



Dear TNFD,

We are writing to you ahead of your final revision to the TNFD framework to set out necessary practical additions to ensure that indigenous peoples' human rights, and those of other customary rights-holders are addressed and incorporated in the LEAP approach and disclosure requirements.

It is regretful that the way in which the TNFD has been conceptualised, designed and developed has meant that it cannot fully integrate all the crucially important human rights of indigenous peoples - such as the right to remedy.

This represents not only a deeply concerning structural flaw in the framework's logic, but also demonstrates a lack of understanding of what responsibilities companies and financial institutions have towards indigenous peoples and their human rights. There is no doubt that a human rights-based approach could have been taken had the taskforce behind the creation of the TNFD consulted properly with indigenous peoples and human rights organisations from its inception.

We therefore urge that our practical suggestions be considered as essential additions by TNFD and that the changes suggested below represent the *very minimum* expectation on businesses and financial institutions in regard to their internationally recognised responsibilities to respect and uphold all human rights.

These suggestions reinforce those being made by the International Indigenous Forum on Biodiversity (IIFB) and we strongly encourage the TNFD to act on their expert advice.

Respecting the rights of indigenous peoples is a fundamental prerequisite to halting and reversing biodiversity loss, as recognised in the internationally agreed Kunming – Montreal Global Biodiversity Framework. Indigenous peoples are the rightful owners of their ancestral lands, and they are holders of traditional ecological knowledge that keeps nature thriving. Their positive contributions to nature should be met with full respect for their human rights, this includes the need for fair and equitable benefit sharing to be premised on their free, prior and informed consent in cases where indigenous peoples have chosen to share their knowledge, practices or natural resources.

The failure of TNFD to incorporate elements that affirm, fulfil, respect, promote and protect indigenous peoples' human rights will not only demonstrate a failure to take on board and act on the legitimate demands of indigenous people themselves, it will also contribute to continued marginalisation and risks increasing their invisibility to companies and financial institutions.

Worse still, it will likely result in more abuses of their human rights rather than the elimination of such abuses. This is not only true in the case of land, environmental, indigenous and human rights defenders who are not properly considered in the TNFD framework, but also of indigenous peoples the world over who, through no fault of their own, bear the brunt of adverse impacts of biodiversity loss and associated human rights abuses at the hands of powerful corporate actors, including the theft of their traditional ecological knowledge for economic gain.

Where companies operating on, sourcing from, or investing in activities place people and nature at risk, or are doing harm, companies and financial institutions must, at minimum, be required to identify, address, and disclose this in relation to both human rights and biodiversity.

It is unacceptable and counter-productive for a voluntary reporting framework to seek only to focus on risks and opportunities to business, which may include the deployment of false solutions such as emerging schemes for offsetting the destruction or degradation of biodiversity, and to focus on nature-related dependencies and impacts on nature without including impacts to human rights. Research has also shown that violations of human rights comes at great cost to business.

The TNFD framework must make clear that requirements to identify, address and disclose impacts on biodiversity should be coupled with requirements to identify, address, and disclose impacts on the human rights of indigenous peoples, local communities, women, and land, environmental, indigenous and human rights defenders.

Companies and financial institutions should not, as is currently formulated under the TNFD, be able to make decisions on what 'materiality' means to them or allow them to decide what their 'preferred or required' approach to materiality should be. It should instead refer to and require 'double materiality' where potential impacts (risks) and actual impacts to human rights are as important as potential impacts (risks) and actual impacts to business. Furthermore, action to address potential and actual impacts should be taken in culturally appropriate ways, in line with direction given by the affected indigenous peoples.

Concepts and definitions

Free, Prior and Informed Consent (FPIC) regarding the access to and use of indigenous peoples' traditional ecological knowledge needs to be better articulated, including by using the Mo'otz Kuxtal Guidelines which unpack the meaning of the right to FPIC in relation to the conservation and sustainable use of biological diversity.

FPIC is an important procedural safeguard right that is not a stand-alone safeguard: it is inextricably linked to other key rights of collective rights-holders, such as the right to self-determination, the right to land, territories, and resources, right to culture and right to self-governance amongst many others. Consent can be given (including with conditions), withheld, or withdrawn.

