BANKTRACK

SUBJECT: PUBLIC COMMENT LETTER ON THE TNFD – BANKTRACK'S SUBMISSION ON V.04

01 JUNE 2023

Dear Taskforce on Nature-related Financial Disclosures Secretariat,

BankTrack is pleased to provide feedback on the latest version (version 0.4) of the Taskforce on Nature-related Financial Disclosures (TNFD) framework. Our submission is divided into two sections. The first section critically evaluates the approach undertaken by the taskforce in developing the framework, highlighting our serious concerns about this process. The second section focuses on specific recommendations aimed at enhancing the TNFD framework's effectiveness in addressing biodiversity loss, particularly focused on ensuring the voices and rights of those most affected by the biodiversity crisis are centred and respected. As financial institutions, particularly commercial banks, are the focus of BankTrack's work and expertise, our submission primarily concentrates on recommendations related to these institutions.

It is worth noting that numerous complaints and concerns have already been raised by civil society organisations through previous consultation rounds, direct meetings with the TNFD, and open letters with wide sign-on. Regrettably, we observe that the majority of these complaints and issues raised have yet to be addressed by the taskforce during the framework's development. In doing so, the TNFD framework poses a serious risk of allowing corporations and financial institutions to greenwash their actions related to biodiversity while also failing to make a concrete improvement to biodiversity protection and restoration, including upholding the rights and interests of those affected the worst by the biodiversity crisis. In this final consultation round, we sincerely hope that the TNFD will give due consideration to these issues and take appropriate action to substantially improve the final version of the framework.

SECTION 1: COMMENTS ON THE APPROACH OF THE TNFD

LACK OF DIVERSITY IN THE TNFD TASKFORCE

The TNFD claims to follow a "science-based" and "market led" approach in developing a risk management and disclosure framework that will enable businesses and financial institutions to integrate nature into decision making. However, we find little evidence to suggest that the TNFD framework is science-based and the very idea that a market-based approach is in line with the science on biodiversity protection is flawed. In 2022, the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) explained that market-based methods of evaluating nature do not reflect how changes in nature affect people's quality of life and that, by prioritising these market-based values, policies often overlook the many non-market values of nature such as climate regulation and cultural identity. The same study also emphasised the importance of diverse voices in decision making, particularly those of Indigenous Peoples, local communities, women's organisations and other often marginalised people, which leads to better outcomes for people and nature.[1]

[1] Media Release: IPBES Values Assessment - Decisions Based on Narrow Set of Market Values of Nature Underpin the Global Biodiversity Crisis; 10 July 2022

The TNFD taskforce is not made up of diverse voices. Instead, it is made up of 40 executives from financial institutions and corporations.[2] These members include businesses and financial institutions that have been repeatedly accused of serious environmental and human rights harms and have persistently failed to respond to impacted communities and civil society when instances of specific violations have been raised.[3] The taskforce includes financial institutions that are some of the biggest financiers of high-risk industries that are driving nature destruction globally, such as the fossil fuel industry, industrial livestock companies, the pulp and paper industry and wood biomass.[4] There are no objective criteria for how the taskforce members are appointed and there is no representation of Indigenous Peoples or local communities, civil society organisations, academics or scientists in the taskforce itself. While some of these institutions have supported the taskforce through the TNFD Forum[5], knowledge partners[6], or consultation groups[7], the information shared through these processes is not publicly available and the contents of the framework is ultimately decided by the taskforce itself.

In order to properly address the biodiversity crises and for companies and financial institutions to better understand how their activities impact upon nature, it is crucial that the voices of those most impacted by nature destruction are centred. As previously expressed by rights holders and civil society organisations, those working on the frontlines of the biodiversity and climate crises have been incredibly clear on the steps needed to stop corporate-led nature harms. This includes placing human rights at the centre, states working together to regulate businesses at the national and international level, holding businesses publicly accountable for their impacts on nature and people, and ensuring that corporations have a legal obligation to provide full disclosure and remedy to people or ecosystems harmed. It is clear that the framework, as it is currently presented, does not meet these objectives and therefore it is viewed by many as a distraction for real, just and sustainable solutions.[8] In the second section of this submission we have put forward recommendations on how to improve the TNFD framework in such a way that it would meet these objectives somewhat and result in meaningful changes to companies' impacts on nature.

