

We reiterate again, as we have on previous drafts, that TNFD’s metrics should recommend organizations report their total land footprint (and track annually if it is increasing or decreasing), including their land bank.

We also note that total area of marine resources should also be examined.

#### *Recommendation iv*

Additionally, guidance or sample reports could provide further examples relevant to intergenerational equity. For example, if a company has a policy on contract terms – it may choose flexible contracts or contracts of limited duration. In recognition, for example, that 100-year contracts deny future generations - bound by contracts signed today - the right to decide about their rights and land, and such contract terms may actively encourage today’s generation to turn on future generations.

1.d. Don’t ask, don’t tell: Toxic secrecy and clandestine markets enable, facilitate or legitimize practices that harm biodiversity and undermine inclusive development, democratic decision-making and even basic legality

By far, one of the most persistent and clear demands coming from peoples and communities in areas of high-risk for environmental and human rights harms has been for transparency and traceability. This has

also been emphasized to TNFD in May 2022 by [28 NGOs and networks](#) and in RAN’s almost 100-page submission, in a [joint NGO letter](#) in September 2022 and again by [48 NGOs and networks](#) in October 2022. Similarly, one of the most persistent deviations from evidence-based decision-making we observe is that businesses refuse to disclose where they operate, source from or finance. This includes, for example, failing to contractually require traceability – especially through public disclosures that allow information to be publicly verified.

If people do not know which companies or financiers are financing, legitimizing or profiting from activities in their area – they cannot access their rights under business’ own risk-management, environmental or human rights policies, or broader law. Similarly, it could be argued that a business cannot do a sufficient level of due diligence if those most likely to know of concerning practices, poor consultations or outright harms are unable to alert the company to these risks because they do not know of its involvement. Intuitively, it is easy to understand that on-the-ground actors and companies perpetuating harms are incentivized to hide those harms from their supply chains and investors. Yet, too often, buyers and investors rely on companies themselves, or third-party data providers headquartered on the other side of the world, as a more reliable source of information than prioritizing, and then acting upon, concerns by local people.

For example, in March 2019 BankTrack [wrote](#):

*“Banks routinely respond to enquiries about specific transactions, especially about the damaging impacts of companies or projects they finance, by saying they are “unable to comment on specific clients”. They often cite “client confidentiality” as the reason, and individual banks often use the same generic, cut and paste text to respond to every query.*

*This refusal to comment on specific clients is a problem. It is impossible for affected communities to effectively hold banks accountable for financing projects that impact them if they don’t know who these banks are in the first place. Likewise it is impossible for civil society organisations (CSOs) to hold a meaningful dialogue with a bank about the environmental or human rights impacts of a company or project that it finances, without confirmation from the bank that a financial relationship exists. Transparency regarding these financial relationships is also fundamental for the proper functioning of standards like the Equator Principles that purport to safeguard community interests by giving stakeholders a seat at the consultation table.”*

SOMO has also written about the abuse of client confidentiality more generally.

Version 3 introduces a new recommended disclosure - *Risk & Impact Management, Recommended Disclosure D* – which we understand to recommend that a business to essentially self-describe if it does or does not trace its financing or sourcing of goods that it is dealing in. While functionally, it is important that TNFD has carved out a recommended disclosure on the issue of traceability – to actually function it needs to require traceability and transparency. The current language does not recommend a business to disclose the geolocation of its operations, supply chains, assets or investment chains. This means that a business’ claims cannot be independently verified. Yet, there are a wide array of examples of businesses self-reporting that their supply chains and investment chains are not exposed to a certain area, only for it to be revealed that they are. In fact, most public disclosures of businesses linked to harms against nature, and the people who protect it, come from or are in response to third party findings. Additionally, the current wording frames traceability to suggest that it is a voluntary choice from businesses of whether they want to pursue traceability or not. This is extraordinarily problematic. This could be seen

to suggest it is a choice, and not a fundamental requirement, that business should know where goods they are sourcing or financing are coming from. If businesses do not contractually require such traceability, they cannot verify if goods are produced legally or illegally, or are connected to environmental or human rights harms. Clandestine market practices that do not require or publicly communicate the location of concessions, supply or investment chains, especially in high-risk sectors and jurisdictions, often operate as a defacto form of ‘don’t ask, don’t tell’ that perpetuates harm by creating a system of plausible deniability.

Similarly, there is abundant evidence that if data of operations, supply chains and investment chains is not made public, then businesses will routinely and systematically fail to identify, or fail to act on, serious risks and harms to nature and people.

At minimum, TNFD should require that a business disclose the geolocation of the organisation’s operations, assets, supply chains and investment chains. Noting that best practice, in addition to such disclosure, would require contracts and related documents - such as environmental impact statements - to be publicly available.

It is critical that traceability and transparency covers all jurisdictions – starting with jurisdictions and sectors at highest risk for environmental or human rights harms based on **scale, scope and irremediable character**. This is necessary to avoid, as the Global Forest Coalition have put it, “sacrificing 70% of the planet to safeguard the remaining 30%” by overlooking harms in places outside of protected areas. It’s also critical to a just transition – to avoid, for example, the inequality of one community being able to see who is behind a problematic supply chain, while its neighbour with less remaining biodiversity cannot. Or similarly, to not allow a loophole that could see companies with abusive or harmful practices shifting from a high-biodiversity area, to low-biodiversity areas (or even land grabbed community land) – in order to evade transparency, and the potential ensuing scrutiny of its buyers and financiers.

In previous open letters and submissions to TNFD we have discussed the issue of traceability and transparency. Below we provide additional examples specifically related to the financial sector. For further examples, on forest-risk supply chains see relevant sections of [this document](#) from Global Witness which explore existing datasets, services, sources and case studies on issues related to traceability (including case studies in Annex 1 and 2 of that document). Noting also, that the incoming EU law on forest-risk products will require the provision of geolocation data. On contract transparency, the Extractives Industry Transparency Initiative requires its more than 50 implementing countries (mostly based in the Global South) to [disclose all contracts and licenses](#) that are granted or amended from 1 January 2021. Resource governance point out the various countries and agencies that have already disclosed contracts and that “citizens have a right to know how their government is selling their resources” (more [here](#)). It also notes that “among international financial institutions, the World Bank, the IMF and the IFC are beginning to encourage contract transparency; the strongest of these proponents is the IMF, which has endorsed contract transparency as key to the good governance of extractives.” Companies and financiers themselves therefore also have a duty to require contract transparency in order not to promote or endorse poor practices.

#### *Recommendation v*

**Change language from the current wording: Risk & Impact Management, Recommended Disclosure D: Describe the organisation’s approach to locate the sources of inputs used to create value that may generate nature-related dependencies, impacts, risks and opportunities.**



To, for example:

**Risk & Impact Management, Recommended Disclosure D:**

Disclose the geolocation of the organisation's operations, assets, supply chains and investment chains.

*Box 1: The real data problem: Knowing who is proposing to operate, buy from or finance operations – and their reputation elsewhere – is a key precursor to 'informed' consent*

One constant issue that arises is that the real 'data problem' is less about how to capacity build and resource global corporations – than how do we invest in and support Indigenous Peoples, local communities and others on the frontlines of defending their rights and environment.

A critical and persistent demand has been for traceability and transparency. To date, there is no one database that simultaneously allows Indigenous Peoples' or other marginalized communities to identify which companies are currently, or proposing to, operate in their area, who is buying from their area and who is financing those companies and supply chains.<sup>2</sup> Similarly, there is no one database where they can find information on existing complaints raised against these companies by communities elsewhere – to get a better understanding of if they are trustworthy or of problems that arise. This should also be inclusive of maps of proposed concessions or operational permits awarded by the state, contracts that affect natural resource rights and access to documents such as Environmental Impact Statements – yet even when such documents are legally required to be publicly available they often are not. This information is necessary for various reasons – including the right of all citizens to know how state resources are used, or proposed to be used. It can also be critical to determine, for example, if concessions overlap with Indigenous Peoples' territories or other areas of local importance.

Arguably, it is not possible to get 'informed' consent from an individual, community or Indigenous nation if they are not fully informed of their rights. This includes being able to know the policies of buyer companies or financial institutions, and the initiatives or standards they have signed up to. This information is also a critical step to identifying further protections they may have – for example, if a country where goods are consumed have laws banning illegal timber imports or on the proceeds of crime, if it is a member of the OECD or has a duty of vigilance or due diligence law. This is also directly material to how people can make complaints, file grievances or explore potential legal action.

*Box 2: Mining in Ecuador: An example of why transparency of value chains is required*

The mining industry in Ecuador is a clear example of why disclosure without transparency is bound to fail. Across Ecuador, mining concessions have been granted to mining companies, without the free, prior and informed consent of Indigenous peoples. As shown by the [Rainforest Action Group](#), the vast amount of mining concessions are often part of complex ownership and investment chains, and are so vast and numerous that every concession and operational site has its own unique context and environmental and human rights impacts. Those concessions also cover over a sixth of the country, meaning that the impacts are cumulative. In this type of context, where companies pick and choose what to disclose, and report on an aggregate group level, it will in most cases be deceiving and misleading for investors, while failing to take cumulative impacts into account, and failing to provide sufficient information for investors and other stakeholders to verify the veracity of a company's claims.

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<sup>2</sup> Particularly not at international level – in some contexts part of this information may exist, but not in a single dataset.

## 1.e. Disclosure without transparency?: Draft financial sector guidance

Reading through the draft financial sector guidance, without a sample report or the broader framework, we struggle to understand what exactly a financial institution would need to report. The language appears unspecified. Additionally, while we note that biodiversity data can be helpful – but only if basic building blocks are in place.

While knowledge of a financial institutions’ policies, strategy or aggregated data can be helpful, by far the most salient information to learn about its actual approach in practice requires knowing such basic information as:

- Who is the financial institution financing or providing financial services to?
- Who is the financial institution **not** financing?
- Is the financial institution facing complaints?

This is also critical to avoid disclosure reporting being an enabler of greenwashing.

There is also substantial public interest in this information. From UK parliamentarians knowing if their own pension fund is invested in industrial livestock companies, to the media reporting on the holdings of GFANZ members. Similarly, our [Forests and Finance dataset](#) shows who finances forest-risk companies has been used by journalists, academics, NGOs and regulators in an array of countries. It has also shown the incongruence between a bank’s policies and its practices, contributing external pressure for change. Producing this data takes significant time, personnel time and money – it should not be NGOs and third parties that have to drive this transparency, it should be financial institutions’ themselves disclosing it.

### *Box 3: A timeline of bank self-disclosure of company and project clients*

A decade ago, it was nearly impossible to uncover a company’s financier, however today there is a growing number of tools, datasets and research services in this area. Despite a wide array of myths about disclosure and the financial sector being widely debunked, misinformation about disclosure is frequently perpetuated in policy discussions. (For example, while it is typically illegal for bank to disclose a client name without consent, for years it has been known that the workaround for this is simply to write disclosure requirements into contracts). Many disclosure reforms have been driven and hard fought by NGO campaigns. These have typically been strongly resisted by the financial sector – which raises questions about the reliability of the TNFD taskforce structure to take an evidence-based approach to disclosure. While this section focuses on bank disclosure, similar arguments today against disclosure are used by investors and for certain asset management products etc.<sup>3</sup>

Increasingly, citizens whose money is held in banks, private pensions, [state pensions](#), managed by asset managers or collectively in sovereign wealth funds are also growing angry that they are unwillingly

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<sup>3</sup> This is despite the long-established evidence base of there clearly being no client confidentiality constraints for an investor stating what companies it chooses to buy shares in, and a wide array of examples of the practice already occurring in the sector (for example, proxy voting reports often act as a backdoor way of disclosing what companies an investor is invested in to different jurisdictions already requiring reporting).

complicit in activities linked to climate, biodiversity or human rights harms – and toxic secrecy prevents the base level of public disclosure that would allow them to know where their own money is going.

There is an array of evidence on the impacts of toxic secrecy and how this prevents people trying to protect their rights and nature from accessing protections under a bank's own policies. One example of the culture of toxic secrecy is that even when an investigation uncovers a bank financing a company linked to harms to nature and people – a bank may refuse to state if the company is a client or not, and use this as an excuse for not taking any further action even when harms violate a bank's own policies. Additionally, there are still see examples of banks writing new ESG policies that claim to include environmental or human rights protections – while refusing to make any part of the policy public, making it impossible for those whose rights are supposedly protected to know what those protections are.<sup>4</sup> Change is happening on transparency, but far too slowly.

?: For years, many financial institutions have chosen to provide detailed data about financial deals and clients to online subscription databases such as Refinitiv Eikon and Bloomberg, and written this disclosure into client contracts. This information is widely accessed by journalists, competitors, companies, financial institutions and researchers and anyone who can afford the tens of thousands of dollar cost of annual subscription fees.

**2009:** Triodos bank, which is headquartered in the Netherlands, today publishes a database of every organization it lends to which can be [found here](#). Such disclosures began in [2009](#) – almost a decade and a half ago.

**2013:** Equator Principles banks began reporting the names of projects and project-related corporate loans they finance over a certain monetary threshold. Although with a loophole that allowed clients to choose not to be named.

**2016:** Dutch development bank FMO pilots – and then later adopts – ‘ex-ante disclosure’. That is it [discloses the names](#) of its proposed clients 30-60 days before financial close. The public or independent third parties can contact FMO to raise concerns about any proposed clients or projects – which may lead the bank to decide not to finance a client. Today, this practice is also used by other development finance institutions – such as the [Asian Infrastructure Investment Bank](#).

**2017:** HSBC bank – which operates in 50 countries – writes in its palm oil commitment that “new customers are required to consent, before financial services are provided, to HSBC being able to disclose publicly whether the customer is or was a customer of the bank.”. This shows, once again, the ability of banks to disclose the names of their corporate clients should they choose to. (Although it is frequently critiqued for its poor reputation on disclosure).

**2020:** The International Financial Corporation adopts [reforms](#) to require its financial intermediary clients to publicly disclose basic information about high-risk (Category A) projects. Other development finance institutions are [expected](#) to follow. In 2020, around [60% - or \\$6.7 billion](#) – of its investment portfolio was delivered via financial intermediaries – i.e. private banks and other financial institutions. This was the result of a years-long campaign by NGOs, who among other issues, pointed out that the IFC's own reports and policies on the importance of transparency to good governance.

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<sup>4</sup> Some asset managers can also present the notion of transparency as insurmountable for certain product lines.

**2020:** The Equator Principles make the naming of project finance clients a requirement, and recommend the naming of project-related corporate loans. Today, the Equator Principles members include 138 financial institutions in 38 countries. This includes client-name reporting from banks from countries as diverse as: [Nigeria](#), [Chile](#), [Japan](#), [Egypt](#), [China](#), [Colombia](#), [Singapore](#), France, US, Australia, [South Africa](#) and many more, for projects in even more jurisdictions. Disclosing banks include several TNFD taskforce members. (This would also indicate that there are existing, or potential, models for writing transparency into standard loan agreements).

Beyond the extremely basic baseline of project-name and company-name disclosure, various NGOs are now working on best practice for assurance measures of community-level transparency. That is, standards for lenders to check that information is actually provided to communities in a way that is manageable, accessible, easy and straightforward – such as through single points of disclosure. For example, through the [Publish What Your Fund campaign](#) targeting development financial institutions and aid funding.

Companies reporting their principal bankers also normalizes the necessary transparency between companies and financial institutions. For example. Singaporean and Malaysian agribusiness companies in their annual reporting cite their ‘principal banks’. See: [here](#) (p.43, Olam), [here](#) (PPB), [here](#) (p.37, Halcyon Agri) as well as [here](#), [here](#) & [here](#) (Rimbunan Hijau subsidiaries). Encouraging companies to disclose their principal financiers should also be considered in guidance for other sectors.

#### *Recommendations vi*

The TNFD financial sector guidance must explicitly state that banks and other financial institutions are, as a minimum, expected to adopt project-name and client-name disclosure.

#### *Recommendations vii*

Financial institutions should also be expected to publish company-name or project-name exit or exclusion lists (see box 4).

#### *Recommendations viii*

It must also recommend that the financial actors report on policies and plans to implement further transparency practices – such as contract disclosures, assurance of community-level transparency and further information.

This is in addition to ensuring that all sectors, including finance, are covered by recommended changes to **Risk & Impact Management, Recommended Disclosure D and E** on traceability, transparency and grievance list reporting discussed elsewhere in this submission.

#### *Box 4: Examples of company or project-name exclusion lists, exit lists, observer lists or ‘investment universe’*

To date, it has been recognized that bank or investor policies that exclude financing to companies exposed to certain activities is – for most sectors – far less effective than approaches which specifically name excluded companies or projects. The only reliable way to know how or if a business is actually applying its policies on exclusion, is to see which companies are excluded.

According to financial sector researchers Profundo, a small sample of financial institutions that publish a company or project-name exclusion list, exit list or observer list include: Achmea (Netherlands), Cardano Group (Netherlands), Orix Corporation (Japan), DC Financial (US), Aegon (Netherlands), MP Pension (Denmark), BankInvest (Denmark), CA groep (Netherlands), Danske Bank (Denmark), DCB Financial (United States), DBN (Norway), National Treasury Management Agency (Ireland), Kommunal Landspensjonskasse Gjensidig Forsikringsselskap (KLP) (Norway), Länsförsäkringar (Sweden), Lægernes Pensionskasse (Denmark), NN Group (Netherlands), Nordea (Finland), Nykredit Group (Denmark), Pensioenfonds Horeca & Catering (PH&C) (Netherlands), Pensioenfonds Rail & Openbaar Vervoer (Netherlands), ANZ (Australia).

Further, exclusion lists, exit lists and observer lists also have an important market role. Such lists, effectively communicates where a bank or investor is stating that they have conducted due diligence and found that a company does not meet its environmental, social or governance standards – usually related to very severe concerns. This can empower consumers, and also internal staff, to ask if their bank or investors is also taking action.

This is in addition to less formal ways of communicating company-name exclusions – such as publicly stating that they will not finance an individual problematic investment. For example, over 40 global insurers publicly ruled out insuring any part of the Adani Carmichael project in Australia (listed [here](#)) and a range of insurers have publicly ruled out financing the East Africa Crude Oil Pipeline (listed [here](#)).

An alternate to publishing an ‘exclusion list’ is to publish an ‘investment universe’. That is, rather than naming companies or projects excluded, to name a total list of companies that an investor will consider investing in – which by virtue, excludes non-listed companies.

1.f. Lobbying: The current framework allows corporations to secretly lobby against policies to implement the Kunming-Montreal Global Biodiversity Framework - while claiming to be biodiversity champions

At Montreal, key decisions were adopted in the [Kunming-Montreal Global Biodiversity Framework](#) that are at extreme risk to be undermined by corporate lobbying. Target 18, for example, calls to end harmful subsidies to large businesses<sup>5</sup> - such subsidies suppress the pricing of market risk by making fossil fuels or harmful pesticides cheaper. Similarly, Target 14 committed governments to align private and public financial flows to biodiversity targets – which, in RAN’s [view](#), cannot be achieved without meaningful regulation of the financial sector, including ending impunity.

