

# Consolidated Mining Standard Initiative



10 December 2024

## CMSI response to Civil Society Briefing for Automakers and other Downstream Purchasers

The CMSI welcomes robust dialogue and feedback from all stakeholders and rightsholders as part of our commitment to developing a credible and impactful global standard for responsible mining. Recent critiques from a coalition of civil society organisations highlight concerns about the Consolidated Mining Standard Initiative's (CMSI) draft standard, governance model, and assurance process. While we deeply value diverse perspectives, some claims in their briefing document contain factual inaccuracies or misinterpretations. In this response we aim to clarify these points and reaffirm our dedication to an open, inclusive consultation process based on accurate and objective information.

The draft Standard seeks to provide clear and prescriptive requirements while maintaining the flexibility needed to account for diverse local circumstances, ensuring alignment with established international laws and practices. With detailed performance areas addressing issues including biodiversity, Indigenous Peoples' rights, and human rights, the Standard prioritises actionable outcomes supported by rigorous oversight and public disclosure to foster accountability and trust.

The CMSI seeks to align with key international standards and principles, including the UN Declaration on the Rights of Indigenous Peoples, the UN Guiding Principles on Business and Human Rights, and the OECD Guidelines for Responsible Business Conduct. This ensures the Standard supports responsible mining practices while complementing existing frameworks rather than duplicating them. Additionally, robust assurance mechanisms, independent oversight, and a transparent governance model are central to the CMSI's framework, safeguarding the credibility and impartiality of assessments while promoting continuous improvement across the industry.

As part of its iterative development process, the CMSI welcomes feedback through public consultations and ongoing dialogue with stakeholders, including civil society organisations. We remain deeply committed to an open and inclusive consultation process, where there are no barriers to participation and where we have the opportunity to learn from a diversity of perspectives and opinions to help strengthen the content of the final Standard, assurance process and governance model. To that end, CMSI welcomes all feedback. We have made the documents available in 8 languages and have convened a number of explanatory webinars where stakeholders and rightsholders have been engaging with us to seek clarifications during the consultation process; the recordings of these are available on our website, [here](#). In the spirit of an open, transparent, inclusive and proactive process – we have also had a series of targeted engagements with many groups, including with the majority of the authors of the briefing.

### Response to key critiques:

#### 1. Clarity and audibility of the Standard

The claim that the draft Standard is too vague to provide meaningful guidance or enable effective auditing appears to misunderstand its design and intent. Key clarifications include:

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- **Auditable requirements:** Each performance area includes an intent statement that defines the desired outcomes, supported by prescriptive requirements. This approach balances the need for prescriptiveness with the need to consider specific local circumstances in collaboration with workers and affected communities. All requirements have been designed to be auditable, benefiting from over 20 years of experience in developing and assuring standards, such as those established by Towards Sustainable Mining (TSM). We welcome stakeholders' feedback on specific criteria where the clarity and audibility could be improved.
- **Diversity of local context:** The ability to take local circumstances into account is crucial to the standard's global applicability, ensuring relevance across diverse jurisdictions and unique site conditions. For example, in Performance Area 19 on Biodiversity, foundational level requirements include: establishing biodiversity baselines in the area of influence; identifying significant aspects and assessing the risks and impacts from activities on these aspects; and developing a management plan using the mitigation hierarchy. This provides a framework while allowing facilities to adapt based on local context.
- **Performance Area 19 on Biodiversity:** At the Foundational Level, the draft Standard requires compliance with the restrictions established on Key Biodiversity Areas, Ramsar Sites and all legally protected areas. This recognises that where prohibitions are in place, they are complied with by the facility but also recognises that many protected areas enable some forms of economic activity that may include mining. Other mining standards such as the Initiative for Responsible Mining Assurance (IRMA) have similar provisions (e.g. IRMA section 4.6.5.2 allows for mining in so-called no-go zones, including IUCN protected areas, Ramsar sites and others under certain circumstances).
- **Standard vs Guidance:** The briefing suggests that the draft Standard is weak because it lacks guidance on how to implement these concepts, favouring an approach with blanket prohibitions on specific aspects like deforestation and stricter no-go zones, including Key Biodiversity Areas, Ramsar Sites and others. We believe that Standards can not and should not substitute for guidance. There are already established methodologies on how to implement No-Net-Loss and Net-Gain which facilities can draw upon. At the Good Practice level, the draft Standard requires the public disclosure of the methodologies applied, bringing an important level of transparency to the process.
- **Lifecycle coverage:** The draft Standard applies throughout a mine's lifecycle, with requirements that address both current operations and long-term impacts. The majority of requirements across the 24 performance areas can be assessed at any point along the life of the mine and are expected to be independently assessed every three years and self-assessed annually throughout the mine's life. They are focused on the impacts of the facility's present activities. A small number of requirements, such as those in Performance Area 4 (focusing on new projects and expansions) and certain requirements in Performance Area 24 (closure), address future-looking actions. However, the No-Net-Loss and Net-Gain requirements for Performance Area 19 (biodiversity) are structured in a way that requires present day action.