TNFD POSES A SERIOUS GREENWASHING RISK

The TNFD framework has no compliance structure, meaning that it will not check or verify the information that a company or financial institution includes in its reporting against the framework. There is no system of penalties or consequences for businesses that provide incorrect or misleading information in their TNFD reports, nor for those that are consistently linked to environmental and human rights abuses. Moreover, a company or financial institution can produce a TNFD report without reporting against all of the TNFD recommended disclosures - in theory, a TNFD report could include reporting against only one recommendation of the framework and still be considered acceptable. This means that the framework poses a serious risk of allowing companies and financial institutions to greenwash, since they can produce a TNFD report which presents a picture of sustainability while choosing to leave out any information on its negative nature impacts. This greenwashing undermines and works against the efforts of grassroots communities defending their land, waters and human rights against harmful activities. It also means that the data and information presented in TNFD reports is not reliable or comparable across companies or financial institutions.

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[2] https://tnfd.global/about/taskforce-members/

[3] BankTrack's report "Actions speak louder: Assessing bank responses to human rights violations" (December 2021) and "The BankTrack Global Human Rights Benchmark 2022" (November 2022) highlight how many banks fail to provide an adequate response when approached by civil society in relation to specific instances of human rights violations.

[4] For examples, see the bank profiles of taskforce members Bank of America, BNP Paribas, HSBC, Rabobank and UBS on the BankTrack website.

[5] https://tnfd.global/about/the-tnfd-forum/

[6] https://tnfd.global/about/tnfd-knowledge-partners/

[7] https://tnfd.global/consultation-and-engagement/consultation-groups/

[8] Joint Open Letter to the TNFD; 13 October 2022

There are various steps that are needed to address the greenwashing risks associated with these issues. The most basic starting point is that **the TNFD should require companies and financial institutions to report against all the recommendations in the framework, or if they cannot report on specific recommendations, they should be required to explain why this is.** This is commonly referred to as a 'comply or explain' approach. It is a basic principle that describes a mechanism used to manage compliance with provisions that are not legally binding. The addressed party decides for itself whether it accepts and complies with a proposed best practice, or if it decides not to do so, it openly publishes an explanation for why it is not complying. The OECD Due Diligence Guidance on Responsible Business Conduct states that if certain information cannot be shared, a valid explanation to the extent possible, should be given for why the information is not shared.[9] A salient example of why this is important is the TCFD's analysis of the 2021 reporting against this framework, which shows that only 4% of companies reporting against the TCFD framework did so against all 11 of the recommended disclosures.[10] The TCFD has been in place since 2017, meaning that even after five years companies and financial institutions have made little progress in developing comprehensive TCFD reports.

There are also benefits for companies and financial institutions in using this approach, including lowering the compliance burden for smaller companies and thus allowing more companies to implement the TNFD. The TNFD framework will be used by a variety of different companies and financial institutions that all differ in size, structure, and practice, and the comply or explain approach allows for flexibility in reporting to cater for this. It also allows institutions to be more transparent, giving them the opportunity to explain why they are not yet complying with a certain recommendation, and detail the plans they have in place to comply in the coming years. It is important for the TNFD to take a proactive approach so that companies and financial institutions cannot use this as a way to be less transparent, including by adding requirements for the explanations institutions can provide in their reporting. For instance, the TNFD could require that institutions provide a clear explanation and time-bound plan on how and when they plan to comply with the recommendation. Furthermore, the TNFD should state that a company or financial institution can only refer to a TNFD report if it is reporting against all the recommended disclosures or has a public plan to report against all disclosures within five years after adopting. By including this in the framework, the TNFD would result in more meaningful disclosures that can be verified and cross-referenced across institutions.