TNFD reporting will be misleading - if not downright misinformation - if it allows a company to claim to be a leader on biodiversity at the same time as it is secretly lobbying to undercut or undermine laws and other policy that set clearer requirements and consequences for business on biodiversity (or climate or human rights) harms - which is one of the most direct routes to seeing biodiversity risks become a financial and legal risk to businesses, and to setting fairer market conditions for businesses genuinely seeking to act responsibly on biodiversity.

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<sup>5</sup> The language refers to phasing out “subsidies harmful for biodiversity, in a proportionate, just, fair, effective and equitable way” – which various civil society groups stressed must start with large businesses.

Civil society groups which have been highly involved in the Global Biodiversity Framework talks and CBD processes have vocally raised concerns about the expansion of negative corporate lobbying on biodiversity. In December 2022, Friends of the Earth International's [Nature of Business](#) report raised a series of concerns about how business influence was weakening the ambition of the Global Biodiversity Framework talks and the CBD structure surrounding it. It recommended that the UN and member states "must resist corporate pressure to grant business a privileged position in UN negotiations". The [Global Forest Coalition](#) also raised this point, with Souparna Lahiri, its senior climate and biodiversity advisor, noting: "Massive corporate lobbying from harmful industries largely responsible for the crisis we find ourselves in today, drowned out the voices of civil society, scientists, Indigenous Peoples and local communities [in Montreal], ensuring the continued financing of biodiversity conservation through offsets and other "nature-based" solutions."

To date, it is not clear if any studies have been undertaken on the costs of lobbying specific to biodiversity, but research in cross-over areas indicate that it is. A [2021 Reclaim Finance report](#) on the EU taxonomy illustrated the undue resources devoted by the oil and gas sector to lobbying to have fossil gas included in the EU taxonomy - in contravention of scientific and policy advice. The report showed that 182 gas-related entities were spending between 64.9 - 78.4 million euro each year - devoting 776 employees (equivalent to 402 full-time staff) to EU lobbying. Studies tracking the number of fossil fuel lobbyists at climate COP talks have made headlines the last two years, with a [25% increase in 2022](#) over 2021 to a total of 636 delegates.

A [2019 paper](#) published in *Nature Climate Change* sought to estimate the costs of lobbying on climate regulation. It estimated that the social costs of lobbying on a single 2009 US climate bill to be **USD \$60 billion**. This reflected: a) a statistical analysis to determine the likely impacts of lobbying on the final outcome - in this case a 13 percent shift from the bill passing to its demise due to the greater lobbying efficacy of firms against the bill than those for it; and b) an estimate of the costs of climate-related damages resulting from activities that would have been addressed if the bill had passed. Much can be learned from the climate space – particularly given the overlap of sectors that impact both climate and nature.

Many TNFD taskforce members should be aware of the critical importance of addressing lobbying - foremost through transparency of lobbying activities and secondly, through clear policies on lobbying - particularly those who have been publicly critiqued:

- A March 2022 [Influencemap analysis](#) of the 30 largest majority-investor owned financial institutions found that **100%** are members of industry groups lobbying *against* climate policy. The report specifically critiqued TCFD for not requiring lobbying disclosures. Several TNFD members were included in this analysis: BNP Paribas, Bank of America, BlackRock, HSBC, AXA and UBS.
- In March 2022, [Greenpeace](#) reported that several soy traders - including TNFD taskforce member Bunge - had lobbied to seek to weaken an EU deforestation law via industry associations.
- In 2021, [Reclaim Finance](#) published a report on the complex web of lobbying undertaken by BlackRock - a TNFD taskforce member - to undermine EU climate policy action. Critically, this noted concern that a push for data/reporting was being used to undermine and distract from more meaningful policy proposals about *what* is being financed.
- [Lobbymap](#)'s analysis of how financial institutions are influencing sustainable finance policy ranked TNFD taskforce members UBS and BlackRock a 'D+' and Swiss Re a 'D'.

- In 2022, [13 financial institutions](#) wrote to the EU publicly backing the EU parliament vote for an incoming EU deforestation law to cover financing. This is a positive example of the role that lobbying can play and was [welcomed](#) by civil society organizations. (An additional note is that all TNFD taskforce financial institution members have so far declined to sign).

Additionally:

- In 2020, [Influencemap](#) released an Australia case study directly showing the link between lobbying from industry groups are having an overwhelmingly negative impact on climate policy. Put another way - even within the logic of TNFD, lobbying directly undermines the capacity of the market to correctly appraise harms to nature and climate as a financial risks because it suppresses policy and regulatory signals that would make nature risk a financial risk.
- The world's 30 biggest listed financial institutions are undermining their net zero goals by continuing to fund fossil fuel expansion and lobbying to weaken emerging sustainable finance policy, according to [analysis](#) released by climate think tank InfluenceMap.
- A [recent report](#) by the Center for Environmental Law and Community rights in Papua New Guinea, alongside the Jubilee Australia Research Centre, gives a further example of how fossil fuel companies are undermining public policy. It has written of fossil fuel companies that “[their] efforts to promote, market and amplify fossil gas in PNG are disproportionate with the role that fossil gas is currently envisaged to have in PNG’s 2030 energy goals, with fossil gas expected to have no significant role in energy supply by 2050.” It has highlighted how an industry event, the PNG 2022 Energy Summit, is dominated by fossil gas and that its promotional material boasts that it provides participants the opportunity to “gain direct access to key government officials in the PNG energy industry”. It also highlights that fossil fuel companies hold leadership positions in multiple PNG business councils.
- In 2022, the London School of Economics released a report on climate lobbying – including a recommendation that investors should develop [lobbying metrics](#).
- Even companies with highly problematic environmental records have left industry groups over concerns about particularly concerning climate positions. For example, [Rio Tinto](#), [Shell](#) and [Total Energies](#)

This is just a sample of an array of academic, industry, media and civil society resources examining the negative or positive role of lobbying in environmental and human rights outcomes. We struggle to understand how - given the overwhelming evidence of the role of lobbying in public policy and the intuitive logic that companies that benefit from harmful subsidies or financial sector impunity will lobby to resist changes to implement the Kunming-Montreal Global Biodiversity Framework targets – TNFD is able to explain the exclusion of lobbying.

#### *Recommendation ix*

Add a new recommended disclosure to address lobbying, for example:

*Publicly disclose, for all jurisdictions, lobbying activities and positions – including membership of, support for and involvement in all associations, alliances and coalitions engaged in nature-related lobbying.*

*Box 5: Some investors, including TNFD taskforce members, have been calling for lobbying disclosures on climate for at least half a decade*

Rainforest Action Network, and several others, have persistently raised concerns about the implications of TNFD excluding lobbying. Yet concerns about lobbying are not limited to civil society. Already, in 2018 institutional investors through the [Investor Group on Climate Change](#) outlined their expectations for how investee companies should address lobbying related to climate. AP7 and BNP Paribas, which are today TNFD taskforce members, [appear to have been highly involved](#) in this work. Notably, even in 2018 the key principles include that companies should ‘lobby positively in line with the Paris Agreement’, that they should speak out publicly when groups they are a part of are taking positions that are not aligned with their policy or the Paris Agreement, and that companies should be transparent about company lobbying.

This included in 2018 noting that “appropriate reporting could also include details of: The company’s position on climate change and policies to mitigate climate risks; The company’s direct and indirect lobbying on climate change policies; The company’s membership in, or support for, third party organisations that engage on climate change issues (including political organisations); The specific climate change policy positions adopted by these third-party organisations, including discussion of whether these align with the company’s climate change policies and positions; The assessment that the company has made of the material impact of lobbying by the organisation taking a contrary position to the public position of the company.”

Today, these positions have evolved further into the investors [Global Standard on Responsible Climate Lobbying](#) – which appears a highly relevant starting off point for how TNFD should approach measures on lobbying, including lobbying disclosures. Particularly important is ensuring that this covers all of its subsidiaries and business areas, and all operational jurisdictions.

1.g. (In)Equity: TNFD hasn’t examined if its approach will leave countries - and marginalized populations within them - better off or worse off

Embedded in the Convention on Biological Diversity is the notion of equity and common but fair and differentiated responsibilities. A critical backdrop to the COP 15 talks was the emerging debt crisis – with the IMF noting a [60% increase](#) in low-income countries at risk of default compared to 2015. Questions and concerns have been [raised](#) that in pricing nature-related risk TNFD will lead to a [lowering of the credit rating](#) of some low-income countries (and formerly colonized countries) and thus increase the cost of capital in those same countries. There is also [research](#) to suggest that lower and middle-income countries will be more adversely impacted. By adding to their financial burden, this could perversely drive increased biodiversity loss – if countries feel that in order to serve a higher financial burden and repayment they need to permit [environmentally harmful activities](#). This would be particularly perverse for countries who face biodiversity loss and increased economic hardship as a result of climate impacts they have done little to contribute to. Examples of research and evidence that supports these concerns is [here](#), [here](#) and [here](#).

These equity concerns should be taken extremely seriously as they could directly violate the spirit of the Convention of Biological Diversity, which recognizes that economic and social development and eradication of poverty are the first and overriding priorities of the developing countries - in that it risks



entrenching economic inequalities, penalizes countries hardest hit by climate chaos and which, through these economic consequences, perversely may motivate activities that harm biodiversity.<sup>6</sup>

*Recommendation x*

*In version 4 - TNFD should act on the available evidence to assume a presumption of harm that its approach could penalize low-income countries and signal how it will address this issue.*

*Recommendation xi*

*In addition to recommendation x, TNFD - or ideally more independent parties such as its donors - should fund and publish further independent research into the equity implications of its work, and convene expert discussions, to identify the impact that pricing nature-related risks will have on access to credit and debt burden for low-income countries or sub-national governments.*

1.h. Will TNFD provide meaningful and accurate reporting on impacts?

We note that in version 3 TNFD notes that it is shifting to recommend impact disclosures. However, it is not clearly stated if this is a 'core' or 'enhanced' disclosure. Additionally, given that TNFD has previously backtracked on its approach to double materiality – from this being a foundational step to its approach at its inception, to no longer appearing in version 1 and 2 – we seek reassurances that TNFD now considers impact reporting as a core part of its framework, that this position is cemented and not open to reversal in version 4 or the final version. If TNFD is able to publicly clarify its position that impact reporting is a core disclosure and this is not subject to reversal – we would acknowledge this as a significant step to reverse what we have continued to highlight as one of the more worrying ways that TNFD could facilitate and promote greenwashing and misinformation, and which deviated from a sizeable evidence-based on nature risks and outcomes.

***Is impact reporting a core disclosure and not subject to reversal in subsequent versions?***

If TNFD cannot or will not make such clarifications – we wish to reiterate the various arguments already raised in various joint NGO open letters and public statements, as well as in the Technical Briefer on Double Materiality we provided to TNFD in September 2022 (Annex 2).

If TNFD does make such clarification, then we reiterate our point raised in September that “not only should TNFD respect the evidence on [reporting on impacts] - it then needs to identify what form of ...reporting is most effective”.

***TNFD currently groups dependencies, impacts, risks and opportunities are in one box***

To address this, TNFD must adopt the following recommendation:

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<sup>6</sup> The CBD is one of the Rio Conventions and the Rio Principles apply. Principle 7 of the Rio Declaration on Environment and Development outlines: "States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command."

### *Recommendation xii*

In order to address the ambiguity of the current framework, which may lead to confusing disclosures, the TNFD framework, as well as any guidance documents, must clearly separate and distinguish dependencies, impacts, risks, and opportunities. This should provide clarity of what specifically needs to be reported, in terms of impacts.

#### ***Important that TNFD has a distinction between positive and negative impacts***

We note in version 3, and other public comments from the TNFD Secretariat, that TNFD has said it would not allow reporting that aggregates positive and negative impacts on nature. This is a critical position to retain, as otherwise this promotes greenwashing. For example, we've previously highlighted an example of a company building a 1400 kilometer oil pipeline stating it is 'net positive' for biodiversity – intuitively, it is nonsensical to suggest that building an oil pipeline leaves nature better off than if it hadn't been built. Similarly, it is clear that claims of 'biodiversity offsetting' are anathema to basic science – as the destruction or degradation of specific and unique relationships of individual plants, animals and natural ecosystems cannot be 'offset'. For example, as highlighted by [Friends of the Earth International](#). Noting also, that there continue to be a series of scandals related to so-called offset programs.

#### ***Lack of clarity on basics of impact reporting and the underpinning evidence base***

These questions relate to the types and structure of data. The following section also highlights the larger point that the data that should be first and foremost prioritized – is that which is likely to drive behaviour change.

- Is a company required to report on all areas where it has impacts – not limited to those of a particular biodiversity status?  
(Noting that OECD due diligence recommendations are that a company should examine all environmental impacts – starting with prioritizing the most important on the basis of **scope, scale and irremediable character**).
- Are there objective, core impact reporting requirements – that ensure that there are no loopholes that allow companies to cherry pick what data they report against?
- Will the approach to core impact reporting requirements ensure that there are not loopholes that allow companies to evade reporting – for example, by having loopholes for downstream impacts?
- Will core impact reporting have a clear baseline for reporting?
  - This should also include the use of cut-off dates.
- For new developments and projects, will there be requirements that allows data comparison of a 'no project' scenario vs. the proposed project – to ensure it is easier to see ahead of time, what the impacts of planned or proposed projects will be and compare it against the current situation?
- Will we be able to understand the company's impacts in the context of alternate use of the same resources? (for example, plantation agriculture vs. small-holder agriculture).
- TNFD has noted it considers people as part of nature – will impact reporting incorporate impacts on people?

#### ***Key questions to ask of impact reporting:***

This process should ask very common-sense questions such as:

- Does reporting take a form that allows local peoples to know whether a business is operating in, sourcing from or financing activities in their local area?
- Does reporting take a form that would allow two different readers to independently, and accurately, come to the same conclusion of what a corporation's current and potential impacts on nature and people are?
- Does reporting take a form that allows the public and/or independent outsiders to scrutinize whether the self-reported data is accurate or not?  
(for example, by allowing a business' claims to be cross-checked against on-the-ground realities)
- Does reporting alert the public (or others) to whether a business is involved in, or accused of, being linked to actual or potential risks and adverse impacts on nature and people?
- Does reporting cover both actual and potential risks, as well as actual and potential impacts?
- Does reporting take a form that allows the public or other businesses doing business with that company to know if they may be complicit in harms to nature and people?
- Does reporting allow the public (and others) to assess whether a business' claims to act on nature-related harms are put into practice?  
(for example, if it is lobbying against new environmental regulations or for exemptions from legal requirements)
- Does reporting allow readers to identify if a business is expanding its land use or 'capping and reducing' its land footprint?  
(i.e. is the corporation using more land or less land)

Previous sections of Section 1 have also spoken to different ways TNFD can, and should, specifically address some of these questions. Noting that much of the data we are emphasizing – such as grievance lists or public naming of bank clients or suppliers – is far easier for a corporation to collate than granular data on biodiversity or scenarios.

It is critical that all reporting recommended disclosures, including on strategy, cover not just financial risk and opportunities but also impacts (both actual and potential). According to the [TCFD 2022 Status Report](#) – reporting on Strategy a) under TCFD is higher than reporting against any other recommended disclosure - with over 60% of companies reviewed reporting. It notes that companies that are disclosing under TCFD, 80% are disclosing in line with at least one recommended disclosure, only 4% in line with all 11 and only around 40% disclosed in line with at least five. It is extremely concerning that the need to report against impacts on nature - and related human rights - is not explicitly stated against the foremost recommended disclosure most likely to be adopted and adopted first.

#### *Recommendation xiii*

We also note that version 3 has not adopted our previous point on the need to change the current definition of 'nature-related risks' and include impacts in the strategy sections – alternative illustrative text provided in September 2022 is copied below.

Nature-related risks: Potential threats posed to an organization AND to nature and people - linked to its and other organization's dependencies on nature and nature impacts and potential impacts. These can derive from physical, transition and systemic risks.

### Strategy

Disclose the actual and potential impacts of nature-related risks and opportunities on the organisation's businesses, strategy and financial planning, and its actual and potential risks and impacts to nature and inter-related risks and impacts to people, ~~where such information is material.~~

#### 1.i. Warning signs

Already, we are seeing warning signs of how the work and influence of TNFD may be used to elevate and greenwash the reputation of companies facing active campaigns over their role in environmental and human rights harms.

*Case Study 1: Nonsensical nature reporting: Vale's 2019 environmental disaster killed hundreds and led to murder charges but it ranked 5<sup>th</sup> best performing company on the 2022 Nature Benchmark*

In December 2022, the World Benchmarking Alliance released its [Nature Benchmark](#) report. This ranked 400 companies across eight industries based on various criteria, this list was also shared via social media.<sup>7</sup> World Benchmarking Alliance's methodologies receive input from their Expert Review Committee. According to its website, the committee is also "consulted prior to the publication of the report to review and provide input on the benchmark's [key findings](#), lessons learned and recommendations for companies. The final report and rankings are then made public." Six of the seven organizations represented on the [Expert Review Committee on nature](#) have a close association with TNFD. This includes a Senior Technical Manager of TNFD, staff from its co-founder WWF and four of its [knowledge partners](#) – the Science Based Targets Network, the Global Reporting Initiative, the Capitals Coalition and the World Business Council for Sustainable Development.

In the December 2022 benchmark Vale was ranked the 5th best performing company. The 2019 Vale dam disaster – where a dam containing mining waste collapsed, sending millions of tons of toxic waste into surrounding areas - killed 270 people in Brazil. As of early 2021, senior staff at Vale were [facing murder charges](#) over the January 2019 disaster. In 2015, another mining dam operated by a Vale subsidiary - Samarco - killed 19 people and devastated 2 nearby villages. WBA's process does not require an expert review from communities, NGOs, lawyers or others making complaints or allegations about the company's practices.

