

Submission to the UN Working Group on Business and Human Rights on “Corporate Influence in the Political and Regulatory Sphere”

Rainforest Action Network, May 2022

Introduction

The Rainforest Action Network (RAN) welcomes the opportunity to provide written input to the UN Working Group on the issue of Corporate Influence in the Political and Regulatory Sphere. RAN is an NGO that aims to work towards a world where the rights and dignity of all communities are respected and where healthy forests, a stable climate and wild biodiversity are protected and celebrated. RAN works to preserve forests, protect the climate and uphold human rights by challenging corporate power and systemic injustice through frontline partnerships and strategic campaigns. In this submission RAN focuses on the Taskforce on Nature-related Financial Disclosures (TNFD) as emblematic of broader concerns of undue corporate influence in public decision-making, including policy and regulatory approaches, to the financial sector.

Expectations of the financial sector in relation to its adverse risks and impacts on nature are relevant to human rights in myriad ways, including:

- Financial institutions have been shown to continue to finance, or invest in, businesses even after being directly informed of environmental and human rights abuses – which is likely to be perceived as an endorsement of current practice.
- Financial institutions can cause, contribute to or be directly linked to human rights abuses. However, to date only one commercial bank globally is understood to have a grievance mechanism – reflecting the poor state of remedy and redress.
- Human rights frameworks, such as respecting free, prior and informed consent, have been shown as critical to prevent harms to nature and people. They also ensure Indigenous peoples rights over their own land and territories critical to their local and global leadership on modelling best environmental practice.
- Outcomes for nature are also inter-related with human rights, including the right to a healthy environment, the right to water and the right to food.
- Threats and killings of land and environmental defenders are among the highest of any human rights defender group.

Below RAN responds to the Working Group’s questions 1, 5, 6 and 7. For any further questions or clarifications regarding this submission please contact Shona Hawkes at shona@ran.org

1. What is your understanding of undue corporate influence in policy and regulatory matters? What challenges have you observed? Could you think of any concrete examples in activities or operations of your organization?

To respond to this question, RAN wishes to present a case study on the TNFD. This highlights the subtlety of how undue corporate influence works even in limiting the imagination of what outcomes are possible or feasible. It is an example of broader trends related to corporate influence of financial sector decision-making that can be observed in a range of fora.

Background: The Taskforce on Nature-related Financial Disclosures

In March 2022, TNFD issued its first [draft framework \(Beta v0.1\)](#). This is the first step in an 18-month process to outline recommendations for how financial institutions and corporations should report on nature-related aspects of their business. While TNFD is a voluntary

initiative, it is expected that TNFD will become the international standard for business reporting on nature.

TNFD is modelled off an earlier voluntary initiative, the 2017 [Task Force on Climate-related Financial Disclosures](#) (TCFD). TCFD-aligned [reporting requirements](#) or similar are now being adopted by governments in Brazil, the European Union, Hong Kong, Japan, New Zealand, Singapore, Switzerland and the United Kingdom and the [United States](#). TCFD is backed by [120 regulators](#) and government entities. TNFD is similarly [endorsed](#) by the G20 and G7, funded by multiple governments and its co-founders include two UN agencies, [UNDP](#) and [UNEP-FI](#). TNFD is being written – by corporations themselves – cognisant of the possibility it will be standardised into national regulatory requirements in future.

Concerns raised by NGOS on TNFD

A recent [Joint NGO Open Letter to TNFD](#) signed by 28 organisations and networks outlined seven key recommendations on the Beta v0.1 framework. It is accessible [here](#). The letter highlights that many civil society organizations (CSOs) do not have enough information on, or even understand, TNFD. The letter reflects several concerns:

1. **TNFD excluding human rights reporting**, despite the alignment of human rights and nature outcomes in over a dozen corporate initiatives and emphasized by a range of collectively developed rights holder and CSO statements (see Example 1).
2. **TNFD's failure to require business to report on adverse risks and impacts on nature**. TNFD only requires business to report on risks or harms if they are financially significant to it in the short, medium or long term (see Example 2).
3. **Failure to require forms of transparency** that allow communities or workers to even know the name of companies or financial institutions that are active in, buying from or financing operations or projects in their local area. Without which it is difficult to access and defend their rights, or alert businesses to problems before they reach crisis point. Again, noting that traceability and transparency is already addressed in various initiatives.
4. **The need to report meaningfully on nature-related claims** noting issues that have been raised about the integrity of ESG reporting, including that it can present a misleading picture of a business' actions and priorities. This specifically outlines that TNFD needs to require business reporting on lobbying, publish grievance lists, publish a list of all Indigenous, tribal and other local communities impacted by potential and existing projects and operations, and publish exit or exclusion lists.
5. **Issues related to TNFD's impacts on equality, equity and just transition** and the need to scope these to ensure necessary safeguards are put in place.
6. **Failure of TNFD to recruit and resource staff who have the specialist skills in how to work with marginalized groups, rights holders and grassroots organization**. Months after Beta v0.1 launched there is little to no public information on its outreach to rights holders and civil society groups.
7. **Failure to test TNFD's proposal against real-world case studies or case studies modelled on real-world scenarios**.

These points respond to the limited parameters of TNFD's model. More broadly, rights holders and CSOs have emphasized the importance of accountability, remedy and redress, as well as the need to challenge the normalization of business keeping the profits from illegitimate deals linked to harmful human rights and nature outcomes. For example, as outlined in a [letter](#) on forest-related issues linked to financial institutions ahead of COP 26.

Next, this submission outlines two examples of how these concerns lead to practical consequences in undermining, or contravening, existing human rights norms in high-risk industries for harms to nature and human rights. This submission then outlines five trends common to many financial sector initiatives and/or discussions of finance in regulatory and

policy discussions that outline the practical and cultural aspects of undue corporate influence.

Example 1: TNFD's draft framework is out of step with already established norms in corporate initiatives in high-risk industries, undermining the headway made on human rights

A key concern arising from the non-representative efforts that established, and now undertake, TNFD is to highlight how its current approach has so significantly deviated from existing norms for high-risk industries. Its framework only refers to nature-related financing reporting, excluding human rights altogether. In its 96-page Beta v0.1 framework the term 'human rights' does not appear once. To think that business can meet its responsibilities to nature while evicting Indigenous Peoples, inciting violence against land and environmental defenders or cutting communities off from local water sources goes against lessons learned across many years of what leads to successful outcomes for nature and people. TNFD itself claims that it "is not developing a new standard. We are creating an integrated framework that builds on existing standards, metrics and data."

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](#), [Advise 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. A recent sample include: [The Land Rights Standard](#), [The Geneva Declaration](#), the [Global Pact to Protect 80% of the Amazon by 2025](#), the [Global Alliance of Territorial Communities](#) five key asks, [A Call to Action from the Global Women's Assembly for Climate Justice](#) and recommendations for how to [integrate Indigenous rights reporting](#) into TCFD-style frameworks. TNFD failing to scope existing statements, recommendations or stakeholder mapping behind this work further undermines TNFD credibility and trust in its process.

Human rights are increasingly recognised in international environmental fora. The [Kunming Declaration](#) includes commitments "to respect, protect and promote human rights obligations when taking actions to protect biodiversity". The IPCC's [sixth assessment report](#) also emphasizes the interconnectedness between climate crisis, biodiversity crisis and social inequalities. The [Glasgow Leaders' Declaration on Forests and Land Use](#) recognizes the rights of Indigenous Peoples, as well as local communities in accordance with national legislation and international instruments. This is in addition to overarching business frameworks, such as the [UN Guiding Principles for Business and Human Rights \(UNGPR\)](#), and the government-backed [OECD Guidelines for Multinational Enterprises](#), and their related [guidance](#). As recognized by the TNFD itself, the form of reporting it proposes is closely aligned with the Global Reporting Initiative (GRI). The first GRI standard was backed by UNEP and issued in 2000 and is [adopted by the vast majority](#) of the world's largest companies. The GRI [Universal Standards](#) identify UNGP-aligned human rights as a baseline reporting requirement – meaning that its sector and topic standards, including on biodiversity, appear alongside integrated human rights reporting. UNDP, one of TNFD's funders, is specifically tasked to promote human rights in environmental policy.