Section 2: Recommendations to strengthen the TNFD Framework

In this section we have tried to provide concrete recommendations for the improvement of the TNFD framework specifically related to financial institutions' reporting and risk management, taking the additional draft disclosure guidance for financial institutions as a starting point.[11] The TNFD Framework could play a crucial role in ensuring greater transparency and accountability within the financial sector, however, in its current format it does not go far enough in this regard. While knowledge of a financial institutions' policies, strategy or aggregated data can be helpful, there is much more salient and basic information that financial institutions should be requiring from its clients and disclosing itself that would go further in addressing impacts on nature. This includes:

- What clients and projects is a financial institution providing financial services to?
- What clients, sector or activities will a financial institution **not** finance?
- Are the financial institution or its clients facing complaints?

In reading the disclosure guidance for financial institutions, it is hard to get an understanding of precisely what a financial institution would have to report under the TNFD Framework. There have also been no example TNFD reports provided that would help in this regard. This is compounded by

[9] OECD Due Diligence Guidance for Responsible Business Conduct, 2018 - see page 87
[10] Task Force on Climate-related Financial Disclosures: 2022 Status Report, October 2022
[11] The TNFD Nature-related Risk and Opportunity Management and Disclosure Framework: Beta v0.4 Annex 4.4: Additional draft disclosure guidance for financial institutions, March 2023

numerous instances of vague language and a lack of concrete recommendations provided within the guidance itself.

The recommendations that we have provided below are primarily focused on the issues of transparency and accountability, since this plays a crucial role in understanding exactly how the banking sector is taking up its responsibility on nature, climate and human rights. Without transparency, holding banks accountable for financing harmful clients or projects becomes impossible. Disclosing information about financed clients and projects enables stakeholders to assess a bank's impact, engage in meaningful dialogue, and provide a means for affected communities to seek redress. Furthermore, increased transparency benefits financial institutions by enhancing clarity, trust, stakeholder engagement, due diligence, and reporting. Where financial institutions withhold such information, affected communities and rights holders are unable to seek appropriate remedies for harms caused by destructive business practices. If banks claim to include environmental or human rights protections in their policies, but fail to disclose where their finance is going, it prevents those whose rights should be protected from understanding the rights and protections afforded to them or from seeking remedy in the case of violations.

DISCLOSURE OF PROJECTS AND CLIENTS FINANCED BY BANKS

The TNFD's current draft framework includes a recommendation for companies and financial institutions to "describe how affected stakeholders are engaged by the organisation in its assessment, and response to, nature-related dependencies, impacts, risks and opportunities." The additional guidance that has been provided under this recommendation in the latest version of the framework is welcome, however, it is missing a crucial first step since the framework does not require financial institutions to disclose the names of projects or clients that it is providing finance to. This means that communities or individuals who may be impacted by a project or business activity are unaware of who is financing the activity, and therefore are unable to engage with the financial backers of such projects or companies.

One of the biggest challenges in assessing what financial institutions are doing to protect nature and respect human rights is to understand how they implement their policies, including an understanding of what clients and projects they are financing. Anonymised and aggregated data on sectors and locations can only go so far in understanding the actual impacts of a financial institution's financed activities. Disclosure of client and project names is possible, but not common, in the banking sector and financial institutions routinely respond to enquiries by civil society about specific transactions – especially those regarding the environmental and social 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, despite widespread evidence that banks can and often do disclose their involvement with specific customers.

For many years, 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 – anyone who can afford the high prices for access to these databases. Such databases are outside the reach of most CSOs, let alone communities who may be affected by bank finance, creating a significant imbalance of access to information. However, it is important to highlight that the widespread availability of data to those with sufficient funds goes in direct contradiction to financial institutions' claims of client confidentiality, since it shows that it is possible for financial institutions to include such disclosure in client contracts.[12]

Other examples of client and project name disclosure include the Equator Principles which, with some exceptions, require signatory financial institutions to report on the names, locations and sectors of