Just months before the WBA report was published, in April 2022 the US Securities and Exchange Commission [announced](#) that it had initiated legal action against Vale S.A. asserting it had made "false and misleading claims about the safety of its dams prior to the January 2019 collapse". The SEC's complaint alleges that "beginning in 2016, Vale manipulated multiple dam safety audits...and regularly misled local governments, communities, and investors about the safety of the Brumadinho dam through its environmental, social and governance (ESG) disclosures' and that "Vale's public Sustainability Reports

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<sup>7</sup> A speaker from Rainforest Action Network was initially scheduled to appear on a World Benchmarking Alliance panel at the report's launch but upon seeing the findings withdrew from the event.

and other public filings fraudulently assured investors that the company adhered to the “strictest international practices”.” In a statement, Vale denied the SEC’s allegations.<sup>8</sup>

An unpublished analysis by Profundo of exclusion lists identifies that investors in nine countries have publicly named Vale on their exclusion lists, including TNFD taskforce members. This includes: Achmea, Cardano Group, MP Pension (Denmark), ATP Group, CZ groep, Danske Bank, DCB Financial, DNB, Ethias, Fonds de Compensation de la Sécurité Sociale, SICAV-FIS (FDC), Första AP-Fonden (AP-1), KBC Group, Kommunal Landspensjonskasse Gjensidig Forsikringsselskap (KLP), Länsförsäkringar, Lægernes Pensionskasse, Menzis, Government Pension Fund Global (Norway), Pensioenfonds Horeca & Catering (PH&C) (Netherlands), Pensioenfonds Vervoer (Netherlands), Pensionskassernes Administration (PKA) (Denmark), Orix Corporation, Pensioenfonds voor Huisartsen (SPH) (Netherlands), Storebrand, Swedbank, Sjunde AP-fonden (AP-7).

The Nature Benchmark report is a clear warning shot of the greenwashing potential of any attempt to evaluate company impact which does not center the voices of those most actually, or potentially, affected by its activities.

It is abhorrent that a company accused of causing the deaths of hundreds of people across multiple incidents, constituting a level of environmental and other abuse so extreme as to justify murder charges being filed was described as a top performing company on nature, alongside other problematic corporations.

This included Rio Tinto ranked fourth, that a little over 18 months before had exploded Juukan Gorge - a sacred site holding 46,000 years of continuous cultural connection of the Puutu Kunturrakama and Pinikura traditional owners, a legacy nine times older than Stonehenge. This is an irreversible tragedy for the cultural and physical landscape of humankind. Of note is that a month after the WBA benchmark’s release Rio Tinto’s operations in the Pilbara again made international headlines after a radioactive capsule was lost travelling from a mine site to Perth. An urgent public health [warning](#) stated that “exposure to this substance could cause radiation burns or severe illness” to people. It also posed a [threat to wildlife](#). While eventually the capsule was found, investigations into the incident are ongoing.

No-one involved in the Nature Benchmark report - including TNFD and its close partners – appears to have expressed public concern about the ranking of Vale. The fact that no victim-survivors have spoken out against the WBA Nature benchmarking finding also shows that those most impacted by corporations are far removed from the “market-led” conversation of how to assess their effects on people and biodiversity. This creates a dangerous echo chamber far removed from real-world evidence or even basic common sense, and it works to undermine the efforts of grassroots environmental and rights defenders.

This is one example that highlights the dangers of conflating company self-reporting with real-world company practices in ways that undermine and disrespect those harmed and calling for change. At minimum, it highlights the need for deep, independent scrutiny of how (not if) TNFD’s framework will be used for greenwashing and closing these loopholes.

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<sup>8</sup> As per a paywalled article cited by a [Harvard Law School](#) article.

### *Recommendation xiv*

TNFD should work together with its co-founders and knowledge partners to investigate and understand their role in the 2022 Nature Benchmark report, identify what specifically occurred that led to the report ranking Vale 5<sup>th</sup>, and publicly share lessons learned.

### *Case study 2: One of the world's largest fossil fuel financiers profiled as a thought leader on nature at global biodiversity talks*

At side events to COP 15 in Montreal, TNFD presented various events which included taskforce members. This included at least two events with Bank of America as a featured speaker - one of the world's largest fossil fuel financiers.

### **Table X: Banking of Climate Chaos reported ranking of banks which are the world's largest financiers of fossil fuels.**

[2022](#) - Bank of America, 4th largest, \$232 billion financing to fossil fuel sector in 2016-2021

[2021](#) - Bank of America, 4th, \$199 billion - 2016-2020

[2020](#) - Bank of America, 4th \$157 billion - 2016-2019

[2019](#) - Bank of America, 4th \$107 billion - 2016-2018

[2018](#) - Bank of America, 10th - 2015-2017

[2017](#) - Bank of America, 7th - 2014-2016

You do not need more data to know that being one of the world's largest financiers of fossil fuels is bad for biodiversity. The effect of this is to use TNFD's resources - which includes tens of millions of dollars in government funding - to provide a platform for corporations profiting massively from destructive industries. It is hard to convey how offensive this is to the work of many citizens, civil society groups, rights holders, unions, parliamentarians and NGOs who have campaigned for years for climate action on fossil fuels.

Putting one of the worst financiers of fossil fuels on a stage may also be interpreted, at least by some, as a dog whistle to communicate that companies linked to environmental harms have nothing to be afraid of from TNFD.

We note that no-one intervened in the planning of this event is indicative of the broader governance issues that we have raised about TNFD as a taskforce made up solely of global corporations. A decision-making body that had more balanced representation - including from those alert to the political and social dynamics of climate issues and business responses - would have likely been aware of the Banking on Climate Chaos reports or at least done basic due diligence on the credibility of corporations profiled and more broadly, those sitting on the taskforce itself.

1.j Disclosure metrics must focus first on the data more likely to shift corporate practices

Civil society groups have been vocal in highlighting the need for data which are most important and actionable for on-the-ground communities. To reiterate, reported data must include grievance list reporting, traceability and transparency data (including geolocation data), and natural resource footprint – particularly land footprint data.

Further, there must be clear, comprehensive and accessible public consultation processes on disclosure metrics – which must also allow for the necessary time needed to develop an informed opinion of the data approaches.

We note discussions of complex and granular data on biodiversity systems overlook and sidestep the first question that must be asked: What types of data – first and foremost – are more likely to drive change in corporate practices?

## Section 2: Comments on TNFD's Process

We believe that anyone who cares about biodiversity should have the right to understand proposals claiming to help address biodiversity loss – including TNFD, and the tools to allow their full and meaningful participation in contributing ideas to this process. Yet, as we saw also in Montreal, the vast majority of experts on biodiversity – including Indigenous Peoples, local communities, women's organizations, youth, scientists, government officials, environmental defenders or peasants – have no idea what TNFD is, and almost none have a working knowledge of TNFD sufficient to concretely see what its proposal would engender in individual cases they're familiar with. This is despite the Global Biodiversity Framework negotiations explicitly including discussion, over several years, of the role of markets, corporations, financiers and the financial system in biodiversity loss – which shows that many groups are well-versed in biodiversity-related concerns about corporate practices. This also violates the spirit of treaties such as the [Escazu Agreement](#) which “vows to include those that have traditionally been underrepresented, excluded or marginalized and give a voice to the voiceless, leaving no one behind” and includes measures on public participation, transparency and justice.

This poses the question of if the experts on biodiversity are not engaged in a meaningful way on TNFD than whose expertise is being listened to? Those who are leading the process are taskforce members. A taskforce which does not appear to require any biodiversity credentials, which is not diverse or inclusive of society, or even the business sector – and in fact includes several corporations who have a very poor environmental record.

We note that:

- TNFD has not developed any plain language easy-to-understand communications materials that allow people to concretely understand TNFD's proposals and participate meaningfully in decision-making.
- In discussions with civil society organizations, rights-holders, business experts and government officials we encounter frequent misunderstandings about TNFD, its proposed framework and even its composition (i.e. as a taskforce solely of corporations).
- Several individuals or groups seeking to input into TNFD, with a detailed working knowledge of corporate standard and framework development, have told us that even they find it very difficult to understand TNFD's materials.
- The lack of public submissions has prevented us from learning and gaining insights in the technical analysis in others' submissions. We are unaware, for example, what, if any, recommendations others have made on gender issues; how TNFD's approach compares with alternate models such as EFRAG; or specialist expertise on the pitfalls of different biodiversity metrics for corporate outcomes.

- Taken together, this contributes a massive burden to the few NGOs and civil society groups that are following TNFD – and leads to the overwhelming majority of civil society and rights-holder groups who have deep expertise on trying to safeguard rights and biodiversity and shift corporate behaviour being excluded.

2.a. TNFD taskforce expansion contravenes IPBES findings and qualifications to become a taskforce member remain unclear

In November 2022, TNFD announced that it had expanded the taskforce members from 34 to 40. In mid-2022, the foremost scientific body on biodiversity - IPBES - issued its values report. IPBES was explicitly created to strengthen the links between science and policy, and includes close to 140 member states. Among other issues, it raised the need for more inclusive and diverse decision-making and to amplify those with diverse relationships and views of nature, noting that a core driver of the biodiversity crisis has been the dominance of market-based approaches to nature.

To be clear, our organization and several others have issues with multi-stakeholder decision-making which typically adopt ways of working that are heavily biased in favor of corporate actors. We do not wish to join the TNFD taskforce as we believe it is not a process we could participate fully or fairly within, and that its structures and mission have been defined in ways we find highly problematic. We noted back in May 2022 that TNFD had not adopted a Due Process Protocol as its peer EFRAG has done.

Not only did TNFD not act upon the advice of IPBES, it appears to have acted against that advice. We can find no possible reason why its expansion did not, at minimum, include more diverse stakeholders. Nor does the taskforce represent the business community - there are no small-holders, small-businesses, worker-owned cooperatives, social enterprises, union representatives, faith-based pension funds, academic experts or other representatives of the business community, it is composed only of global corporations. It is less accurate to say it is 'market-led' than 'corporate-led'.

In [September 2022](#), we and several other NGOs gave specific examples of numerous TNFD taskforce members seen to have a poor environmental record, pointing out that this was incongruent with an evidence-based approach. The new TNFD taskforce members include Dow and Bayer. On Dow, Violation Tracker reports that since 2000 Dow Inc. and its subsidiaries have paid [\\$269 million in penalties or legal liabilities](#) in the US alone for environmental offenses, as documented through 175 separate records. This includes penalties paid in 2022 and 2021 for nine separate environmental violations. On Bayer, Violation Tracker reports that since 2000 Bayer and its subsidiaries have paid almost [\\$14 billion in penalties or legal liabilities](#) in the US alone for safety (including health impacts from harmful chemicals) and environment-related offenses. This includes penalties paid in 2022 and 2021 for five separate environmental violations.

2.b. Closed-door consultation continues to dominate TNFD process

While we note that TNFD has adopted some accommodations on its consultation processes, it remains overwhelmingly dominated by closed-door processes. Unlike ISSB, there are no notes provided from taskforce meetings or any other processes, such as guidance development.

- **TNFD Forum:** The TNFD continues to rely on its closed-door 'TNFD Forum' as the basis of consultation. To join the forum requires an individual or organization to sign a form stating that



they publicly support TNFD's mission and then be publicly named on its website. This delegitimizes the rights of groups who are still forming an opinion on the TNFD to take part, or groups who may be outright critical of the TNFD but wish to take part in consultations in order to press for improvements – and alert others taking part in consultations to their concerns. While TNFD keeps a list of the hundreds of groups signed up to the TNFD Forum, the TNFD does not disclose, for example, who the members of national consultation working groups are - although we have repeatedly made requests for this basic information. TNFD Forum remains dominated by business and government voices.

- **A focus on corporations, but not the public:** TNFD has presented at a wide range of events targeted at the financial or corporate sector (including the business stream at COP 15) - including a large number of expensive, paywalled events. But there appears to have been little effort to speak at events that target the public or those with lived, or technical, expertise of safeguarding biodiversity - including those pressing for change from companies and financial institutions.
- **No public information on how to take part in Indigenous Peoples and Local Communities consultation:** There is no public information on when, how or where interested Indigenous Peoples' can take part in consultations (other than providing a written submission, which requires a significant knowledge about TNFD to do). This is needed in addition to any engagement TNFD may be doing with a specific Indigenous Peoples' body.
- **Feedback provided by Indigenous Peoples to TNFD does not appear to be public:** To date, there is no clear documentation of the feedback that Indigenous Peoples' have provided to TNFD. It is therefore not possible to see if or how TNFD is responding to these recommendations.
- **Lack of plain language materials to date prevent most people from taking part:** Any who knows, or cares about, biodiversity should have the right to understand TNFD's proposals and avenues that allow them to provide appropriate, meaningful impact. However, TNFD has not developed plain language materials or communications outputs that allow everyday people, or even environmental policy-makers, to do this.
- Anecdotally, we observe that these **poor processes are contributing to:** a) few civil society groups working on nature issues knowing about TNFD; b) groups that want to know more about TNFD are often disengaged because TNFD communications are undertaken in a way that does not value their engagement, for fear of not being able to understand it's proposal and input in a way where they are confident of their recommendations; and c) it places a huge burden on the few individuals who do understand TNFD to field questions from peers and counter misunderstandings. Combined, this grossly erodes the capacity of civil society organizations and others to focus on developing responses to the actual TNFD text.
- Many groups who work closely with Indigenous Peoples' have raised these issues with the TNFD. This in addition to language and technological barriers, as well as a communications strategy that fails to make TNFD easily understandable or accessible.

The TNFD notes that it is consulting with global civil society organizations. To be clear, Rainforest Action Network and other groups we have been working with – have been extremely clear that our groups cannot and do not provide a diverse reflection of civil society working on nature issues, that it is imperative that the TNFD address its failure to include civil society voices and that there are a range of barriers that prevent a basis of fair consultation. While we acknowledge that TNFD has privately met with us multiple times, including senior and technical staff, we have been consistently clear on our concerns that groups with the deepest expertise in the on-the-ground realities of corporate-led nature harms and seeking change, have little, if any awareness, about TNFD.

TNFD does note that for consultation on v.04 (but not on v.03) submissions will be made public. This will allow the public and others to scrutinize who has taken part in the TNFD process, what they have said, and whether the TNFD has responded to this. We note that instituting this process on version 4 will allow us to gain a better picture of concerns raised, by who, and who is under-represented or over-represented in this process - but as this will be the last phase of consultation we will be unable to take on board this analysis in future submissions as v.04 is the final draft before TNFD will be finalized.

TNFD has committed to providing sample reports of what a TNFD disclosure could look like in v.04 – if done adequately, this should include a range of reports, across a range of realms and types of businesses – allowing people to more easily see what TNFD is proposing. Currently TNFD is largely inaccessible to anyone not spending hours pouring through technical documents.

#### 2.c. Who is writing TNFD guidances?

Basic information, such as which corporations or initiatives are leading or taking part in guidance development, is not known. This means that we don't even know such basic information as if corporations that have a poor reputation on environmental issues are highly involved in this process, or if guidance-writing processes are excluding key civil society organizations and rights-holder groups that have been highly involved in pushing for new sector norms (which we must assume they are). We have also pointed previously to broader concerns about guidance, such as drawing on frameworks based on SASB. Our understanding is that TNFD version 4 will include a massive data and policy download of guidances on a range of sectors and issues – this will create a profound capacity issue, and diminish the capacity for groups to work together to provide in-depth responses on all guidances of relevance.

#### 2.d. TNFD appears to still have no plan to workshop TNFD's proposals against real-world case studies of biodiversity harms

Since version 1, NGOs including Rainforest Action Network have consistently called for TNFD to have a systematic approach to using real-world cases, or anonymous cases drawn from real-world cases, to testing its recommendations. While it is helpful that TNFD has agreed to publish a series of sample TNFD disclosure reports with version 4 – this is separate to a process which starts with known cases to understand what a company involved would have to report, whether this would capture critical information and whether it could allow greenwashing and lead them to act differently or not.

TNFD and its co-founders and funders, have already resourced, staffed, planned and partnered on at least 130 pilot studies involving companies. These pilots seek to test the ease and practicality of company's applying the TNFD disclosure framework, through this to learn more about TNFD in more detail and allows them to provide recommendations. However, to date, TNFD has not had any form of structured approach to explore what should be the most fundamental question of its work. Would

reporting under TNFD’s proposed disclosures have made any difference to the outcomes of existing case studies involving corporations – including financial institutions – linked to actual or potential risks to nature and people?

To the best of our knowledge there has not been a single event that has sought to test TNFD’s recommendations such as with legal clinics, NGOs, Indigenous Peoples’ organizations, casework experts or others to understand what its recommendations would mean for those seeking to defend their rights and environment against harmful corporate and financial practices. We have also shown, in our own submissions, case studies that show the critical value of checking TNFD recommendations. This effort has required significant time, research, fact-checking and legal checks to seek to minimize threats that arise to those speaking out against company-led abuses.

First and foremost, these efforts should involve bringing people together to workshop and run through case testing. These efforts could also be complemented by desk-top research. Various databases catalogue detailed information about community and NGO-led complaints – including, but not limited to, the [OECD Watch Complaints Database](#), the [Business and Human Rights database](#) and the [World Bank’s Compliance Advisor Ombudsman case database](#). This information can also be cross-checked against a company’s own self-reporting. BankTrack’s [Dodgy Deals database](#) is also instructive of databases focused on certain sectors.

Buried in the text of version 3, TNFD invites NGOs interested in case testing to approach TNFD to express their interest. Since version 1 NGOs have already, and repeatedly, expressed the need for case testing. TNFD has already invested millions of dollars in company pilots, with tens of millions allocated for future company testing. Presumably, TNFD and its co-founders have sought to remove barriers to participation by initiating this activity and providing human, physical and technical resources for companies wanting to take part, which has included recruiting dedicated staff for this work.

Yet for case testing – which involves a cohort facing far greater resource and time pressures – including groups and individuals whose work involves responding to urgent violations of environmental defenders’ human rights and legal rights – the onus is on NGOs to initiate this work. This is exacerbated by broader issues in the consultation processes that mean that very few civil society groups or law clinics working on related casework are aware of TNFD, its implications or understand its framework – which makes it even more unlikely that anyone external to TNFD’s processes is able to organically resource and initiate such work.

#### *Box 6: The importance of case studies: Salmon Fresco*

With version 3, the TNFD has released an aquaculture case study which gives a hypothetical background example of a company’s current operations and practices - and then presents the box below to describe what would be disclosed under the TNFD framework. While this box describes the response to the TNFD framework, it is not a sample TNFD report.

### Box 11: Disclosing against TNFD recommendations

Salmon Fresco's TNFD disclosure reports against each of the TNFD recommendations:

- **Governance:** Its governance section outlines its board and executive's oversight of nature-related risks and opportunities alongside climate-related risks and opportunities, and its management's role in assessing and managing nature-related risks and opportunities integrated with climate-related risks and opportunities, including involvement in strategy setting, risk management and performance monitoring.
- **Strategy:** In the strategy section, Salmon Fresco has described its interactions with low integrity/high importance ecosystems. It has listed its material risks and opportunities, classified them as short, medium or long term, and described how they have been integrated into the company's strategy and financial planning. Salmon Fresco has not yet implemented a scenario analysis but plans to do so in the next three years.
- **Risk and impact management:** Under the risk and impact management section of the report, Salmon Fresco describes how the TNFD LEAP approach was used to identify and assess nature-related risks and opportunities, including stakeholder and rights-holder engagement, and describes all relevant risk management and mitigation measures, as well as how these process for identifying, assessing and managing nature-related risks are integrated into Salmon Fresco's overall risk management.
- **Metrics and targets:** Lastly, under the metrics and targets section, the company discloses the metrics it used to assess material risks and opportunities, impacts on nature, and the metrics used in LEAP component P2. Targets have yet to be established but Salmon Fresco describes its intention and high-level approach to target setting, including a commitment to establish science-based targets for impacts on nature.