FPIC should not be isolated as the only right that companies and investors need to respect when it comes to indigenous peoples and other customary rightsholders, as has been done in the 'stakeholder engagement' guidance, which singles out FPIC as a key right without explicitly acknowledging its link to other fundamental rights such as to land, territories and resources.

Another important needed change in the definitions section is to explicitly include human rights and the rights of indigenous peoples, at minimum, in the definitions related to 'impacts' and 'priority locations'.

The TNFD risk and opportunity assessment approach (LEAP)

It is not sufficient to simply have a cross-cutting element stating ‘engagement with affected stakeholders’ as part of the LEAP approach. Human rights, through the addition of specific criteria, must be integrated into each element of LEAP.

Whilst we note that there have been attempts to create ‘stakeholder engagement’ guidance, having standalone guidance without integrating key aspects in the main framework reduces its effectiveness in driving real change in corporate behaviour or achieving positive outcomes for indigenous peoples. An independent assessment of how indigenous peoples’ human rights have been integrated in current pilot initiatives undertaken by TNFD should be undertaken, made public, and lessons from this taken to inform the next, and final, iteration of the TNFD framework.

Furthermore, the use of the word ‘stakeholder’ on its own is not always adequate, and this should be expanded to explicitly mention indigenous peoples as legitimate rights-holders.

To meet international good practice and align with international law to the extent it is possible within the TNFD, the following minimum additions should be made:

- **Scoping:**
 - Add to ‘C3 type of analysis’ and ‘F3 type of analysis’ to include the need to answer the question, *what human rights impacts are most likely to result from, or are already happening, because of the organisation’s business and/or investment activities?* A human rights scoping exercise is often the first stage in a Human Rights Impact Assessment, an essential element of human rights due diligence that should be encouraged in the TNFD framework.

- **Locate:**
 - Rename to ‘Locate: interface with nature *and rights-holders*’
 - Amend ‘L3 priority location identification’ to be clear that this includes identifying where negative impacts to human rights are present, including the impacts on indigenous peoples.
 - Add ‘L5 rights-holder identification’ to require the identification of rights-holders impacted by their business activities and/or financial investment. The suggested output of this would be to publish their rights-holder mapping, this information can be required by adding this to point 1 under ‘suggested outputs from the LOCATE phase’.

- **Evaluate:**
 - Amend ‘E2 ID of dependencies and impacts’ to make clear that impacts include those to human rights.
 - Amend ‘E4 impact analysis’ to be clear that such an analysis should focus also on the types of negative human rights impacts that are occurring, or could occur, in the priority locations identified (as above, the definition of ‘priority locations’ should include human rights, including those of indigenous peoples). Indigenous peoples should be consulted to check that the issues deemed as salient by the company or financial institution are also perceived as salient by them, and if they have other issues they deem to be more salient these should be taken into account. A requirement to identify human rights

impacts, including those to indigenous peoples, in the assessment (point 3) should be added under 'suggested outputs from the EVALUATE phase'.

- Assess:
 - Amend 'A1 risk and opportunity ID' to include the need to answer the question, *what are the potential and actual impacts to human rights, including to indigenous peoples?*
 - Amend 'A4 materiality assessment' to include the 'double materiality' concept and the need for potential impacts (risks) and actual impacts to human rights to be included in disclosures. A requirement to include human rights impacts, including those to indigenous peoples, in the 'long list' (point 1), guidance outlining an organisation's proposed risk management strategy (point 3) and the ways a company will avoid, minimise and mitigate risks (point 4) should be added under 'suggested outputs from the ASSESS phase'.

- Prepare
 - Amend 'P3 reporting' to include the need to report on potential and actual human rights impacts, including to indigenous peoples, and actions being taken to address these.
 - Amend 'P4 presentation' to require public disclosures on human rights potential and actual impacts found, as well the actions being taken to address them. A requirement to disclose human rights impacts, including those to indigenous peoples, in a company's integrated disclosures (point 1) should be added under 'suggested outputs from the PREPARE phase'.