[12] For more information, see BankTrack's report "We are unable to comment on specific customers: Challenging banks on client confidentiality" (March 2019)

projects financed.[13] Dutch development bank FMO 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.[14] Today, this practice is also used by other development finance institutions – such as the Asian Infrastructure Investment Bank.[15] Triodos bank, which is headquartered in the Netherlands, publishes a database of every organisation it lends to and has done since 2009 – almost a decade and a half ago.[16] In 2017, HSBC bank – which is headquartered in the UK and operates in over 50 countries – introduced a requirement in its palm oil policy 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.”[17]

The TNFD guidance for financial institutions must include a requirement for banks and other financial institutions to, at a minimum, adopt project-name and client-name disclosure. Financial institutions must develop a policy on disclosure, and include disclosure considerations in their overarching environmental and social risk frameworks. New corporate lending and project finance should be contingent on clients consent to the disclosure of key details, including client and project names, names of project sponsors where applicable, sector, use of proceeds, amount and duration of the financial commitment, host country and the country in which the proceeds are used. This can be done through clauses securing consent from clients to make such disclosures as part of their standard loan contracts, and denying finance to clients that are unprepared to accept such disclosures.

EXCLUDING HARMFUL PROJECTS AND CLIENTS, AND DISCLOSING EXCLUSION LISTS

Financial institutions can do more to prohibit harmful financing which directly or indirectly negatively impacts at-risk, critical ecosystems which are essential for conserving biodiversity and regulating the climate. The area-based exclusion approach is already being implemented in some capacity by financial institutions through specific policies relating to internationally recognised and protected areas such as UNESCO World Heritage Sites or Ramsar Wetlands[18] as well as exclusions of certain activities in iconic ecosystems such as oil and gas extraction in the Arctic.[19] The TNFD framework includes a narrow definition of areas of high biodiversity since it is limited to “protected areas or otherwise internationally recognised areas”. This is not expansive enough and should instead refer to a wider list of vital ecosystems such as that proposed by the No Go Policy of the Banks and Biodiversity coalition.[20] In addition, given the strong correlation between Indigenous Peoples and local communities and biodiversity protection, financial institutions should also prohibit harmful financing to areas where FPIC has not been obtained.

In order to ensure that exclusion of projects or clients in at-risk critical ecosystems is well implemented, financial institutions must disclose exactly what clients, projects or activities they will **not** finance. It has been recognised 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.

[13] Equator Principles Version 4, July 2020 - see Annex B for minimum reporting requirements
[14] https://www.fmo.nl/world-map
[15] https://www.aiib.org/en/projects/list/index.html?status=Proposed
[16] https://www.triodos.co.uk/know-where-your-money-goes
[17] The requirement has been maintained in updated versions of this policy. The most up-to-date version is from May 2022 <https://www.banktrack.org/download/agricultural_commodities_policy_2> <https://www.banktrack.org/download/agricultural_commodities_policy_2/230309hsbcagriculturalcommoditiespolicymay2022.pdf>
[18] See Friends of the Earth US’s report “World Heritage Forever? How Banks Can Protect the World’s most Iconic Cultural and Natural Sites” (July 2021)
[19] https://oilgaspolicytracker.org/
[20] https://banksandbiodiversity.org/the-banks-and-biodiversity-no-go-areas/

The practice of financial institutions publishing a company or project-name exclusion list, exit list or observer list is not uncommon. According to Profundo, a small sample of financial institutions, including pension funds, commercial banks and investors, publish such lists.[21] In addition, there are less formal ways that financial institutions communicate exclusions of finance, 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[22], and 25 banks[23] and 22 insurance companies[24] have ruled out involvement or financing the East African Crude Oil Pipeline.

The recommended disclosures provided by the TNFD Framework associated with "Strategy" talk about the "need to understand how nature-related issues may affect an organisation's businesses, strategy and financial planning over the short, medium and long term". The framework recommends that financial institutions and other companies could "describe the effect nature-related risks and opportunities have had" on the business. This language is vague and leaves room for diverse interpretation. It would be more effective here for the framework to **require financial institutions to publish an exclusion or exit list which explains why they will not finance certain clients or activities, including that these clients have a significant negative impact on nature.** An alternative to publishing an exclusion or exit list would be for financial institutions to publish an 'investment universe' which, rather than naming companies or projects excluded, names a total list of companies that the institution will consider financing or investing in, thereby excluding finance for companies not included on this list.