However, in lieu of a sample report, we will take this opportunity to show how this case study provokes specific questions of TNFD. This stresses the critical importance of sample disclosure reports as a more tangible way to feedback and provide analysis on TNFD's framework.

- The disclosures discuss the metrics the company uses - but the wording is ambiguous – it's not clear if it will disclose its actual impacts on nature or will just report the metrics it used to find its impacts on nature to be.
- It states that it will develop targets. It's not clear whether the company has previously set related targets – and if so, if it met or failed those targets.<sup>9</sup>
- It appears that the report would state how it has met with rights-holders to inform its overall assessments. However, the report does not let us know if communities, media investigations or environmental organizations have made complaints or allegations against the company - for example, its environmental impacts, animal cruelty or human rights impacts such as if Salmon Fresco is displacing local small-scale sustainable fishing.

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<sup>9</sup> For example, in the decade leading into 2020 hundreds of companies, and a handful of banks, signed onto initiatives to address deforestation and related issues in certain forest-risk commodity supply chains and financing. Various governments also made commitment. Yet it appears that not a single company met those 2020 commitments. Concernedly, there have now been attempts by other initiatives to move the goalposts to 2025 or beyond, as well as specific examples of individual companies doing this. Yet knowing if a corporations fails to set the targets it sets itself, is extremely pertinent to appraising the value of those targets to understanding a corporations actual practices.

- The company has said that it will ask its third-party suppliers to let it know where the fish supplied comes from (which Salmon Fresco should have been doing anyway to ensure it was not trading in products produced illegally.) However, because the company does not need to disclose supply chain data under the TNFD framework workers or others raising the alarm about problematic fisheries wouldn't even know that Salmon Fresco is buying from them.

In short, off the basis of this report alone it is extremely difficult to reliably distinguish what Salmon Fresco's real-world impacts are.

A second box then refers to how a user of this report – Finance4Life – may consider Salmon Fresco's information in its own disclosures. The description outlined is problematic for two reasons. Firstly, it implicitly appears to suggest that Finance4Life checking for certification and reading a company's self-report is sufficient due diligence. While certification can form part of a business' due diligence, certification in and of itself is often highly problematic – as highlighted by [Greenpeace](#), and far from a guarantee that a business is acting ethically, or even legally.

A company's self-reports are hardly an objective source of information. Salmon Fresco's key business is salmon fishing in Chile - an industry already subject to a number of media exposes, including that companies operating in Chile are using environmentally harmful practices that would not be accepted in other jurisdictions and that industrial salmon fishing has displaced small-scale local fisheries. (We also do not know if Salmon Fresco itself is lobbying the government against adopting stronger standards).

Secondly, is the suggestion that the Salmon Fresco report 'informs Finance4Life about the extent of Salmon Fresco's risk mitigation and activities that mitigate negative impacts'. However, the Salmon Fresco report misses fundamental information of what its risks and impacts are. It does not tell us:

- Is it facing complaints about its human rights and environmental practices?
- Has it been fined by regulators for non-compliance?
- Is it lobbying against stronger laws to protect nature?
- Do people affected by its operations or sourcing even know that Salmon Fresco is buying from their local area?

### Section 3: Generalized concerns on the adverse impacts of TNFD on public discourse and policy

The two earlier segments of this submission relate to analysis within the parameters of TNFD's proposed framework and its processes. In this section, we wish to create a record of generalized concerns. These specifically relate to the context in which TNFD operates and its influence on broader public policy discussions. This includes highlighting the disconnect between its activities and expert recommendations - including from the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) and key UN bodies. We feel in this context it is important to create a public record of these concerns. However, we also share them in a spirit of transparency to present an opportunity for the TNFD secretariat, the taskforce members, its founders or funders to respond.

3.a. TNFD's proposed approach is not the solution that rights holders and the victims of the nature crisis would have devised and the re-tooling of our financial infrastructure that is so desperately needed

*Note: This section is excerpted from RAN's May 2022 submission to TNFD.*

“While this submission focuses on analysis and recommendations that respond to TNFD's proposed model, we also wish to briefly note that TNFD's framework clearly has not been rights holder led or victim led. By rights holder we refer to stakeholders whose human rights may be positively or negatively impacted – such as Indigenous Peoples, Afro-descendant communities, local communities or land and environmental defenders, including women and youth within these groups. Rights holders have a broad and diverse role in local and global environmental [leadership](#), including spearheading new analysis, solutions, ambition and pathways for the future. Corporate-led harms to nature can be nuanced and complex, and should be approached as such, which requires diverse perspectives. However, we cannot overlook that in the case of many environmental abuses, certainly the most serious, there are victims and perpetrators in some form – not simply different stakeholder groups. Trauma-informed approaches believe that the integrity of evidence-gathering and decision-making relies on elevating the voices and recommendations of those with lived experience of how abuse unfolds. They recognise that without particular effort to centre these voices or marginalised peoples more generally, their views will be sidelined, we will default to our own assumptions of their experience or fail to consider it at all.

The model that TNFD proposes is not the solution that those on the frontlines of the nature and human rights crisis would have devised. TNFD does not challenge business' right to profit off harms to nature or acknowledge the vast inequalities in access or control of land, water and forests as key to the nature crisis. It does not identify that fundamental to shifting outcomes for nature is requiring respect for nature's own right to exist and to thrive. It does not identify that impoverished wages or below-poverty prices to farmers, failure to respect the wishes of local people to protect nature and the undermining or ignoring of existing laws by business is fundamental to many of the most egregious environmental and human rights abuses. It ignores the structural and physical violence that often lies at the heart of this process. The TNFD report repeats claims that the issue is a 'data gap' without acknowledging that businesses who chose to operate or finance companies that operate in high-risk areas have failed to make transparency or traceability a contract requirement and that when presented with evidence of harms to people and nature they routinely fail to act on rights holder concerns. It does not acknowledge that local people are systematically denied the basic right to even know the names of the companies or financial institutions that are buying or financing operations or supply chains in their local area. It appears to suggest that the elite global companies and financial institutions that have been at the heart of the nature crisis and been key architects in shaping and maintaining the status quo are the best placed to re-tool our global economy. TNFD is silent on what kind of economic system supports nature which we believe can only be achieved by de-growth and economic democracy, particularly equitable sharing of natural resources. TNFD is silent on the role of justice in protecting nature, including widespread impunity for corporate environmental crime and the persistent and ongoing injustices of colonialism, intergenerational inequities and gender and racial injustice. In its current form TNFD ignores such fundamental aspects as the centrality of protecting the human rights of those who seek to care for or depend on local nature and requiring business to report on their harms to nature. All of these issues can, and should, be addressed through concrete and practical initiatives to transform our global financial system and TNFD's proposal risks distracting from the changes we need.”

### 3.b. Global corporations writing future regulations is a dangerous precedent

TNFD is led solely by a taskforce of 40 global corporations and as a voluntary initiative is predicated on making itself attractive to the corporate sector. It is not, for example, led by environmental defenders, Indigenous Peoples or grassroots organizations that have been at the forefront of trying to protect biodiversity from harmful practices.

Below are examples of where TNFD's co-founders, and even at points its Co-Chair and taskforce members, have made statements that suggest TNFD as a template for future government regulation. It is not appropriate that a framework written by global corporations should be presented as a template or blueprint for future regulations, or as the starting point for those regulatory discussions. Noting that civil society groups working most closely on biodiversity issues do not come to that conversation with the resources and backing of an initiative with a budget in the tens of millions of dollars, backed by some of the largest corporations on the planet and with pre-existing relationships with central banks. This would also contravene commitments under existing treaties, such as the [Escazu Agreement](#) where Latin American and Caribbean signatory states have agreed "each Party shall adopt measures to ensure that the public can participate in the decision-making process from the early stages".

**May 2021:** WWF, in what appears to be its [funding proposal](#) for TNFD to the Global Environmental Facility, writes: "Strong government engagement is vital to help translate the TNFD framework and recommendations into public policy development. This will help replicate the success of the TCFD in being adopted under national regulations such as the TCFD reporting requirements mandated under France's Article 173."

**March 2022:** TNFD co-founder Global Canopy [wrote](#) about a "regulatory push necessary for rapid implementation [of TNFD]", noting that "in the climate space, we have seen an increasing number of financial regulators move towards mandatory disclosures of climate-related risks, including most recently [the US Securities and Exchange Commission \(SEC\)](#). Nature-related disclosures should follow, as financial regulators are increasingly recognising that nature is as equally a significant financial issue as climate."

**March 2022:** PwC – which is a TNFD taskforce member – [writes](#) "TNFD disclosures will be voluntary, however, there is a high chance that their recommendations will be adopted by regulators in due course in a similar way to how the TCFD now informs mandatory climate regulations in a growing number of jurisdictions."

**May 2022:** The TNFD Technical Director is [quoted by ESG Clarity](#) as saying on a roundtable at the UK Houses of Parliament: "There is a push for convergence. The TNFD will initially be market-led and voluntary, but there will be a decision on whether and when it is mandatory."

**July 2022:** TNFD co-chair Elizabeth Maruma Mrema is interviewed by Responsible Investor, the paywalled article has the heading "[Make TNFD reporting mandatory](#)", says head of UN biodiversity convention: Elizabeth Maruma Mrema calls for government action ahead of crucial UN COP15 conference in December."

**October 2022:** TNFD co-founder UNEP-FI in its [TNFD Financial Market Financial Readiness Assessment](#) report wrote (p.18) that "the TNFD should engage with governments, supranational bodies and policymakers to influence the regulatory agenda on the TNFD and nature-related financial disclosures."

**December 2022:** TNFD co-founder WWF [recommended](#) to central banks and financial regulators that they “define reporting templates based on the Task Force for Climate-related Financial Disclosures (TCFD) and the Taskforce for Nature- related Financial Disclosures (TNFD)”.

**December 2022:** On a public panel at COP 15, which included a senior staffer from the French central bank working on biodiversity issues, a TNFD taskforce member on the panel proposed that a representative of the French central bank could sit on the taskforce.

3.c. Bait and switch: Reporting initiatives are undermining policy and legislative change that would see biodiversity harms become a business risk to firms

In November 2022, the Green Finance Observatory published [an open letter](#) signed by 119 experts from academia and civil society - this open letter outlined a series of concerns about the ‘nature positive’ agenda. The list of signatories included researchers and analysts at the International Energy Agency, IPCC authors, academics in various fields and organizations from the Global South and Global North. The open letter specifically noted that **“most often financial regulation for sustainability purposes does not come in addition to appropriate environmental policies but instead of it”**, outlined in further context below:

“The nature positive agenda also includes calls to central bankers and financial supervisors to use monetary policy and financial regulation, for example through publishing their own transition plans, to address the biodiversity and climate crises. While this could be a good idea all other things being equal, here is why we find this suggestion problematic in the broader political context: - It diverts the conversation away from the need for tighter environmental regulations curbing biodiversity destruction: all the media and policy space used to discuss the regulation of sustainable finance is not used to discuss the inadequacy of our conservation policies, and can give an illusion that the issue is being addressed. Likewise, **most often financial regulation for sustainability purposes does not come in addition to appropriate environmental policies but instead of it**, as private lobbies are prompt to claim that there is no longer any need to tighten conservation regulations...” [emphasis added]

The theory of change behind TNFD is to require companies to speculate how in future activities that are harming biodiversity (and people) today that come at little or no cost, may shift to present a financial risk to companies in future as new policies, legislation, regulation and consumer expectations see harms to nature become a legitimate business risks.

Yet today we observe that the self-reporting model is crowding out, undermining and in some cases being used to directly make the case *against* the very policies and initiatives that make environmental and social harms a legitimate business risk. More generally, we see a shift to focus on disclosure undermining work built-up over decades, that has been driven by those most affected by threats to their rights, lands, waters and forests. In the worst examples there is a ‘bait and switch’ – where momentum calling for tackling the role of the financial sector in human rights and environmental harms is redirected from issues such as liability, legal responsibility and obligations for redress, to be crowded out by a focus on reporting. This is exacerbated by the issues outlined in Section 2 – that most people are unable to understand, or meaningfully engage on, the substance of TNFD making it hard for them to respond when they observe these ‘bait and switch’ tactics taking place.



**Example 1, Global Biodiversity Framework negotiations:** Heading into the Montreal talks, the draft Global Biodiversity Framework included draft language under Target 15 that businesses would face **liability** for their harms to biodiversity and a requirement to cover **redress**. These were points emphasized by the civil society and rights holder groups working on the GBF - such as the CBD Alliance, and in the Friends of the Earth International [Nature of Business](#) report. In December 2022, over [70 NGOs](#) wrote to governments to emphasize the critical importance of ending impunity of corporations and financial institutions. This reflects the common-sense view that if businesses face no meaningful consequences for harming biodiversity - and are in fact able to keep the profits they make from such harms - little will change. Yet there was scant, if any, mention of the need for liability and redress in any of the dozens of official and side events in the business and finance stream at Montreal. This included events organized by, or including as speakers, TNFD co-founders, staff or taskforce members. These almost exclusively focused on the need for company self-reporting on their own performance (and tools to do this) or on how to price nature correctly in order to incentivize change. Some discussion focused on the need for reporting to be 'mandatory' rather than voluntary – but without acknowledging that what is made 'mandatory' should be key to the discussion – as if what is reported is not trustworthy, accurate or able to effect change is not helpful.

In the later stage of the GBF negotiations, we observed in at least one session a huge amount of negotiating time was spent on the target related to company self-reporting - particularly by the UK negotiator. Despite being in successive drafts over years, and supported by the CBD Alliance, the language on 'liability' and 'redress' was cut at this point with no discussion at all. While the final Global Biodiversity Framework requires governments to 'align financial flows' - which cannot be achieved without addressing impunity - it is unhelpful that language that would have specifically drawn attention to liability and redress was cut.

We are also deeply concerned that an initiative written by global corporations - which was still in draft form and therefore its final content is not known - was included as a suggested 'indicative indicator' for the government-focused target under the Kunming-Montreal Global Biodiversity Framework. Particularly disturbing is that it was included under the government-focused Target 14, while the language on company reporting comes under the business-focused Target 15. This appeared to occur with little, if any, debate or discussion and we believe it highly likely that most negotiators have no working detailed knowledge of TNFD. This raises questions as to how exactly this indicator was included, what role corporate lobbying had in this process and what responsibility TNFD itself has to speak publicly about what its framework is and is not well-suited for.

More broadly, we see a push to shift discussions about 'accountability' - from corporations, and individuals within them, needing to face meaningful legal and other consequences for their proportionate role in harms; to 'accountability' being reduced to writing a report, based on a framework written by corporations themselves. In December 2022, as talks resumed, Friends of the Earth International [specifically raised this point](#) to the role of TNFD, in that "it could serve as a 'misdirect' – that is, a push for financial-risk reporting as the 'answer', eclipsing demands for a *reduction* in corporate impacts on biodiversity [as had appeared in earlier drafts of the GBF], and sidelining issues like business impunity for environmental and human rights harms." And added "this proposal is being strongly challenged by environmental and social justice organisations."

**Example 2, UK anti-deforestation law expert findings on finance:** In mid-2019, the UK government appointed the [Global Resources Initiative Taskforce](#) to advise it on measures to address its deforestation footprint. The taskforce included members from financial institutions, companies and civil society organizations.

As the Chair of the taskforce, a former Chair of Barclays UK wrote in a 2023 [open letter](#): “In March 2020, the GRI Taskforce strongly recommended the introduction of new legislation to prevent the financing of deforestation by UK financial services. This was followed by a more detailed set of recommendations for how this could be achieved in May 2022...The GRI Taskforce concluded its work in May 2022 by reiterating the need for new legislation to provide due diligence obligations for financial institutions equivalent to those that will be placed on supply chains companies under the Environment Act 2021. **Our analysis concluded this to be necessary because risk reporting mechanisms such as the Taskforce on Nature-related Financial Disclosures (TNFD) and voluntary net zero pledges are insufficient to prevent deforestation financing.** To this end, the Taskforce recommended the Government should make it illegal for financial institutions to invest in or lend to supply chain companies that are unable to demonstrate forest risk commodities have been produced in compliance with ‘local laws’ (i.e. legally).” [emphasis added] This advice is not isolated, in [September 2022](#) the EU Parliament voted to ensure the inclusion of provisions on finance attached to a forthcoming regulation on deforestation-free products. A final EU trilogue agreement in December 2022 committed to developing a regulatory proposal for this financing aspect within two years.

However, Global Witness [writes](#), in December 2022 in response to proposals in UK parliament that the UK should enact regulation on finance and deforestation – effectively instituting the GRI finding - the Economic Secretary for Treasury has “appeared to suggest that the Taskforce on Nature-related Financial Disclosures (TNFD) could solve the UK’s deforestation financing problem, despite overwhelming evidence to the contrary”. Similarly, in the government’s [November 2020 response](#) to the [initial GRI report](#) recommendation that the government should explore measures to cover financial institutions similar to those introduced on companies under Schedule 17 of the Environment Act – it extensively discussed the TNFD. However, it did resource an extension of the GRI to focus on the finance question, and another 18 months of expert deliberations [clearly concluded](#) that regulatory measures on the actions of finance (not just reporting, or even regulating reporting) was required. The work of the taskforce included reviewing research that pointed out that in the UK – and likely many other jurisdictions – it appears to be currently legal for a financial institution to knowingly handle the proceeds of environmental crime – including providing financing to and managing the accounts of companies engaged in environmental crime - provided that a crime designated a ‘financial crime’ has not occurred. For example, a bank may bear some liability under anti-money laundering laws if a client business takes steps to hide where its revenues have come from, but not if it openly states where its revenues come from while unable to provide reasonable evidence that its operations are legal (such as not knowing where its products come from or have outstanding legal cases against it). This similarly applies to the social dimensions of deforestation – such as land-related human rights abuses. Several TNFD co-founders and taskforce members either served on the GRI taskforce itself or worked as part of the expert finance working group advising the taskforce. The UK government is, we understand, a significant funder of TNFD itself.