Example 2: TNFD's draft framework doesn't require business to report on its adverse risks and impacts to nature and human rights

A fundamental issue raised in the [Joint NGO letter](#) is that TNFD doesn't actually require businesses to report on their actual or potential adverse risks and harms to nature – which should be the foundation of evidence-led decision-making. Instead, TNFD only requires a business to report on financial risks or benefits that may arise to its business – as a result of its dependencies or impacts on nature. This is likely to be a highly subjective assessment. While an ethical business may believe that being linked to any harms to nature will hurt its business, a company that is complicit in environmental and human rights abuses is less likely to think this way. This approach also risks diverting business focus away from the most serious environmental harms that may occur in high-risk contexts where there is high impunity – and therefore less risk of legal repercussions for wrong-doing. TNFD's proposed approach is also profoundly out of step with existing corporate initiatives, including on finance, that focus on environmental and human rights outcomes not only financial risk (as referenced in Example 1).

TNFD is often discussed publicly in the context of its role to support forests – which account for 80% of land-based biodiversity. In the Beta v0.1 draft TNFD notes that it has decided to focus heavily on aligning with the approach of TCFD on the advice of market participants. It appears to have done limited scoping of high-risk industry corporate initiatives and does not appear to have examined why – given that forests are a sizeable carbon-sink and forest-risk industries account for a large portion of greenhouse gas emissions – TCFD's impact on this area has so far been limited. One conclusion is that TCFD – including in its Agriculture, Food and Forest Products annex – ignored many of the well-established norms likely due to its structure sharing many of the same challenges as TNFD. This includes TCFD failing to acknowledge requirements already systematized in many of the initiatives named in Example 1. This includes on Free, Prior and Informed Consent – important to uphold human rights, but also to avoid stoking land conflicts and land disputes as the shift from an oil-based global economy to a land-based global economy changes commercial interests in natural resources; to use cut-off dates – closing off future markets for products grown on cleared and felled land; to cover all natural ecosystems affected by forest-risk industries to avoid simply moving the problem as business exit forest ecosystems to clear peatlands or savannah or undertake land grabs instead – and many other points. These requirements also reflect that few businesses openly say that they plan to be implicated in deforestation or natural ecosystem clearing through their operations, supply chains or finance – and have evolved to specifically address these issues. TCFD's influence has led to complementary initiatives, such as the [Science Based Targets initiative](#), similarly failing to integrate these hard-won lessons.

Five trends common to many financial sector initiatives endorsed by governments and/or discussions of finance in regulatory and policy discussions

Five trends RAN observes in TNFD are common to many financial sector initiatives. These highlight the low expectations that are set of the financial sector by business, by government and even certain UN agencies and aspects of the NGO community. This represents an undue corporate influence on regulatory decision-making that is so embedded that the financial sector is often positioned as outside the normal expectations of business. This contrasts with financial institution and company requirements under the UNGPs and OECD Guidelines.

1. Starting from Zero

TNFD itself acknowledges that the financial sector has been slow to understand and value nature. However, in its approach it has ignored many of the existing principles already normalized in multi-stakeholder corporate initiatives for high-risk industries over the last decade or longer. Examples 1 and 2 outline how this starting from zero approach not only fails to set meaningful ambition – it undermines and contravenes the expectations on human rights already internalized in corporate initiatives, including finance.

2. Exclusivity – including excluding the voices of those facing human rights abuses

TNFD's 34-person [taskforce](#) is comprised solely of senior staff from global corporations, financial institutions and commercial data providers – a structure which opposes long-established expectations of credible international decision-making. Several of the businesses whom members work for face allegations of being linked to serious environmental and human rights harms. In addition to the taskforce, there is a [TNFD Forum](#) – a consultative 'hub' of over 400 'institutional supporters'. To join the Forum requires interested groups to first [complete a form](#) saying that they endorse TNFD's mission and they are publicly named. CSOs that do not understand TNFD, or may even actively critique it in order to make improvements, are therefore highly unlikely to join. The TNFD Forum is comprised of mostly business and governments. There is a Knowledge Hub of [knowledge partners](#) comprised largely of data experts. It appears that TNFD can seek advice through these structures, but is not obligated to follow it. While some NGOs are heavily involved in TNFD, such as co-founders Global Canopy and WWF, these are principally in the role of data experts. They are not human rights organizations and do not work closely with rights holders. The TNFD structure amplifies the voices of those who are complicit in harms to nature and human rights but provides little meaningful voice for victims of such harms.