DISCLOSURE OF COMPLAINTS FACED BY FINANCIAL INSTITUTIONS AND THEIR CLIENTS

One of the most effective ways of understanding a client or project's impact on nature is by knowing what complaints or grievances have been lodged against the company or project by affected communities and other stakeholders. This provides the best evidence on whether the company is fulfilling its obligations and commitments on nature, climate and human rights. Financial institutions play an important role in ensuring their clients are transparent in their disclosure of complaints filed against them, but they also have responsibilities under the UN Guiding Principles on Business and Human Rights to establish or participate in effective and accessible grievance mechanisms that can be used by those affected by their activities, including their finance.[25]

Grievance mechanisms and grievance lists play a critical social and environmental remediation role. 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. It is also salient information for financial institutions in understanding the performance of entities that it finances or will potentially finance and assessing their own risks and exposures. One of the challenges that TNFD framework is addressing is the fact that "financial institutions and companies don't have the information they need to understand how nature impacts the organisation's immediate financial performance, or the longer-term financial risks that may arise from how the organisation, positively or negatively, impacts nature."[26] Having information on the complaints and grievances that have been lodged against its clients or projects it might finance is a key way in which financial

[21] Based on an unpublished analysis by Profundo, these 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).
[22] https://www.marketforces.org.au/campaigns/stop-adani/insurers-stopadani/
[23] https://www.stopeacop.net/banks-checklist
[24] https://www.stopeacop.net/insurers-checklist
[25] United Nations Guiding Principles on Business and Human Rights, see Principles 29 - 31
[26] https://tnfd.global/about/#who

institutions can assess the risks and impacts associated with transactions since it provides valuable data from the ground.

The TNFD guidance for financial institutions has gone further in the latest version by recommending that financial institutions "describe their involvement in any cases that concern nature-related dependencies or impacts that are brought to National Contact Points under the OECD Guidelines". However, this must go still further **to require financial institutions to report on any case, complaint or grievance they are involved in. This should include those lodged through any accountability mechanism, including but not limited to, project-level, company, bank (including development bank), or initiative-level grievance mechanisms. It should also include any complaints of serious allegations made through other means - such as research reports or public comments.** In requiring financial institutions to report on complaints of serious allegations made through other means, it identifies that, for various reasons, some groups may not have the means to lodge a complaint through formal processes.

In addition to this, **the TNFD must require that companies disclose a grievance list of any complaints made either directly through an accountability mechanism or through other means.** In order to strengthen this, financial institutions should require clients to publish such a grievance list as a condition of finance in loan agreements, and not provide finance to those clients which refuse to do so.

Summary of Recommendations

1. The TNFD should require companies and financial institutions to report against all the recommendations in the framework, or if they cannot report on specific recommendations, they should be required to explain why this is.
    a. The TNFD should require that institutions provide a clear explanation and time-bound plan on how and when they plan to comply with a recommendation they have not reported against.
    b. A company or financial institution must only be able to refer to a TNFD report if it is reporting against all the recommended disclosures or has a public plan to report against all disclosures within five years after adopting.
2. The TNFD must require banks and other financial institutions to, at a minimum, adopt project-name and client-name disclosure.
3. The TNFD must require financial institutions to publish an exclusion or exit list which explains why they will not finance certain clients or activities, including that these clients have a significant negative impact on nature.
4. The TNFD must require financial institutions to report on any case, complaint or grievance they are involved in. This should include those lodged through any accountability mechanism, including but not limited to, project-level, company, bank (including development bank), or initiative-level grievance mechanisms. It should also include any complaints of serious allegations made through other means - such as research reports or public comments.
5. The TNFD must require that companies disclose a grievance list of any complaints made either directly through an accountability mechanism or through other means.
    a. In order to strengthen this, financial institutions should require their clients to publish such a grievance list as a condition of finance in loan agreements, and not provide finance to those clients which refuse to do so.