While there are examples of individual companies and financial institutions that are vocal in support of the policy and legal solutions proposed by at-risk communities and environmental defenders – such as a focus on addressing corporate impunity and justice, ending harmful subsidies and shifts away from harmful production models to helpful ones, we observe the vast majority of those extremely vocal on reporting initiatives are not. TCFD, TNFD and similar disclosure initiatives have come to dominate the policy landscape. Today, we perceive that the unprecedented time and resources focused on reporting initiatives – often championed by the corporate sector itself and with a budget in the tens of millions of dollars – is distracting from calls for justice, liability, redress and a fairer and more equitable sharing of access to nature and resources that have long been prioritized by those on the frontlines of trying to defend their rights and biodiversity. To the best of our knowledge, we estimate that TNFD budget is well in excess of USD\$50 million – an initiative led by many of the world’s largest and most powerful corporations, including several with an extremely problematic environmental record.<sup>10</sup>

3.d. TNFD’s structure and model appears to ignore, or contradict, recommendations of IPBES and key UN agencies

In 2022 alone:

- The IPBES values report, three years in the making, clearly outlines the importance of justice, democratic and inclusive decision-making and the need to promote in public policy more diverse worldviews on our relationships with nature - calling out that the dominance of market-centered thinking has driven such harms. These findings have profound implications for the impacts and context of TNFD. Yet it does not appear that TNFD, or those backing it, have engaged with these core recommendations and TNFD continues to focus the vast majority of its efforts on empowering corporations. In fact, TNFD’s decision to expand its taskforce directly contravenes IPBES’ advice – by adding 6 new corporate members. At the same time, TNFD writes that it is “drawing on the scientific work of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES).”
- UN Women [cancelled](#) a partnership with BlackRock after an open letter signed by over 700 feminist organizations and further campaigning. This opposition focused on BlackRock’s reputation as one of the ‘worst performers’ on corporate accountability - particularly its social and environmental impacts. Yet BlackRock continues to sit on UN co-founded, backed and funded TNFD taskforce.
- A report by the [UN working group on business and human rights](#) specifically recommended that there needs to be less corporate influence in the political and regulatory sphere. At the same time UNDP and UNEP have co-founded a corporate taskforce and persistently worked to elevate business views. This includes a TNFD ‘market readiness survey’ with companies and staffing full-time positions to support corporate pilots and corporate engagement with TNFD. As far as we are aware, the two UN agencies have made little, if any, effort to engage directly with civil

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<sup>10</sup> This is an estimate as TNFD does not appear to publicly disclose its total financing. At launch, the June 2021 Nature in Scope report advised that TNFD should have a USD\$15 million budget across two years. The Global Environmental Facility provided \$1.7 million. In December 2022, NICFI announced an estimated 1 million euro in funding and German government 29 million euro. In addition, UK government referred at making potential an ‘additional 3 million pounds’ available to TNFD (the status of this commitment is unclear).

society groups, environmental defenders, community organizations or NGOs that have not self-selected to be part of the TNFD Forum. In effect, their role appears to have legitimized a process that is opening the door for TNFD to further elevate the voices and interests of global corporations. For example, TNFD taskforce regularly appear on panels alongside central banks, government officials, UN officials and international public policy makers and at paywalled events for business – reinforcing the reach and voice of global corporations, and under-mining the voices of those most marginalized by biodiversity loss and related human rights harms. We have repeatedly stated that we believe TNFD’s statements directly contravene the advice of UN agencies on a host of issues related to marginalized people – from the absence of a gender analysis of proposals, to the side-lining of environmental defenders and others with lived experience of corporate harms.

### 3.e. Data as delay: The new frontier of ‘discourses of delay’ and corporate strategies to evade climate and broader environmental action and accountability

Those studying the response of fossil fuel corporations to climate change over decades have summarized tactics and strategies of misinformation and disinformation to include ‘discourses of delay’ which justify inaction or insufficient action.<sup>11</sup> At a conceptual level, we observe similarities with a narrative of data-based delay attached to disclosure initiatives. This appears largely based on business self-statements of what they say would lead them to act, rather than an evidence-based approach of what actually compels business behaviour change and what doesn’t. As previously pointed out, to the best of our knowledge neither TNFD nor its co-founders have systematically examined what *types* of business interventions are most effective.

Those closely involved in TNFD sometimes legitimize or promote a narrative that suggests that businesses have failed to act because of insufficient ‘data’ about biodiversity, climate or related human rights impacts - and this is justifying further inaction as suggesting they need still more ‘data’ in coming years until they can act.

We read as implicit in this narrative, at times, a view that businesses should not immediately and decisively act on concerns of environmental illegality, human rights abuses or environmental practices that harm biodiversity and the rights of nature – but that any action should be weighed against the balance of their entire portfolio. This acts to legitimize and excuse businesses violating national and international law - or enabling, motivating, facilitating of handling the proceeds of such violations.

For example, in November 2022, TNFD co-founder Global Canopy [wrote](#): “While a lot of data exists on the state of biodiversity itself, data on how biodiversity is relevant to financial institutions that can easily be meaningfully integrated into their decision-making processes has been limited.”<sup>12</sup> In December 2022, S&P Global – a taskforce member – [wrote](#): “Although the majority of the Earth’s biodiversity is found in developing countries, the data from just 10 countries — the United States, Australia, South Africa and

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<sup>11</sup> For example, see William Lamb et al., ‘[Discourses of delay](#)’, Global Sustainability, Cambridge University Press. 1 July 2020.

<sup>12</sup> In 2022, it was reported that HSBC paid [2.2 billion pounds](#) in staff bonuses alone. Bloomberg reported that the CEO of BlackRock received USD [\\$29.9 million](#) compensation for 2020. A July 2022 [analysis of bank salaries](#) identified that the number of staff who earned 1 million euro or more in a single year included: 476 staff from Deutsche bank, 566 staff at Barclays, 426 at HSBC, 284 at BNP Paribas and 185 at Santander.

seven others in Europe — accounts for 82% of all available biodiversity records, the report said. All other countries comprise the remaining 18% of records, the report said,” and then added “This lack of granular data across geographies could make it harder for companies to understand their biodiversity-related supply chain risks, particularly if their supply chains extend into developing nations.”

On the face of it this can appear a reasonable statement, but delving deeper the problems are clear. A company doesn't need 'granular data' on biodiversity to act. For example, climate scientists and the International Energy Agency have already called for no new oil and gas fields – financial institutions, including insurers, heading this advice do not need further granular biodiversity data provided by very the companies whose projects and operations ignore these recommendations. Additionally, as many NGOs, community organizations and environmental defenders have called for, again and again – if a company or financier simply publicly disclosed their supply chain and investment chain this would remove a critical barrier to people on the ground to connecting the company to its true impacts. Similarly, if a community is calling for harmful industries and sectors to exit their local area or to stop sourcing from supply chains linked to ecosystem destruction – it is not required that a company has 'granular data' about each individual plant or animal species that lives in that ecosystem.

Various groups have raised concerns surrounding this issue of data as delay.

- During COP 15 events a representative of the Dutch central bank made the point that while more data is welcome, there is already sufficient data to act. Reclaim Finance has also [observed](#) this “the “data gap” argument used... to justify that only disclosure and reporting are needed to address the climate crisis also suggests that financial players can delay climate action while waiting for the data to be available. As the NGFS and ECB board member Frank Elderson recently stressed, while obtaining better data is always useful, we already have information that allows us to act, and we should immediately use it.”
- In November 2021 a group of almost 40 NGOs and civil society groups [noted](#) that: “Time and time again, NGOs and communities have reached out to specific banks, investors or asset managers with detailed, and often horrifying, accounts of forest destruction and associated human rights abuses linked to their financing. Communities’ requests for action are overwhelmingly ignored. Financial institutions accrue vast profits and often bankroll the same company behind this destruction for years to come.” This pointed out that investors and financiers are failing to act on available data, and implicitly referred to delaying techniques - for example, by allowing deforestation to continue to a future date (i.e. 2025, 2030 etc).
- In its extensive analysis of what it describes as [BlackRock's lobbying 'web'](#) in influencing EU policy, Reclaim Finance also points out that the “all you need is data - nothing more” is part of a playbook of avoiding more meaningful action. For example, requiring no new investments in fossil fuels in line with recommendations from the International Energy Agency and scientific analysis.
- In June 2021 - the same month that TNFD officially launched - [Global Witness explicitly described](#) how narratives about 'data' were used by banks to evade meaningful action and accountability in response to its investigative reports, noting: “A common excuse for why banks haven't done better checks on their clients' environmental records is to claim that the supply chain data simply isn't available. Of course, a company which knows its responsible for deforestation has a strong incentive not to supply their bank with evidence of their wrongdoing.

So, unless banks require that companies hand over that data as a condition of lending to them, there's a high chance it will remain unavailable. A bank wouldn't approve a mortgage to someone who refused to provide information about their employment status, income, or credit history. Yet we're expected to think it's reasonable for these same banks to give truckloads of money to high-risk companies that source goods from the middle of the forest without knowing what they're doing or buying?"

- Similarly, it is hard to argue about the efficacy of reporting initiatives in delivering change at pace when half a decade on from the launch of the TCFD framework we see oil and gas companies posting historic profits in the tens of billions of dollars. And, that multiple members serving on the TNFD taskforce itself continue to invest in or loan to fossil fuel companies despite the abundant evidence of their impacts on climate and nature.

### 3.f. What role does TNFD play in the further commodification of nature?

In April 2021, a group of eight NGOs raised with the technical expert group scoping TNFD the importance of making space to discuss if TNFD could exacerbate the commodification of nature. At COP 15, we were reminded of the importance of this question. Various rights holders and civil society groups organized events or discussed concerns in Q&A about whether further commodifying nature can, and will, exacerbate the biodiversity crisis.

In mid-2022, the IPBES values report explicitly pointed out the challenges that a market-based focus on nature have had in driving the biodiversity crisis – and the importance of valuing, amplifying and shifting public discussions to broader relationships with nature. Fundamental to this is nature's intrinsic right to exist – whether or not a company believes that respecting this right is beneficial or not. Equality is also a dynamic – as commodification, by putting a price on nature, gravitates control and access to nature to those who have the most money and the resources to defend their interests. Today, various studies have shown it is the most marginalized populations who are denied access to nature or are most at risk for trying to defend it. For example, see [here](#), [here](#) or [here](#).

Below is an excerpt of a January 2023 Ted Talk by Papua New Guinean human rights advocate Manu Peni '[The sustainable brilliance of Indigenous design](#)'. While Peni was speaking to the expertise of Indigenous design and sustainable development, his talk also provides a concrete, place-specific example of the importance of focusing on commodification.

"I come from one of the most beautiful places in the world... I grew up in this paradise until I had to attend a modern education away from my home... **The world thrived for centuries until logging, mining and other extractive and destructive development ripped resources from the earth. And here we are, looking at experts who advised on that to advise to us to the solutions for climate change.** Maybe we need to rethink about the definition of experts. Maybe the experts are the Indigenous Peoples who have lived lifetimes and centuries and have protected the earth and can help heal and save it now. I learned the value of my Indigenous knowledge and traditions the hard way... We also are beginning to see that in our world where we live there is an emphasis on kinship, relationship and social capital which underpins an equitable and connected economy and society which is also the currency that my people still use today... **I feel that many cultures and communities across the world are in such a hurry to alienate themselves from the nature and treat everything as fragmented bits and pieces that can or cannot be traded...** It would be against our traditions ... these traditions that we have and these philosophies have

guided us for 50,000 years of sustainable development. Stop thinking of us as underdeveloped, uneducated and uncivilized and stop insulting our home which is the rivers, the forests, the lakes and saying this is also underdeveloped and underutilized... Our cultural traditions are so sophisticated we've been able to use these to protect our forests and resources. **In fact, its rampant consumerism, greed, imperialism often your way of seeing the world and seeing us that has hurt the planet...Stop thinking that the modern way of building our future is the best it probably is a problem too.** Communities closest to the climate crisis are also communities closest to some solutions. Learn from us. Try to understand. Respect and heed Indigenous guardianship." [emphasis added]

This example speaks to the importance of creating public dialogue on the commodification of nature. This includes spaces to discuss whether TNFD or similar efforts led by global corporations are likely to reinforce or even exacerbate commodified views of nature that treat nature as 'fragmented bits' to be 'traded'.

3.g. TNFD will not provide objective materiality data for economic policy makers

Anecdotally, we have observed in some public discussions a reference to the data that TNFD will provide. At times, this appears to suggest that company self-reporting will serve as an objective data source for central banks and others to inform economic analysis. This subtly serves to elevate the role of global corporations in public policy in ways that undermine the basic tenants of sound governance and public policy and further excludes or distances those doing the most to safeguard biodiversity and those most impacted by biodiversity loss.

While company self-reporting can provide insights – it is not an objective source of economic data. Even in an idealized scenario of completely honest reporting, a company self-report will not incorporate opportunity costs of its operations to the economy at large. For example, a company undertaking a pipeline will not include in its report how its activities affect the local tourism economy or the economy of local food systems. A company undertaking industrial agriculture or factory farming will not provide an objective analysis of how its operations compares against small-scale farmers competing for the same land and resources. A global bank is not going to compare how the entirety of its investments match up against a local credit union that has the capacity to provide smaller loans and services to micro and small enterprises.

Additionally, we know that company self-reporting is one-sided. By its nature, company self-reporting is not objective or bound to evenly weigh diverse perspectives from different social actors. It is produced from the perspective of those working in a company – not those impacted by it.

Additionally, further to the issues on equity raised in section 1 – it is imperative for central banks, international agencies, academics and others to urgently assess whether the pricing of nature-related risks could exacerbate the current debt crisis facing many low-income countries.

3.h. Reporting initiatives like TNFD do not stop business keeping the profits made from harms or see them face meaningful consequences for wrong-doing

The sum effect of the dominance of corporate voices in public policy discussions about how to address the broken market structures which are driving biodiversity loss and related human rights abuses, is that

this is dramatically shifting how we talk about the problem and the solution. As a result, even the most basic, intuitive points are left out of the discussion.

First and foremost, reporting initiatives do not stop businesses from keeping the profits they make from harms and breaking their own policies, or even the law. So long as corporations can make profits from poor practices, and never lose money as a result, we can expect the status quo to continue. This is a textbook example of moral hazard.

Secondly, reporting initiatives do not advance accountability. Grassroots leaders working to protect their rights, lands, waters and forests have been adamant that they want those perpetrating or profiting from harms to face meaningful consequences under the law and to have to provide redress that results in meaningful change in the day-to-day lives of affected peoples, as well as affected plants, animals and ecosystems.

Thirdly, to solve the biodiversity crisis we need to empower those who have the best track record on safeguarding our remaining lands, waters and forests. It is communities who lack resources, not corporations.

*Box 6: It's hard to understand what TNFD is, it's easier to understand what TNFD isn't*

The lack of plain language, community-focused tools for communicating about what TNFD is or isn't continues to exclude the vast majority of groups who have deep expertise on biodiversity from understanding it. In the many discussions we have had with individuals or groups who are unable to understand, or misinformed about TNFD, we find it easiest to start by explaining what TNFD isn't. This analysis is generally framed from the position of the asks and focus of what groups trying to defend their land, forests, water and sky from corporate harms have been calling for.

Under the TNFD would a company or financial institution:

- Face legal consequences for causing environmental & human rights abuses? **No.**
- Have to give up the profits it made from harmful financing? **No.**
- Have to provide remedy and redress to people or ecosystems harmed? **No.**
- Have to disclose where it is operating, buying from or financing – so that people can know if a company or bank is linked to problems in their area? **No.**
- Have to report complaints or allegations against it of serious environmental or human rights harms? **No.**
- Report where it was linked to illegal practices or fined for illegal practices? **No.**



## Annex 1: Draft technical briefer: Grievance mechanisms and grievance lists

*Note: This draft Technical Briefer is still under development.*

### **Introduction**

This technical briefer seeks to provide a brief overview of grievance mechanisms, the importance of their inclusion and of grievance list reporting to help show how a grievance mechanism is applied. Grievance mechanisms as a pillar of international human rights law. The 2011 UN Guiding Principles on Business and Human Rights clearly articulate the responsibilities of business to respect human rights. This includes requirements to have a grievance mechanism. This also recognizes that in many cases, the gross imbalance of power between communities and multi-billion dollar companies can mean that today there are few, if any, accessible legal mechanisms for redress (see, for example Annex 2).

### **The market function of grievance mechanisms and grievance lists**

Grievance mechanisms and grievance lists play a critical social and environmental remediation role. Additionally, in simple terms they also function to signal where third parties believe that a company or financial institution's policies, statements or commitments do not align with its practices. They therefore have a vital function as a check and balance on data quality - mitigating risks of inaccurate, misleading or greenwashing information. This is particularly important given available evidence on concerns related to ESG reporting and business failing to report serious grievances or complaints. See Annex 1: JBS case study.

A grievance list and grievance mechanism is also salient for any company or financial institution that has a business relationship, or a potential business relationship, with the entity such as buyers of agricultural goods, financing banks, insurance etc. This information is important to understanding their own risks and exposures. Publicly reporting the grievance list also avoids an administrative burden, ensuring information is available to all parties.

Anecdotally, being required to address grievances - more than almost any other factor - plays a critical role in internal learnings and driving forward improved practices from business. This in turn can drive improved due diligence.

It is hard to argue why investors, or the public at large, should be denied information about complaints or grievances that have been raised about a company or financial institution's actual or potential risks and adverse impacts on nature or people. A grievance effectively represents a third party claim that a company's strategies, policies or targets are either inadequate or not being put into practice.

### **Examples of grievance lists**

Today, a number of organizations have said that they have incorporated the UNGPs into their policies - but have failed to develop a grievance mechanism for people affected by their business. Even though they will routinely already have a grievance mechanism developed for customers or shareholders. This issue is particularly prevalent in the financial sector.

An additional issue that can arise, is for a company to say that it has a grievance mechanism - but to provide no information about the *processes* this involves or the *outcomes* that this has achieved. This can involve little more than a business acknowledging a complaint has been made, talking with its supplier and then deciding that the issue is resolved or that the community claims are not valid - which clearly does not lead to fair outcomes. It also doesn't allow the public, or others, to identify any patterns

- in the types of concerns raised or how the business responds (positively or negatively; and similarly or differently to its peers).

A grievance list can allow the public, and others, to see how a complaint is proceeding. At a sector-based level, it can also help to recognize if there are similar concerns emerging across the operations, supply chains or financing in different places or commodities.

For example see:

[Golden-Agri Resources](#)

[Louis Dreyfus Company](#)

[International Finance Corporation](#)

Components of an effective grievance list

Best practice for grievance mechanisms is for them to be fully independent. Best practice for grievance lists, and due diligence more broadly, is the public disclosure of any documents, analysis, consultations, community agreements or plans related to environmental or human rights risks and impacts. This is also increasingly enshrined in legal obligations, such as the Escazu Agreement.

A bare minimum for grievance list reporting is likely to include:

- Information on listed cases/grievances to be **public**. For example, via an online database or a PDF on a website.
- To list the reported company or group.
- A summary of the case.
- Source of the grievance/allegation and link (such as an NGO report or a media expose)
- Data received
- Current status i.e. under investigation, monitoring etc.
- Date closed
- They are cumulative and include all listed grievances, including cases the business has deemed closed or addressed. This ensures that a business cannot evade disclosure by saying that a grievance is resolved.