In late May 2022, TNFD did announce a further [consultation structure](#). This is composed of six consultation groups, all led by financial sector actors. It has also announced four piloting program partners who will each run a portfolio of tests with companies and financial institutions of the draft framework. TNFD has noted a partnership to 'engage' Indigenous peoples and local communities via the International Union for Conservation of Nature – however, it is not yet clear when or how this will happen. If this only begins after the first two drafts of the framework are published (the next due in June 2022) it could be expected that by this time much of the DNA of TNFD's approach will be cemented. This 'engagement' process does not appear to sit within any formal TNFD decision-making structure.

These processes are perpetuated by a culture – including within governments and UN agencies – that suggests that only financial insiders are sufficiently expert to advise on financial regulation. TNFD fails to provide plain language information and collate resources that explain finance and its key tenants for lay people. Elsewhere, there are already [examples](#) of how to build accessible information on complex technical areas of finance. Many of RAN's own staff now working on financial sector issues come from a non-finance background. RAN believes that what it observes with TNFD reflects a trend that can be seen in a host of other finance-dominated policy-making processes.

TNFD's structure and draft framework contrasts with processes which, while not perfect, have a broader and more deliberative process involving multiple stakeholders. This is evident in the more ambitious outcomes arising from the OECD guidance for responsible business conduct [applying to financial institutions](#) and the Office of the UN High Commissioner for Human Rights (OHCHR) notes [articulating responsibilities](#) for financial sector actors under the UNGPs. This is also seen in the evolution over time of initiatives outlined in Example 1 and a forthcoming report on finance from the UK [Global Resources Initiative](#).

3. Financial Exceptionalism

TNFD reflects an ethos that the financial sector simply needs better information or visibility to act differently – and itself sits outside the accountability expected of other businesses. This ignores the [evidence](#), compiled by many different organizations, of where banks, investors and asset managers have failed to address environmental and human rights abuses directly presented to them.

To provide recent examples, in Indonesia Jikalauhari has urged the Attorney General's Office and President Jokowi not to exempt [financiers](#) from their investigations and response into a host of concerning practices by palm-oil traders. In several high-consuming countries, such as the EU, UK and the US, there is currently discussion of how to regulate imported deforestation through commodities such as palm oil, soy or beef. In effect, these laws or proposed laws cover agribusiness companies but not financial institutions fuelling the sector. This creates a scenario where public policy is communicating that it is unacceptable for certain businesses to profit from deforestation such as agribusiness traders, but it is acceptable for banks and investors to. Statements by the [European Commission](#) or [UK government](#) have specifically outlined that while certain businesses must be regulated and accountable, reporting measures such as TNFD or similar are sufficient to address financing. Multiple stakeholders, including business, parliamentarians and civil society networks have called for financial sector requirements. Even the UK-government backed Global Resources Initiative multi-stakeholder taskforce has recently outlined that such measures are not comparable and that regulatory measures should be extended to cover finance.

4. Normalized and systemic impunity

The previous point also speaks to the normalization of financial sector impunity i.e. the view that finance shouldn't be covered by efforts to regulate problematic sectors in which finance is a key participant and profits from. A [recent paper](#) highlights how, even under existing anti-money laundering laws, financial institutions are legally able to handle the proceeds of environmental crime – so long as a crime designated as a 'financial crime' has not occurred. Financial institutions typically fail to require consent to be publicly named as a financier of projects or companies as a condition of finance, then often hide behind confidentiality concerns to justify failing to investigate or engage on cases of identified rights abuses.

5. Failure to challenge the right to keep illegitimate profits

As is the norm in standard-setting activities for the financial sector, such as TNFD and more explicit regulatory processes, the need to challenge the right of businesses to keep the profits that they make connected to deals linked to harmful, illegitimate or even illegal activities, including human rights abuses, isn't acknowledged. Intuitively, one doesn't have to be a financial expert to understand that so long as financial institutions are able to keep the profits that they make off deals linked to environmental and human rights abuse the status quo will prevail. The frequency and repeated natures of deals documented through the [Forests and Finance](#) database shows that this is a systemic, recurring problem. One [recent report](#) examining financing to just 20 agribusiness companies linked to deforestation and human rights abuses estimated that financial institutions made USD \$1.74 billion in gross profit off these deals in the five years following the Paris Climate Agreement.