The TNFD draft disclosure recommendations

Disclosures should be viewed as a necessary element of respecting the rights of indigenous peoples, enabling access to information on issues that affect them and enabling them to understand which companies are infringing on their rights. Disclosures should not be at the company's discretion; they should be required.

- Under 'Governance'
 - Add a new disclosure requirement, 'C: Describe the Board and management's role in embedding a human-rights respecting culture within the organisation and its involvement in the implementation of human rights due diligence, including in relation to indigenous peoples, women and land, environmental, indigenous and human rights defenders'.
 - Add a new disclosure requirement, 'D. Disclose operational policies and procedures, including commitments to zero-tolerance of reprisals towards land, environmental, indigenous and human rights defenders, to respect land and natural resource rights (including customary, collective, and informal tenure rights), indigenous peoples' rights, the rights of other customary rights-holders and the rights of women; non-compliance protocols; where applicable supplier engagement documents such as codes of conduct; terms of responsible disengagement; and its grievance mechanism that meets the standards and effectiveness criteria set out in the UN Guiding Principles.'

- Under 'Strategy':
 - Amend disclosure requirement A to include, 'which human rights impacts were identified'.

- Amend disclosure requirement D to include, 'areas identified as high risk for potential or actual human rights impacts. List the locations of operations, where land and natural resource rights (including customary, collective and informal tenure rights) may be affected by the organisation's operations, where this would not result in further human rights harms such as reprisals'.
 - Add a new disclosure requirement, 'F: Describe how respect for human rights, including in relation to indigenous peoples, women and land, environmental, indigenous and human rights defenders and human rights due diligence, is embedded within the business' strategy, systems, operations and with suppliers along its supply and value chains.'
- Under 'Risk & Impact Management':
 - Amend disclosure requirement A and Aii to include, 'processes/approach for identifying human rights potential and actual impacts'
 - Amend disclosure requirement B to include, 'processes to manage and actions taken relating to human rights'
 - Amend disclosure requirement C to include, 'how human rights are integrated into the organisation's risk management'.
 - Amend disclosure requirement D to include, 'how affected stakeholders and rightsholders such as indigenous peoples, local communities and women are engaged, how their human rights are respected and how the organisation ensures there are no reprisals against land, environmental, indigenous and human rights defenders'.
 - Under 'guidance for all sectors' include:
 - (a) How the business ensures benefit-sharing is rights-respecting for indigenous peoples, understanding the need for FPIC.
- Under 'Metrics and Targets':
 - Add a new disclosure requirement, 'D disclose the potential and actual human rights harms identified, including those related to indigenous peoples, women and land, environmental, indigenous and human rights defenders and how they are being addressed'
 - Under 'guidance for all sectors' include:
 - (a) What is the % of direct and indirect suppliers who can demonstrate evidence that they have received FPIC? Report what the company and/or investor is doing to verify FPIC was sought in an appropriate manner and whether the process was designed by the customary rights-holders, including women and youths, according to their rights and followed by the company to their satisfaction, as well as whether any benefit-sharing agreements were reached, what the on-going engagement looks like, what the monitoring of on-going agreements consists of, and where the agreement to consent, and agreement reached on benefit-sharing have been published.
 - (b) Where FPIC has not been evidenced, report what the company and/or investor will do when it finds FPIC was not granted.
 - (c) Disclose the identified incidents of violations of indigenous peoples' rights (grievances identified, reported and those under litigation) and disclose the % of grievances that have been adequately remedied from the perspective of the affected rights-holders.

Please note that the above recommendations draw from conversations with the IIFB, Forest Peoples Programme's 30-year experience of working on the rights of indigenous peoples and corporate responsibilities to respect these, the Accountability Framework Initiative's guidance, the Global Reporting Initiative's topic standard for biodiversity, and the UN Guiding Principles on Business and Human Rights.

We look forward to seeing the above incorporated in the final version of the TNFD framework and would be available to clarify any questions resulting from the above.

Kind regards,

Forest Peoples Programme