Ideally, they should also include a statement of those raising the grievance if they believe the business' response adequate or not. Frequently grievance lists can be instructive in showing a business' approach to recognising and responding to a grievance - but as they are reported by the business itself are not a fully independent or objective source of information.

Grievances reported publicly should automatically be added to a grievance list - as this information is in the public domain. Noting that grievance lists shouldn't be limited to only concerns that have been filed legally or through a formal process - especially as many businesses don't communicate any formal process to address complaints.

Grievance processes not in the public domain should include offering an option for confidentiality. This may include offering complete anonymity, use of pseudonyms or general reference to a location without specifically pinpointing the geolocation - to provide communities who fear retaliatory violence or threats as a result of making a complaint. Many businesses already have a standardized template on this.

### **Components of an effective grievance mechanism**

There is a diverse array of guidance to support different types of businesses to develop grievance mechanisms. For example, for projects, for [technology companies](#), for [banks](#).

Best practice is to have a wholly independent and resourced grievance mechanism that minimizes capacity for interference or bias.

### **How could requirements on grievances be worded in TNFD?**

Below is an example of how a requirement could be worded in TNFD.

#### **Option 1: Incorporate references to grievances in a high-level disclosure requirement, with further detail outlined in a related guidance.**

In version Beta v.03 TNFD has added a new stakeholder engagement disclosure.

This disclosure does not appear to be a 'core' requirement. The current disclosure reads: *"Describe how stakeholders, including rights-holders, are engaged by the organisation in its assessment and response to nature-related dependencies, impacts, risks and opportunities"*.

At the October 2022 TNFD taskforce [plenary](#) this was discussed as a 'human rights and equity' disclosure. Since May 2022, dozens of NGOs and networks whose members represent over 220 organizations from six continents - have called for the TNFD to align with international human rights law. They have been particularly critical of an initiative co-founded and financed by UN agencies (UNDP and UNEP-FI) failing to align with the UN's own human rights policy recommendations.

However, as discussed elsewhere, the disclosure does not objectively make any clear requirement to respect human rights or respond to rights-holder concerns.

Civil society organizations are therefore calling for the disclosure to be re-written.

An example of alternate language to be explored could include:

Replaced/rewritten disclosure to replace Risk management disclosure e):

***"Describe how the organization has ensured that it is respecting human rights and rights-holders, in its assessment and response to nature-related dependencies, impacts, risks and opportunities, and disclose a grievance list of any complaints raised."***

#### **And require this as a 'core' disclosure.**

If this language is chosen, it's important in guidance to further stipulate that this:

- Covers individual and collective human rights
- Covers environmental complaints and those related to human rights
- Should be as inclusive as possible - noting that there is often an inter-relationship between fraud and corruption, and harms to nature etc.

**Option 2: Recognizing the centrality of grievance mechanisms to effective environmental and human rights outcomes, as well as gaining an accurate understanding of a business' exposures add a stand-alone grievance disclosure.**

#### **Additional disclosure:**

***Risk Management Recommended Disclosure x)***

*Describe the organization's process for addressing, and publicly acknowledging, third party complaints or grievances*

We're not clear in what format TNFD will be providing supplementary detail for recommended disclosures. But it should provide additional detail, that Recommended Disclosure x) requires:

- All businesses to report a grievance list on adopting TNFD reporting. This should cover complaints or grievances raised to management level or with risk officers.
- Require all businesses within 5-years to have a formal grievance mechanism.

The Risk Management section of TNFD requires businesses to "Disclose how the organization identifies, assesses and manages nature-related risks" so it is not subject to the requirement on materiality. A materiality lens for grievances is highly problematic, as it would allow business to cherry pick what, if anything, they report.

### **Assurance**

A prior question was raised by the TNFD Secretariat on assurance i.e. how an auditor would verify a business' grievance list or grievance mechanism reporting.

To give examples:

- The [UN Guiding Principles Assurance Guidance](#) discusses assurance indicators relevant to complaints and grievance mechanisms under C6 - p.22-25.
- The Global Reporting Initiative Disclosure 2-16 Communication of critical concerns (which can include, but doesn't require grievance list style reporting) and Disclosure 2-25 Processes to remediate negative impacts are relevant to grievance mechanisms. Various auditors work on GRI assurance.
- Businesses' typically have grievance processes for their customers and clients. The current gap on grievance mechanisms is for third parties facing risks or impacts as a result of the business' actions.
- *Without* a grievance list or similar, a broader question also arises about assurance - compromising data quality. If grievance lists aren't included, there is a risk that auditors are signing off on inaccurate or misleading information about company environmental and human rights performance and risks.

Further background on grievance mechanisms:

- The UN Guiding Principles on Business and Human Rights requires businesses to have their own grievance mechanism, including financial institutions. The UNGPs also describe certain criteria that must be met.
- [New guidance in China](#), has also asked Chinese banks and insurers to establish their own grievance mechanisms as a tool for managing environmental, social and governance (ESG) risk of

their clients. [113 financial institutions](#) receiving money from the Green Climate Fund are required to have grievance mechanisms.

- Most development finance institutions have grievance mechanisms. An [Accountability Counsel](#) analysis found of more than [1,600 complaints](#) filed to grievance mechanisms of development financial institutions, 506 alleged some type of environmental harm, and 53 allege harm about investments specifically aimed at environmental protection.
- The Global Reporting Initiative that is already adopted by most of the world's largest companies, requires businesses to have a grievance mechanism (i.e. 2-25) and to disclose the nature of critical concerns (2-16) as part of its Universal Standards.
- EFRAG requires businesses to report on grievances and grievance mechanisms.
- Multiple [impact management and measurement standards](#) have heralded the importance of such mechanisms.
- The latest IPBES 'values' report highlighted justice as a key determinant of addressing the biodiversity crisis.
- Accountability Counsel have outlined their role in [financial materiality](#). Given that the most severe environmental harms are likely to occur where legal and financial risks are few, they can also play an important role where nature harms are not financially material.

The heavy power imbalances between communities and companies can make the legal system virtually inaccessible to many people even where illegal or violent environmental and human rights abuses are occurring, or their rights may not be outlined in law (see Annex). Severe grievances are more likely to occur in contexts of impunity.

## Case studies

### Case Study 1: JBS report

JBS is the world's largest meat packer. In 2020 various NGOs, media agencies, investors and even its own auditor raised concerns about JBS' environmental claims or brought forward allegations that it was sourcing cattle from tens of thousands of hectares of deforested land in the Brazilian Amazon. These concerns were put forward by [Greenpeace Brasil](#), the [Bureau of Investigative Journalism](#), [Chain Reaction Research](#), [DNV-GL](#), [Amnesty International](#), [Global Witness](#) and [Nordea](#). JBS has disputed many, if not most, of these claims. [Credit ratings agencies](#) also signaled that they do not believe deforestation to present a significant financial impact on JBS' business.

In JBS' most recent 2021 self-report on cattle products to the [CDP](#) Forest criteria JBS fails to mention these reports and received a favorable 'B' rating. Under the current TNFD proposal, its TNFD report would likely be in a similar vein.

By contrast, if TNFD required JBS to publish a grievance list of complaints this information would likely be captured. This requires grievance list reporting, noting that a report of merely the total number of grievances or general nature of grievances would not be sufficient.

ANNEX 2: Why marginalized people may not be able to access their legal rights

From Oxfam International, [Consent is everybody's business](#). August 2019 p.26.

Bankers unfamiliar with human rights may assume that a lack of legal action or a court finding in favour of a company show that its activities are lawful and appropriate. However, this is not necessarily so. As legal empowerment NGO Namati writes: 'Law is supposed to be a sacred thread that ties us together and protects each one of us. But for billions of people around the world the law is broken. It's an abstraction, or worse, a threat, but not something we can use to exercise our basic rights.'\*

People living in poverty often cannot access or protect their rights because of the high cost of defending a legal case. They cannot afford surveyors, notaries and application fees to have their tenure recognized. They cannot afford fees to file court cases or legal services to inform them of their rights or contest fraudulent land claims by others. Rural peoples often cannot afford time away from farming tasks, and those forced off their land may depend on unreliable day labour just to buy food. Women are particularly vulnerable. States frequently fail to recognize the territorial rights of Indigenous peoples and pass or uphold laws that dispossess them and undermine their rights to control their traditional lands, forests and waters.

Unjust laws or biased policing may criminalize people for exercising free speech, even when they are speaking out against illegal practices.\*\* They can be arrested on unfounded charges, such as trespassing on land they legally own. Without access to lawyers, land defenders face barriers to justice in court, risking prison time, gag orders or fines. Those speaking out may be blacklisted for employment, vilified, surveilled, beaten, raped or have their property destroyed. Local gangs, organized crime, militia, police or military forces may enact this violence – or even community members formerly involved in the land case who have been bribed or coerced by others.

Judicial systems may be skewed to favour those with money, political connections or power. Police may not prioritize the rights of Indigenous people and other marginalized communities, fail to document abuses or register when people want to file charges. Public prosecutors may refuse to pursue cases against influential people or companies. Cases filed with the courts may never be heard or judges may fail to declare a conflict of interest. Corruption in land deals may never be pursued. New laws may be passed that appear to legalize the transfer of land to elites, with little or no consultation, but which contradict fundamental protections laid down in national constitutions.

\* <http://www.namati.org>

\*\* Companies and investors themselves are also increasingly recognizing this as a risk; for example, see the statement *Supporting Civic Freedoms, Human Rights Defenders and the Rule of Law*.

[https://www.business-humanrights.org/sites/default/files/Statement\\_Public\\_v2.pdf](https://www.business-humanrights.org/sites/default/files/Statement_Public_v2.pdf)

Annex 2: Technical briefing paper: TNFD and double materiality: Reporting on harms to business linked to nature but also business harms to nature (& people)

Note: This was provided to TNFD in September 2022.

This technical briefing paper outlines why TNFD needs to require businesses to report on business harms to nature and related human rights abuses, not just how nature impacts business i.e. double materiality; rather than its current approach where a business is only required to report on financial risks or opportunities - in this case any significant financial outcomes in the short, medium or long-term that arise from its relationship with nature (enterprise value).

NGOs and networks, as well as others, have already presented to TNFD various arguments and the evidence base for why double materiality is needed - further expanded in this technical briefing paper. The world's leading biodiversity scientists have also urged in the recent [IPBES values report](#) the importance of respecting the intrinsic value of nature - not just its marketized impacts - is critical to halt and reverse biodiversity loss. To date, TNFD doesn't appear to have acted on this evidence or undertaken parallel processes to address this evidence base. We believe that failing to take an evidence-led approach on various issues, including materiality, runs counter to TNFD's claims to be 'science-based' and that TNFD will continue to face vocal criticism on this point.

**Our objectives from these meetings are:**

- To ascertain if TNFD is prepared in any meaningful way to incorporate or address double materiality in its revisions for draft 3. This would include, for example, providing concrete proposals of language that could be incorporated.
- If TNFD has any existing analysis or research on double materiality and enterprise value approaches - we invite TNFD to provide these publicly otherwise we will assume that its position on this issue is not evidence-led.

This technical briefing paper outlines:

- Examples of how TNFD text could be adapted to address a double materiality approach (PART 1).
- The extensive evidence which shows why, using the enterprise value approach alone, it is virtually impossible for TNFD to make a significant dent in efforts to halt or reverse biodiversity loss by 2030 (PART 2).
- In brief the need not just to incorporate double materiality reporting, but to then examine what types of double materiality reporting are more effective (PART 3).
- It provides a series of case studies and examples that show the shortcomings of the enterprise value approach (PART 4).

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### **PART I: Recommended changes to TNFD text**

Below we outline some examples as to how language on double materiality could be adopted or amended to the draft TNFD framework. This relates to new disclosures and amended definitions, new language is in red text. Where this is amending existing TNFD text, the TNFD text has been placed in blue. Recommended cuts to existing text appear in blue strikethrough.

#### Risk Management

**Recommended Disclosure X: Describe the organization’s actual and potential adverse risks and impacts to nature and inter-related risks and impacts to people<sup>13</sup>**

**Nature-related risks: Potential threats posed to an organization AND to nature and people - linked to its and other organization’s dependencies on nature and nature impacts and potential impacts. These can derive from physical, transition and systemic risks.**

#### Strategy

**Disclose the actual and potential impacts of nature-related risks and opportunities on the organisation’s businesses, strategy and financial planning, and its actual and potential risks and impacts to nature and inter-related risks and impacts to people, where such information is material.**

#### Metrics and Targets

TNFD acknowledges that Beta v0.2 does not include language on disclosure metrics. We will at this time not provide recommendations on the Metrics and Target section.

#### Additional observations:

We also note asymmetry in current definitions. As outlined in the current definitions below, businesses do have double materiality for positive opportunities (by reporting positive outcomes for organizations and nature) but not for adverse impacts (only examining negative outcomes for the organization).

*Current definition - Nature-related risks: Potential threats posed to an organization linked to its and other organization’s dependencies on nature and nature impacts. These can derive from physical, transition and systemic risks.*

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<sup>13</sup> This would ensure that the governance and strategy sections are internally consistent - requiring reporting relevant both to the organization and to nature and people.



Current definition - *Nature-related opportunities: Activities that create positive outcomes for organizations and nature by avoiding or reducing impact on nature or contributing to its restoration. Nature-related opportunities can occur i) when organizations mitigate the risk of natural capital and ecosystems services loss, ii) through strategic transformation of business models, products, services and investments that actively work to halt or reverse the loss of nature, including by implementing nature-based solutions (or support for them by financing or investments).*

## **PART 2: The evidence base on the need for double materiality and the flaws behind the ‘enterprise value’ approach**

[We find it hard to envisage that rightsholder groups - particularly the victims of corporate-led nature harms - would back TNFD’s position](#)

We believe that those on the frontlines of the nature crisis, and those voices who have led international efforts to fight for nature to be intrinsically valued and respected in its own right, are extremely unlikely to support core tenants of TNFD’s approach. This includes that TNFD’s enterprise value approach condones ongoing harms to nature (and people) so long as they do not impact on profitability, and does not even require such harms to be reported. This arises from lived expertise and experience that highlights a core driver of the nature crisis is business impunity for harms against nature and people - in that businesses profiting off their complicity in environmental and human rights abuses continue to do so because they face few meaningful consequences for doing so, including their right to retain profits made off these activities. It is a community’s ability to plan, control and resource their own future vision, as well as hold businesses’ accountable, not merely business self-reporting that is most needed - but if TNFD is to focus on reporting it should at minimum ensure that it accurately represents a business’ links to environmental and human rights risks and abuses, and allows those reading reports to access independent information brought forward by those making complaints.

[Evidence from TCFD on the shortfalls of the ‘enterprise value’ only approach](#)

As University College of London (UCL) [researchers](#) write “since the TCFD launched in 2017, climate risk disclosures have yet to materially affect investment decisions for the majority of financial institutions”. They also [observe](#) that the underlying hypothesis that reporting on climate-related financial risks would drive effective change in financial flows in line with objectives such as those linked to the Paris Climate Agreement “is unsupported by either theory or evidence”. Half a decade since TCFD was instituted TNFD should not ignore the evidence and learnings from TCFD from diverse quarters.

The OECD also drew on current research underway to [note](#) that “while the [Financial Stability Board’s TCFD] has been instrumental in achieving a transition in thinking amongst investors, its focus on financial materiality of climate change may be insufficient to foster reallocation of capital to align with the low-carbon transition.” A point underscored by four oil and gas companies alone posting a record [\\$51 billion profit](#) in the second quarter of 2022<sup>14</sup> and the continued expansion of oil and gas fields against the advice of even the International Energy Agency’s definitive 2021 report.

The [American Academy of Actuaries](#), drawing on the findings of different research projects, has emphasized the need for impact reporting under the International Sustainability Standards Board (ISSB) (TNFD’s approach to materiality is drawn from ISSB - although ISSB is still in draft form). Observing, among other factors, that “relatively few companies are likely to provide robust responses” under TCFD.

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<sup>14</sup> See also the analysis of Market Forces of climate exposures of the [ASX 300](#).

Securities exchanges from [Thailand](#) and [India](#) have pointed out on ISSB that quantifying how adverse social or environmental impacts - which may not be financially detrimental today - will affect a businesses' financial value is challenging for enterprises or may lead to misleading disclosures. A similar observation has also been made by TCFD itself. The [2021 TCFD status report](#) found that only 20% of consultation respondents report on how their climate-related risks or opportunities affect their current financial performance. This drops to 14% for reporting on potential financial risks in future. An obvious point is that TNFD will stymie the process of seeing risks and harms to nature become a financial risk if it fails to require those harms to be publicly disclosed.

[Tata Steel](#) also pointed out to ISSB the data comparability issues that arise from the enterprise value only approach - noting that when presented with the same climate impacts, two companies may have vastly different interpretations of what they see as financially significant or not.

To date, TNFD doesn't appear to have engaged in any systematic way with evidence or analysis as to why TCFD has particularly failed to address deforestation and forest degradation. Forests account for approximately 80% of land-based biodiversity - meaning that if TNFD fails forests it fails its mission. Forest-risk industries can also impact a range of other natural ecosystems. The UK government Global Resources Initiative - a multi-stakeholder taskforce working over three years - has issued a [May 2022 finance report](#) which outlines why TCFD reporting is not well-suited to curb the financing behind deforestation (and argued on the need for regulation). A similar analysis appears [here](#) and [here](#). Not only has deforestation and forest degradation continued since 2017, rates have sped up. As has been previously pointed out to TNFD, there are [clear cases](#) where credit ratings agencies are also endorsing the view that a business' links to climate-related harms today - such as the destruction of climate-critical forests - will not affect its short, medium or long-term financial health.

This is one of many examples of evidence of why the enterprise value approach is not sufficient.

Reasons for these outcomes from TCFD are [varied](#). We fail to recall a single example of a community fighting against threats to their rights and nature arguing that business environmental harms should be able to proceed so long as they don't harm business profitability. Investors have also noted to [UCL](#) researchers that "given policy uncertainty, multiple trajectories/futures are possible as well as the risks that lie ahead - investors do not know which of such possible pathways is more likely to happen". And that "it may be perfectly economically rational for individual investors to ignore climate risks and continue to invest in carbon-intensive assets, if they judge and perceive that is how the market overall is behaving and will behave in the near future". Added to this is a narrative that investors are failing to shift capital because they are looking for investment opportunities and structures that directly mirror those in the harmful finance world - i.e. that they are unwilling to invest at scale in green finance because they are unprepared to adapt their expectations and processes. Or as UCL academics [note](#): "the continued financing of environmentally-harmful activities enables damaging stakeholders, technologies, and infrastructures to retain a persistently dominant position in the economy, thus making the transition to more ecologically-sustainable alternatives more difficult and costly - i.e. 'lock-in' effects". Research by [Inclusive Development International](#) on ESG indexes and reporting also highlights how a lack of disclosures of social and environmental impacts is resulting in investors being invested in harmful companies or projects without their knowledge. Added to this is the fact that a vast majority of financing to harmful companies or activities is not through project-specific or asset-specific investments - but through shareholdings which are far more transferable, or through loans or bonds, which have a shorter time horizon.