5. What are the specific human rights risks posed by corporate influence in the political and regulatory sphere to groups in most vulnerable situations such as women and girls, indigenous communities, human rights defenders, persons with disabilities, persons with different sexual orientation or gender identity or migrant workers?

Example 1 outlines how TNFD's proposed model, which ignores human rights, risks undermining and contravening the integration of nature and human rights already incorporated into over a dozen corporate initiatives in high-risk industries. This took great awareness raising, time and energy to achieve. This poses a particular risk to the rights of Indigenous Peoples and the rights of human rights defenders working on land and environmental issues, including women and youth within these groups. Example 2 also proves illustrative of this issue.

6. How does corporate influence in the political and regulatory sphere impact the ability of victims of business-related human rights abuses to seek access to effective remedies? What specific challenges do rightsholders face in accessing effective remedy?

As highlighted in the case of TNFD and many existing regulatory processes at state level – discussion of financial sector provision of remedy and redress to victims is virtually non-existent. Specific to TNFD, its structures of decision-making have meant that the initiative itself has been designed to exclude any accountability for outcomes of business practices. The [Joint NGO letter](#) highlighted that TNFD’s Beta v0.1 report doesn’t even acknowledge the need for grievance lists – that is reports of current allegations, complaints or litigation against a business, the business’ response and statements from victims regarding whether they think this approach appropriate or not. These are not required under TCFD.

7. What recommendations on this topic would you like the Working Group to include in its report?¹

- a) RAN would welcome any specific reference to TNFD by the Working Group – as it may still be possible to influence its process to incorporate meaningful reforms.
- b) Funders, including donor governments and UN agencies, to make support to initiatives such as TNFD contingent on strong, clearly structured and inclusive decision-making structures.² This should include trauma-informed processes that provide specific outreach to at-risk rights holders and victims of corporate-led human rights harms and to position them as central to the process. Also require mandatory reporting of participation data – to identify which stakeholders are over or under-represented.
- c) States to invest in skilling up environmental and human rights expert staff to ensure that they can meaningfully and fully participate in discussions regarding financial sector regulation and reform. Also to resource similar efforts for civil society.
- d) States to avoid any statements that legitimize financial sector exceptionalism. States, and the UN system, should ensure that principles of accountability apply equally to all economic sectors and actors, including finance.
- e) Resource the office of the Special Rapporteur on human rights and the environment and OHCHR to engage on financial sector issues, including supporting appropriate and inclusive consultative processes for non-financial stakeholders. This fits with the Special Rapporteur mandate – that TNFD-funder UNDP itself is tasked to support – of integrating human rights into environmental policy.
- f) Resource Special Rapporteurs and OHCHR to investigate, and report on, the role of financial institutions in corporate-led human rights harms and to support casework.
- g) Funders, including states, to provide funds for community-led casework through judicial and non-judicial mechanisms. Noting the role this can play in advancing remedy and redress [expectations](#) of the financial sector.
- h) Recommend an independent investigation into the UNEP-FI program. This should examine why it has failed to develop a strong consultative mechanism that centres rights holders and the victims of corporate harms across all initiatives it is backing and why it has failed to streamline strong human rights provisions in its work.

¹ Several of these recommendations also overlap with Question 3 posed by the Working Group “what measures could States take to prevent and address corporate political activities that may undermine the State’s ability to protect human rights and businesses’ responsibility to respect human rights?”.

² This should include such basic principles of sound consultation as stakeholder mapping, providing plain language information, providing trauma-informed processes that take special efforts to centre the voices of rights holder and victims of corporate harms, ensuring that there are planned public events and workshops targeted at civil society groups, ensuring that TNFD’s recommendations are tested against real-world case studies and providing a response matrix to allow independent scrutiny of how TNFD has considered and weighed feedback from different stakeholder groups.