The Forest and Finance [database](#) tracks deals to forest-risk companies. In the five years following the Paris Climate Agreement financial institutions made an estimated [USD\\$1.74 billion](#) from deals made to 20 agribusiness firms facing credible allegations of links to deforestation and human rights abuses. To the best of our knowledge, not a single cent of this USD\$1.74 billion in gross profit is at risk - and there is little foundation to suggest that financial institutions would be left worse off for making these deals.

#### [Whose enterprise value?: Nature loss effects all businesses - not just the company perpetrating harms](#)

As previously stated, we believe that TNFD's approach should be informed by efforts to drive positive outcomes for people and nature - not merely enterprise value. However, even within the logics of the enterprise value approach TNFD's proposed approach is highly flawed.

[BNP Paribas](#) has written: "A company's impacts to nature, for example, will not always create foreseeable risk to that company, but may exacerbate the systemic risk of nature loss, which affects all companies. The complexity and severity of this systemic risk is entirely lost by placing enterprise value – as opposed to biosphere integrity - at the center of concern." (Campaigners against the East Africa Crude Oil Pipeline also make this point - arguing that it will undermine the local tourist economy, adversely impacting local economies and livelihoods. Effectively the impact of EACOP on the local tourist economy is an 'externality' to the oil companies involved). [UCL researchers](#) have also made this point noting "given that one firm's impact upon the environment may affect other firms' ability to operate, negative impacts may contribute to the emergence or accumulation of physical risks elsewhere, or at a systemic level." The 2022 [Network for the Greening of the Financial System-INSPIRE group](#) report on nature-related risks has similarly discussed this point, which it terms the 'endogeneity of risk'.

The HSBC Bank (UK) Pension Scheme also [outlined](#): "Corporate practices that maximize enterprise value at the individual entity level can contribute to additional costs, or externalities, which can negatively impact the enterprise value of other firms in the portfolio. Universal owners seek more than just entity-level enterprise value to understand the value and risks faced by their total portfolio, including adopting a double materiality lens." Put another way, an investor may be reluctant to invest in a company that is harming nature - even if it does not impact the company's own value - because this harm will impact on other companies in its portfolio. The view that a long-term approach to enterprise value for the company involved would be compromised by these investor views is undermined if an investor is prevented from acting because they are denied the basic information to even know what the impacts are. In addition is the point that the financial sector itself is highly diverse - divestment commitments on climate, for example, come from educational institutions, philanthropic organizations, faith-based organizations, government or pension funds which are accountable to broader public interests than merely return on investment.

Accounting firm [Deloitte](#) supported ISSB reporting on impacts on people and the environment noting that "poor conduct by a company may not affect financial returns in the short, medium or even long term despite it being unacceptable in the realm of sustainable development. In fact, historical evidence of this is plentiful."

#### The risk of cumulative, unreported impacts

When companies do not have to do comprehensive impact reporting and are allowed to report only on what they consider material (for their own company), this can create a systemic risk. Without detailed impact reporting, it becomes impossible to assess the totality of impacts a system is exposed to. The

sum of a number of small, “non-material” impacts, can actually be a significant impact that can pose a significant risk to companies operating within a system.

[Biodiversity loss is unprecedented in recorded human history - creating “radical uncertainty” where future outcomes are inherently unknowable](#)

If the future outcomes of biodiversity loss are inherently unknowable - then it stands to reason that the financial risks related to this ‘unknowable’ process and how it relates to transition modeling is similarly unknowable. Researchers at [University College of London](#) have stressed the limitations of modeling in order to inform understandings of financial risk to business. They point out that “the current trajectories of both climate change and biodiversity loss are unprecedented within recorded human history (Barnosky et al., [2011](#)), impeding the calculation of probabilities needed to estimate future outcomes in conventional financial models. For these reasons, environmental-financial risks cannot be easily conceptualized as *probabilistic risks*, which form the basis of traditional financial models, or even as forward-looking risks that would become precisely measurable through scenario-based risk modeling. Just as with climate change (Chenet et al., [2021](#)), biodiversity loss and its socioeconomic consequences are subject to *radical uncertainty*, where future outcomes are inherently unknowable. No matter the quality of the input information, therefore, scenario-based modeling approaches cannot reliably quantify all of the possible future outcomes resulting from the dynamic interaction of multiple human and environmental variables (Chenet et al., [2021](#); Svartzman et al., [2021b](#)).”

UCL [researchers](#) note the inherent complexity and highly localized nature of biodiversity, suggesting it is near impossible to imagine capturing all this granular environmental information. “Even if a sophisticated database of asset-level environmental information could be imagined, financial policymakers should be aware of the inherent limitations of financial risk modeling approaches to generate even broadly accurate estimations of environmental-financial risk exposure at the systemic level due to the presence of complex system dynamics.” They note that there is “no obvious carbon price equivalent for biodiversity loss, which complicates the design of ‘transition pathways’ for financial risk modeling”. In short, even if it were possible to know all the biodiversity risk involved, extrapolating what this means for financial risks in real-world terms with some level of accuracy is highly difficult.

They point to the importance of double materiality [noting that](#) “such an approach may be more achievable within the limited timeframes for remaining action, rather than the time-intensive evolution in disclosure and modeling required to fulfill market-led approaches.” Put another way, allowing businesses to continue to hurt and harm nature and people under the guise that they should only be compelled to act if harms will hurt their financial health will merely justify inaction. The authors explicitly note that approaches that quantify financial risks “may be important in *exploring* environmental-financial risks and raising awareness among financial players, but these limitations mean that alone they are insufficient to ensure the effective risk *management*.”

[Recommended Disclosure D under ‘strategy’ is not double materiality](#)

The language under Disclosure D currently reads:

[“Strategy: Disclose the actual and potential impacts of nature-related risks and opportunities on the organisation’s businesses, strategy and financial planning, where such information is material. \[emphasis added\]”](#)

[Disclosure D: Describe the organisation’s interactions with low integrity ecosystems, high importance ecosystems or areas of water stress.](#)

## Guidance for All Sectors

Organisations should provide a list and/or spatial map of the ecosystems deemed to be low integrity and/or high importance and water-stressed areas with which the organisation's assets and operations interact. This should include reference to the location of the ecosystem and the type of ecosystem (i.e. the biome).

A number of reference sources and indicators for defining low integrity ecosystems, high importance ecosystems and water-stressed areas are available and signposted in the [LEAP approach](#) on the TNFD interactive online platform. Others reference sources and indicators are in development.

The definitions and reference sources for this disclosure recommendation in subsequent beta versions will be established through further consultation with knowledge partners and market participants.”

We have seen TNFD describe Disclosure D under Strategy as something akin to impact reporting. Below we outline the reasons why it is not.

Firstly, any reporting is subject to the overarching ‘strategy’ framing that this disclosure only needs to occur ‘as material’. This is further hampered by TNFD failing to provide a glossary definition of the term ‘material’ but given its ‘enterprise value’ approach we believe that equates to its definition of materiality. This means that any business could simply opt not to report its connection to these ecosystems by arguing that this does not affect their profitability. This would be particularly salient for financial sector interests who could argue that their exposure to the biome is not ‘financially material’ and similarly for supply chain operations who do not own land or projects in the area.

Secondly, the language of ‘operations and assets’ is vague and based on the LEAP approach appears to then further exclude a vast majority of the financial sector, only applying to ownership of physical assets.

Thirdly, the ‘disclosure’ is just to acknowledge the ecosystem that a company is linked to. It doesn’t require a business to disclose its exposures within these ecosystems. If we take the Amazon forest for example, this is a vast area and there is a substantial difference between a company sourcing from an area which has been subject to recent clearances, and sourcing from long-established farms. Knowing simply what country or ecosystem a business operates in reveals little about their exposure to nature-related harms. It is also highly dangerous to legitimize businesses’ not knowing where the goods that they source or finance come from - a business cannot know if it is trading in illegal goods (or those produced in ways that harm the environment or people) if this is not known.

Fourthly, this definition does not take into account the vast learnings on issues with aggregated reporting processes. Where supply chain disclosures have taken place - they have shown in several high-profile cases, that companies which have previously reported little or no links to environmental harms have failed to identify or disclose these links, that have only been made public by third party investigations. The value of these disclosures is not in understanding a business’ links to a high-risk ecosystem - but to note the specifics of its supply chain, such as the geolocation. This also protects against businesses externalizing their impacts - for example, by moving from at risk ecosystems onto large-scale land grabs of community land, which force people from their homes and can require displaced communities to undertake land clearing to re-establish their communities.

Fifth, the 'disclosure' doesn't require a business to explicitly state whether it has self-identified, or faced external complaints regarding, its links to harmful practices. It is only required to note its 'interconnections'.

[Under its proposed model we believe it is virtually impossible for TNFD to make any substantive headway to 'halt and reverse biodiversity loss' by 2030](#)

Currently TNFD is expected to conclude in September 2023. TNFD would then be adopted in 2024. It would then allow businesses 5 years to adopt full reporting in line with its recommendations. Meaning it is 2029 before full TNFD reporting, based on financial risks and opportunities are realized. This mimics the model of the TCFD, finalized in 2017.

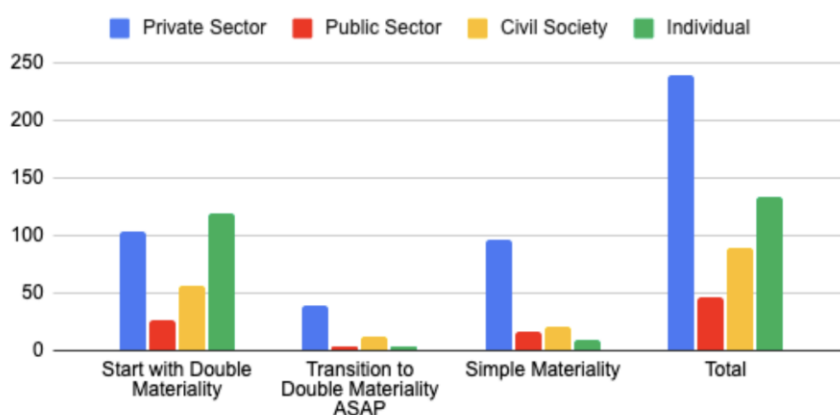
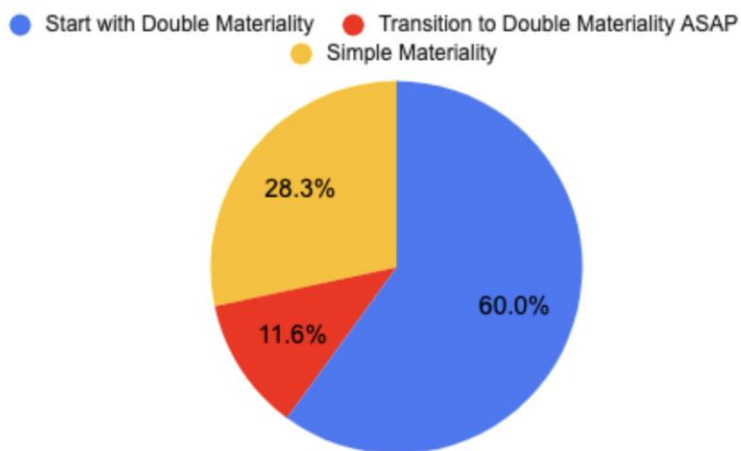
Firstly, it is extremely unlikely that TNFD would see businesses halting and reversing their contributions to biodiversity loss by 2030, if as of 2029 they are not even required to report what these impacts are. This also aligns with evidence we have from TCFD.

Secondly, as cited earlier, existing evidence from [TCFD](#) applied to TNFD suggests that by year 4 (2028) four in five companies (80%) will not be reporting on their current financial risks linked to nature, and almost seven in eight (86%) won't be reporting on future financial risks. This is without interrogating the accuracy or comparability of the entities that are self-reporting on financial risks or opportunities, and whether this is the form of reporting that is most likely to engender business action. Additionally, given that understandings of nature-related financial risks are far more nascent than similar work on climate this is a best case scenario.

More broadly we are skeptical about whether any reporting measures - detached from accountability or the requirement to surrender illegitimately acquired profits - will affect business change. The shortcomings of the enterprise value approach are particularly salient.

[The ISSB definition TNFD relies on is still in draft form, ISSB itself faces allegations of undue process and lacks a mandate for an 'enterprise value' only approach](#)

[Re Generation](#) that has analyzed ISSB submissions maintains that: "Support for double materiality is far from a minority position [presented to the ISSB]. An enormous and growing contingent of influential voices from around the world is unanimous in calling for a double materiality approach. Of the 577 comment letters submitted to the IFRS Consultation Paper in 2020, a large majority explicitly called for a double materiality perspective—a fact which was noticeably absent from the feedback letter released by the IFRS as a summary of the comment letters. Our analysis demonstrates that, of the 508 respondents that answered Question 9 on materiality, 72% supported double materiality either being implemented immediately or as soon as possible, while only 28% explicitly supported the ISSB's stated approach. This group included a majority of private sector respondents (59%), as well as a vast majority of regulators, NGOs, and individuals (83%)."



Graphics from *Re\_Generation [analysis of ISSB submissions](#) in 2020* - as provided in their 2022 comment letter to the ISSB on its exposure drafts.

ISSB faces many similar due process challenges as TNFD, in that it has [sidelined](#) if not outright ignored the views of those who are most likely to have experienced corporate-led nature harms. Of its list of over 700 public submissions made to ISSB in 2022 there doesn't appear to be a single submission made by a rights holder organization.

Unlike ISSB, TNFD does not make survey responses, submissions or information about meetings public - making it virtually impossible to scrutinize how decisions are made. The transparency afforded by ISSB shows that within the narrow band of groups following ISSB, it is clear that there is no clear mandate for the 'enterprise value' approach. According to Regeneration's [analysis](#) ISSB has failed to respect that 72% of participant responses that called for double materiality in 2020. They highlight that while double materiality has particular support in the EU, Regeneration notes a range of groups beyond Europe pressing for a double materiality approach. This is even moreso when the raft of voices not represented or under-represented in the ISSB process is considered. Yet ISSB failed to address the double materiality issue in its exposure drafts.

On providing feedback to the ISSB in 2022, the [International Capital Market Association](#), the [European Central Bank](#), the [Asia Securities Industry & Financial Markets Association](#) and the [Dutch Financial](#)

[Markets Authority](#) all raised concerns with its approach and advocated for double materiality. The Global Head of [Sustainability Fitch](#) - an arm of one of the world's largest credit ratings agencies - also spoke out on the need for double materiality. A [joint submission](#) by investor organizations the Capitals Coalition, the Predistribution Initiative and the Investor Alliance on Human Rights, as well as various NGOs and academic institutes, called for double materiality. They also urged ISSB to “adopt processes for standard-setting that ensure that those with first-hand knowledge of these risks can inform determinations of materiality” and “formaliz[e] engagement with civil society organizations.”

We do know that some [corporations](#) have also publicly called for TNFD to adopt double materiality, as has a May [2022 letter](#) by 28 NGOs and networks whose members include over 220 organizations across six continents. ISSB submissions now show that even several TNFD taskforce members have called for double materiality - including [Mirova](#), [Deloitte BNP Paribas](#) and [Moody's](#)<sup>15</sup>. [Tata Steel](#) pointed out that the ISSB's enterprise value only approach “would likely not fully address the needs of the remaining key stakeholders (governments and regulators/ communities/civil societies)”. TNFD co-founder [WWF](#), as well as the [OECD](#) and [CDP](#) also called for double materiality.

Alarming, in its own [submission to ISSB](#) in July the TNFD Secretariat failed to acknowledge that concerns about double materiality had even been raised. This adds to our concern that TNFD's approach is not founded on evidence or due process.

[The process by which TNFD came to the 'enterprise value' approach does not appear evidence based or transparent](#)

It appears that TNFD's approach to materiality did not arise from engaging with the evidence base but the desire to align with ISSB or TCFD. We have significant concerns that TNFD's initial approach was oriented on double materiality - noting its four co-founders and other closely involved groups have supported double materiality but it has, through an untransparent process, shifted to adopt an 'enterprise value' approach. TNFD has never publicly asked whether its approach should be based on double materiality or enterprise value, and it has never engaged in a substantive public way with the evidence on double materiality and the poor outcomes arising from enterprise value approaches.

An obvious flaw of the 'alignment' argument is that even if this led to a widespread uptake of TNFD - the widespread uptake of an ineffective framework will have little impact on biodiversity, as outlined in the previous sections. For many, TNFD's stance on this issue is likely to be interpreted as an example of corporate capture - already TNFD's efficacy is limited in that it fails to hold businesses accountable for environmental harms or to challenge their rights to keep the profits they make off environmental abuses. If TNFD fails to even require businesses to report on their environmental harms to nature then what's the point?

In March 2021 [Environmental Finance](#) reported on the conference presentation of the co-chair of the TNFD Technical Expert Group who is also Global Canopy's programme and impact director who noted: “Nonetheless, there will be differences in the TNFD compared with the TCFD. Chambers indicated that the TNFD would actively look at 'double materiality'. The TCFD is currently focused solely on the financial materiality of climate-related impacts – put simply, the impact of climate change on a company or financial institution.” This clearly delineated between discussion of 'double materiality' and the short, medium or long term enterprise value approach.

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<sup>15</sup> Note Moody's pointed to the interoperability of ISSB - noting that impact reporting was needed, but this could be done through mechanisms that joined an impact report with an enterprise value report.



In February 2021, the Head of the UN Environment Programme Finance Initiative publicly stated that the TCFD view of materiality was no longer adequate at the Climate Risk and Green Finance Regulatory Forum. ESG investor reporting on the speech noted “Financial institutions will have on their radar screens the two materialities at hand; the classic materiality on how ESG will impact portfolios as well as the newer materiality of how portfolios will impact our planet and our society.” ESG investor added ‘Usher’s call for a so-called [double materiality](#) approach comes also in reaction to the increasing urgency to tackle climate change...To this end, Usher called for standardized, comparable and forward-looking disclosure, covering all dimensions on materiality, including impact, and for TCFD targets to be science-based.’ According to Regeneration’s analysis the [UN Development Programme’s](#) submission to the 2020 ISSB consultation also supported a double materiality approach and [WWF’s](#) recent submission to ISSB has also called for a double materiality approach. This signals that each of TNFD’s co-founders appear to be on the record for highlighting the importance of double materiality in TNFD-style structures - such as TCFD or ISSB. As does the [OECD](#), who has been linked to TNFD from its early stages, as does [CDP](#) - one of the five standards ‘consolidated’ into the ISSB standardization system.

While TNFD has often replicated the ISSB’s shortfalls, one area it hasn’t matched ISSB is in adopting a base level of transparency - meaning that it is virtually impossible to scrutinize how decisions are made. We do know that some [corporations](#) have also publicly called for TNFD to adopt double materiality, as has a May [2022 letter](#) by 28 NGOs and networks whose members include over 220 organizations across six continents. RAN’s 98-page submission to TNFD included extensive case studies, precedents and examples outlining why double materiality was needed. ISSB submissions show that even several TNFD taskforce members have called for double materiality - including [Mirova](#), [Deloitte BNP Paribas](#) and [Moody’s](#)<sup>16</sup>. [Tata Steel](#) pointed out that the ISSB’s enterprise value only approach “would likely not fully address the needs of the remaining key stakeholders (governments and regulators/ communities/civil societies)”.

Alarming, in its own [submission to ISSB](#) in July the TNFD Secretariat failed to acknowledge that concerns about double materiality had even been raised. This adds to our concern that TNFD’s approach is not founded on evidence or due process.

### PART 3: What types of double materiality reporting are most relevant and effective?

Before diving into the detail of measuring biodiversity - it is critical that first basic prerequisites are put in place. This includes disclosing such basic information as to ensure that local communities and the public in general know if a business is operating in, sourcing from or financing activities in their area - which is also a basic prerequisite to holding that business accountable to its own stated policies and communities and requirements under international and national law. This outlines the point that not only should TNFD respect the evidence on double materiality - it then needs to identify what form of double materiality reporting is most effective.

This process should ask very common sense questions such as:

Does reporting take a form that allows local peoples to know whether a business is operating in, sourcing from or financing activities in their local area?

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<sup>16</sup> Note Moody’s pointed to the interoperability of ISSB - noting that impact reporting was needed, but this could be done through mechanisms that joined an impact report with an enterprise value report.

(to then check how this aligns with the business' purported policies and claims)

Does reporting allow readers to identify if a business is expanding its land use or 'capping and reducing' its land footprint?

Does reporting take a form that allows the public and/or independent outsiders to scrutinize whether the self-reported data is accurate or not?  
(for example, by allowing a business' claims to be cross-checked against on-the-ground realities)

Does reporting alert the public (or others) to whether a business is involved in, or accused of, being linked to actual or potential risks and adverse impacts on nature and people?

Does reporting take a form that allows investors (including the public) or other businesses doing business with that company to know if they may be complicit in harms to nature and people?

Does reporting allow the public (and others) to assess whether a business' claims to act on nature-related harms are put into practice?  
(for example, if it is lobbying against new environmental regulations or for exemptions from legal requirements)

Does reporting take a form that requires a business to transparency admit to continuing to be linked to actual or potential risks and harms to nature and people - on the basis that it is pursuing profitability against the public interest?

#### PART 4: Case studies and in practice examples

Below are a series of case studies and examples that show, in concrete terms, the reasoning behind our concerns of double materiality in an array of ways. We note that several of these examples have already been provided to TNFD by Rainforest Action Network.

##### [A. TNFD's WoodNCo case study shows why impact reporting is needed](#)

In its June 2022 documents, TNFD did not provide a single case study example of what a TNFD disclosure would look like. It provided one detailed case study based on a fictional company WoodNCo which discussed how a company could assess its dependencies and impacts on nature under the LEAP approach. Under TNFD, companies can use their own processes for identifying impacts or they can choose to use a tool called LEAP. This analysis and assessment remains private – it is not part of TNFD public reporting.

On reporting, the case study simply states that "Having evaluated its dependencies and impacts and assessed the risks and opportunities, WoodNCo prepared disclosures to share its findings with report users. WoodNCo disclosed its findings as part of its annual mainstream financial reporting, annual report and investor-specific communications. It disclosed its most material/relevant risks in detail, while providing transparency on how it determined its approach. The company disclosed metrics that it intends to use for subsequent assessments and monitoring, which could be useful for disclosure users, such as metrics that can be aggregated at an industry or user-portfolio level." In short, it's not exactly clear what WoodNCo would report. Under TNFD, a company only has to self-report on if its relationship with nature significantly affects the financial health of its business in the short, medium or long term. If

it believes that some or all of these impacts or dependencies aren't financially significant, it doesn't have to report them at all. This has been strongly critiqued by many NGOs and others.

In addition, if WoodNCo's process for identifying its impacts and dependencies on nature is flawed, its analysis of 'risks and opportunities' to its business will also be flawed. Rainforest Action Network identified several key issues of concern (in blue). These have then been grouped into different categories of core issues with additional explanation provided, as well as broader reflections and commentary on TNFD (in black).

#### Key issues of concern

##### 1. *Lack of sufficient data to make an informed assessment*

- Approach to assess impacts for companies that lack full traceability/known sources
  - Acceptance of lack of geo-spatial data
  - Acceptance of certification as a proxy for chain of custody
  - Inadequate scope of assessment
  - Baseline assessments
- o Definitions and methods for assessing deforestation/conversion/degradation and thresholds for what constitutes degrading the condition of the forest and reducing land/ tree cover
  - o Lack of third party assessments
  - o Lack of reference to assessments for various time periods (historical, since cut-off dates, current)

Note: A company and its financiers cannot know its risks or impacts on nature and human rights if it doesn't know the origins of the products that it is buying, trading, selling or financing. Companies can choose to write chain of custody, traceability and transparency requirements into their contracts. This is also needed to ensure that the company is not trading in illegal or fraudulent products. This is particularly important where companies choose to operate in sectors or areas of high-risk for environmental harms and human rights abuses.

Similarly, the use of 'cut off dates' has long been written into various policies, standards and laws. This recognizes that the ability to profit off produce grown on cleared land is a key financial motivator for land clearing. Even if a company or individual is subject to a one-off fine for land clearing, it may still ultimately profit from using the land in years to come. Cut-off dates are used to state that a company will not buy or trade a product grown on a land that was forest (or other stated ecosystem) at a certain date – cutting off the market for products grown on cleared land. The [cut-off date](#) issue for TCFD and TNFD has been flagged since at least January 2021.

##### 2. *Legitimizing and condoning deforestation*

- False view that logging (long-term sustainable harvesting yield) can maintain or increase intact forests
- Acceptance of zero net deforestation commitments for producers and net neutrality claims.
- Supplier assessments focus on overlap with illegal deforestation, not all deforestation/conversion/degradation

Note: This appears to be a significant step below the existing expectations of the private sector. For example, the various government, private sector and SDG commitments regarding halting or halving deforestation for the year 2020. As well as broader 'no deforestation, no peatlands, no exploitation' commitments. Shifting the goal posts from aiming for no deforestation or degradation of natural

ecosystems, to allowing deforestation under a 'net' approach would see TNFD undermine existing discussions of these issues.

### 3. *Issues regarding data quality such as the lack of verified or third party review of data and assessment*

- [Acceptance of certification as a proxy for a\) sustainable management of forests b\) chain of custody](#)
- [The lack of lack of third party assessments](#)

Note: It is a basic tenant of ESG conversations, as well as in various national laws, that a company itself is responsible for its own due diligence - it cannot outsource its responsibilities to third parties such as certification schemes. Shortcoming of certification schemes have been extensively documented, for example in this report by [Greenpeace](#) and the current case against [Bonsucro](#).

### 4. *Unknown data and outcomes*

The case study describes how WoodNCo thinks it's process works but appear to have few, if any, independent checks and balances.

For example:

- It is not known if there are any current complaints, grievances or litigation against WoodNCo.
- It is not known if WoodNCo operates in an area with high violence and threats against local people or other human rights dynamics.
- The report states that the company strategy is to 'transition activities/or suppliers' that do not currently align with the general direction of world leaders' commitments. But the lack of public traceability data, and the lack of company exit or exclusion lists means it is not known if this occurs in practice.

Overall comments:

- A key flaw of this case study is that while it explains WoodNCo's process of identifying dependencies and impacts – it doesn't show us what it would have reported under TNFD's framework.
- Traceability and geolocation – a significant issue for many sectors is that it appears to legitimize and condone companies failing to know the origin of goods that they are buying, trading, using or financing. This is incompatible with the most basic tenants of due diligence.
- Under TNFD reporting it's unlikely that WoodNCo would go into detail to explain what data it was using to assess its supply chain. Meaning that the data gaps and data quality issues identified wouldn't even be clearly communicated.
- Point 2 – 'Legitimizing and condoning deforestation' and the point on cut-off dates stress the importance of TNFD having strong sector and location-based guidance. RAN (and others) are extremely concerned that TNFD plans to rush out its sector guidance in a matter of a few months. This example shows the risk that TNFD will legitimize setting a lower standard than what is already outlined in multiple corporate initiatives and sector standards. This can already be seen in the mismatch between TCFD's Annex on Food, Agriculture and Forest Products and other sector initiatives.
- If TNFD is to present LEAP methodologies for businesses to assess dependencies and impacts it would be helpful to peg this to a higher, rather than a lower, standard. For example, the processes outlined in RAN's [Forest Footprint methodology](#).
- A lack of focus: This case study reflects many of the challenges of TNFD's own processes particularly its skew to focus on complex and detailed datasets (numerous of which are named) before asking more

fundamental questions. Such as: What would WoodNCo's *actual* TNFD report look like? Are there any current complaints against the company? Does the company know where its goods come from? Is there any independent verification or oversight of data and company claims?

- There is a need for many more case studies as these provide a concrete point of analysis.

## B. Under the proposed model, businesses can be TNFD compliant while continuing to trade and finance illegally produced commodities

As identified by Forest Trends, a significant portion of forest-risk commodities produced in tropical regions, like beef, soy or palm oil, are produced in contravention of local laws and regulations (see also [here](#)). The problem is complex, but persists because of widespread impunity, high-profits and business' ability to structure out financial risk, for example, by buying commodities rather than owning plantations – meaning they are less impacted by highly local ecological harms. Agricultural traders, for example, have been able to profit during times of abundant, or scarce, production. This explains why global brands, banks and asset managers continue to be linked to allegations of deforestation and rights violations. Interpol has reported that environmental crime has skyrocketed in recent decades to become the world's fourth largest crime sector growing at 2-3 times the pace of the global economy.

Since the Paris Agreement and the introduction of TCFD reporting financial institutions have made literally thousands of deals with companies linked to deforestation and human rights abuses (see [here](#) and [here](#)). This signals that they do not see significant financial risk arising in relation to their role in these nature-related harms. This is also reinforced by credit ratings agencies. Under TNFD businesses would only be required to report on their ties to goods that were produced on illegally cleared land "if [the impacts] could reasonably be expected to affect the entity's future cash flows". Given widespread impunity for forest and land-clearing crimes, the structuring out of risk, and the fact that credit ratings agencies themselves are not stating that these risks are material – this suggests that a business could be TNFD compliant, without even having to report if it is linked to the sourcing or financing of companies or activities linked to illegally produced goods so long as these business activities made financial sense. This sets an extraordinarily low bar.

## C. Case Study: What could JBS reporting look like under TNFD?

JBS is the world's largest meat packer. In 2020 various NGOs, media agencies, investors and even its own auditor raised concerns about JBS' environmental claims or brought forward allegations that it was sourcing cattle from tens of thousands of hectares of deforested land in the Brazilian Amazon. These concerns were put forward by [Greenpeace Brasil](#), the [Bureau of Investigative Journalism](#), [Chain Reaction Research](#), [DNV-GL](#), [Amnesty International](#), [Global Witness](#) and [Nordea](#). JBS has disputed many, if not most, of these claims. [Credit ratings agencies](#) also signaled that they do not believe deforestation to present a significant financial impact on JBS' business.

In JBS' most recent 2021 self-report on cattle products to the [CDP](#) Forest criteria JBS fails to mention these reports and received a favorable 'B' rating. Under the current TNFD proposal, its TNFD report would likely be in a similar vein. By contrast, if TNFD required JBS to publish a grievance list of complaints and to report on nature-related impacts (not just financial risks to business) this information would likely be captured or at least incongruencies more identifiable.

## D. Case Study: The East Africa Crude Oil Pipeline – why focusing on environmental risk, not financial risk, is needed

French oil company TotalEnergies (also known as Total) and majority state-owned China National Offshore Oil Corporation (CNOOC) are planning to build the world's longest heated oil pipeline. The East Africa Crude Oil Pipeline (EACOP) will stretch for nearly 1,445 kilometres and is expected to extract in the vicinity 200,000 barrels of oil per day. According to the global Stop EACOP! campaign, now in its third year, the project threatens to displace thousands of families and farmers and poses significant risks to water resources and wetlands in both Uganda and Tanzania. The pipeline will pass through numerous sensitive biodiversity hotspots and risks degrading several natural reserves critical to preserve threatened elephant, lion and chimpanzee species. The project will transport oil that will generate over 34 million tons of carbon emissions each year. On the back of a large campaign, endorsed by 1 million people, 15 large lenders and 5 insurers have already committed to not supporting EACOP on the basis of climate, biodiversity or human rights concerns. In 2019, six non-profit organisations from France and Uganda launched legal action against Total over its failure to comply with France's Duty of Vigilance law in regards to EACOP.

Total's 2021 annual report, which encompasses its TCFD reporting, shows a reduction in GHG emissions in its Africa operations since 2015. While EACOP is discussed in several places in its annual report, under the TCFD section it's only reference is "The Tilenga and EACOP projects in Uganda were approved with a low technical cost of \$11 per barrel and CO2 emissions significantly below those of the current portfolio (13 kg CO2 per barrel vs. 18kg CO2 per barrel)". In its CDP climate report, Total mentions EACOP only once, as part of a list of projects about which it writes "the sanctioned projects have a profitability above the internally defined threshold" – i.e. that Total has undertaken different scenario planning for different hydrocarbon price scenarios and still found EACOP to be profitable, even if markets change in future to lower prices. Total also writes, "The company assess the vulnerability of its facilities to climate hazards so that the consequences do not affect the integrity of the facilities..." and that "these internal studies have not identified any facilities that cannot withstand the consequences of climate change known."

This shows the inherent flaws of focusing on financial risk. As activists Vanessa Nakate and Landry Ninteretse show this also fails to take into account the project's impact on pre-existing, sustainable industries. They write "the pipeline clearly threatens one of the most ecologically diverse and wildlife-rich regions of the world. This is a region home to a number of unique, iconic and endangered animals which are been attracting thousands of tourists. What would happen to the local tourism industry, a source of livelihood to thousands in both countries? Will all of them be employed by the oil projects? What are the mitigation measures in place to address the strong potential loss of jobs in the tourism sector and the related local socio-economic sectors?"

While elsewhere in its annual report Total references a range of studies it has taken, civil society engagements at a general level, its support for civil freedoms and human rights defenders – it does not explicitly acknowledge that there is an active international campaign targeting the project's financing or insurance and other expressed concerns that would have been picked up by a credible grievance list. (Since this report publication, in May 2021 even the International Energy Agency itself has since called for "no new oil and gas field development approvals".) There are also salient concerns raised regarding what this means for TNFD. For example, Total describes the pipeline – which will drag across more than 1,400 kilometres, through two countries, affect over 100,000 people and run through an IUCN II area – as having 'net biodiversity gain'. Net reporting claims that appear to suggest nature will be *better off* because a pipeline has been erected are nonsensical.

This case study reiterates the importance of TNFD requiring business to report on its adverse risks and impacts to nature and people – as focusing on financial risk alone may actually serve to alleviate pressure on businesses if profitability is seen as the overriding important factor.

#### E. The TNFD proposal skews business to focus on ‘neat’ cases that fit its model, diverting attention from more high-risk exposures

The TNFD model appears to be particularly well-suited to a certain subset of environmental issues. These are not unimportant, but are less likely to be the most urgent in addressing the nature crisis. For example, a ‘neat’ TNFD scenario would be a factory that requires the use of water for its processing and manufacturing. TNFD reporting may allow the factory to highlight that while water is cheap today, rising water scarcity in the region means the cost of water is likely to go up in future. This empowers the factory to invest now in infrastructure such as water recycling or reducing water use that is financially beneficial in the long term, but not in the short term. Another ‘neat’ scenario is for a farm in an area with dramatically dropping biodiversity. This may allow a farm to identify that a continued drop-in pollinator species will lead to increased costs in future from having to hire pollination services. In this case, a farm may calculate that it is more financially beneficial to take land out of production to re-wild and create pollinator habitat, than to pay for pollination services in future. Another ‘neat’ scenario may be for a company group to focus on planned nature dependencies that are common across their activities – such as water use or soil management. The challenge of TNFD is that if its model steers businesses towards ‘neat’ cases - particularly through its exclusive focus on financial risk and benefit - it may actually detract from more destructive practices. This includes issues like peatland destruction in supply chains, one-off habitat destruction, rights violations, or water pollution events that may not be planned, reoccurring or even identified until after the fact.

#### F. Deep seabed mining: When nature-related risks and impacts are contested or unknown it is not possible to extrapolate a meaningful assessment of financial risk

A salient example of why it’s important to focus on actual and potential risks and impacts – not solely financial dimensions, is for new industries. Opponents of deep seabed mining in the Pacific argue that the complexity of seabed ecosystems, the little known about creatures and communities there, and the interrelated nature of marine life makes it very difficult to reliably understand its risks and impacts. There are also concerns raised that the international law and regulatory space (for example under The Law of the Sea) has yet to be robustly outlined, given this is a completely new proposed industry. Additionally, the activity is outright opposed by some over cultural, and customary obligations to protect the common heritage of the sea. If the risks and impacts on nature of an entire industry have not been established in practice it is impossible to extrapolate a meaningful middle to long-term assessment of financial risk.

#### G. Few predicted the financial impact of the global pandemic: Why risks and impacts on nature and people, not only financial risk, are most salient to know

Few, if any businesses, predicted a global pandemic in 2020 and 2021 – let alone its differentiated financial dynamics on nature. The pandemic drew attention to the role of nature in protecting against zoonotic diseases amplifying EU efforts to ban deforestation-linked agribusiness commodities. However, it also led to record profits for some of the world’s most environmentally-destructive pulp and paper businesses through new demand for surgical masks and other hygiene products. Similarly, no-one predicted that in 2016 Indigenous resistance to the Dakota Access Pipeline would catalyze a \$4.4 billion

divestment from the banks backing companies behind it. Nor did they foresee that the assassination of an Indigenous land and environmental defender in Honduras would lead to the Agua Zarca hydroelectric project being abandoned or that the Russian invasion of Ukraine would fundamentally shift policy discussions on oil and gas. Businesses cannot control or even know much of the political, financial and social environment which determines what adverse nature impacts will become financial risk – but they can control their own actions, exposures, accountabilities and operations to ensure that they are not contributing to nature-related harms.