## 2. Alignment with international laws, principles, and guidance that protect the rights of Indigenous Peoples

The draft Standard seeks to closely align with international human rights and Indigenous Peoples' rights frameworks – particularly the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the United Nations Guiding Principles on Business and Human Rights (UNGPs).

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The briefing suggests that the draft Standard does not conform with internationally recognised laws and norms that protect and respect human rights and the rights of Indigenous Peoples, with a focus on the principle of Free, Prior and Informed Consent (FPIC). As noted above, the draft Standard refers to the existing international frameworks and established roles and responsibilities of States and companies in protecting and respecting Indigenous Peoples rights, and in the application of FPIC. Key clarifications are:

- Performance Area 14 on Indigenous Peoples begins, at the Foundational Level, with a requirement to publicly commit to respecting Indigenous Peoples’ rights in line with UNDRIP, which is an advanced and comprehensive international instrument that establishes the basis for FPIC in international law.
- This Performance Area then requires facilities to establish engagement and decision-making processes with Indigenous Peoples, carry out due diligence and, in accordance with the principles of FPIC, obtain agreement with Indigenous Peoples demonstrating their consent. There are further requirements to maintain and monitor the implementation of the terms of such agreements with Indigenous Peoples. This approach enables Indigenous Peoples to express their consent over anticipated impacts to their land or other rights in terms that are acceptable to them. The expectation being that companies conduct due diligence and establish that they respect the rights of Indigenous Peoples, and the presumption from the outset that a proposed project or activity should proceed with agreement.
- The provision in this Performance Area that the briefing questions regarding circumstances where agreement is not obtained with all Indigenous Peoples reflects established interpretations of FPIC (e.g. UNDRIP) that it is not an unequivocal veto and recognises that where there are multiple communities in question, there may be differences between those communities. In these circumstances, the facility must establish processes to navigate these differences.
- The briefing also questions the resettlement requirements of the draft Standard, which are included in Performance Area 4. These requirements directly reference the IFC Performance Standard 5 on Land Acquisition and Involuntary Resettlement, and IFC Performance Standard 7 on Indigenous Peoples and require implementation of these standards in order to achieve good practice.

We recognise the need to continue to engage with and listen to Indigenous Peoples and we re-confirm that we welcome any and all feedback. Throughout and in the run up to this initial public consultation, we have undertaken several targeted engagements with Indigenous Peoples representatives and organisations given the importance of dialogue to understand their perspectives. As a voluntary standard applicable to facilities, the draft focuses on companies’ responsibility to respect Indigenous Peoples’ rights.

### 3. Alignment with widely accepted international standards already used by industry

The assertion that the draft Standard does not align with several internationally accepted standards is too general and, in this form, not accurate. The draft Standard intends to align with internationally accepted standards and has directly incorporated or referenced key frameworks throughout. Examples are:

- **Extractive Industries Transparency Initiative (EITI)** in Performance Area 1.3 (Transparency of Mineral Revenues).

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- **International Finance Corporation's (IFC) Performance Standards** – While the IFC standards have not been referenced across the board, where they do define the established norm, such as resettlement (discussed above) the Performance Standards have been directly incorporated as requirements.
- **International Labour Organisation Conventions (ILO)** are integral to the requirements set out in Performance Area 6 (Child Labour and Modern Slavery), Performance Area 7 (Rights of Workers), and Performance Area 9 (Safe, Healthy and Respectful Workplaces).
- **Free, Prior, and Informed Consent (FPIC) and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP)** – there is a requirement at the Foundational Level of Performance Area 14 to commit to respecting Indigenous Rights in line with UNDRIP, and requirements related to FPIC. Subsequent requirements in this performance area are designed to drive implementation of the provisions of UNDRIP.
- **UN Guiding Principles on Business and Human Rights (UNGPs)** are the cornerstone of Performance Area 5 (Human Rights) and Performance Area 17 (Grievance Management) and are reflected in several other performance areas.
- **Voluntary Principles on Security and Human Rights** are core to Performance Area 11 (Security Management).

It is also worth noting that Foundational Practice is a starting point for conformance with minimum industry standards, on which a facility can build on to improve performance. It is an 'entry point' for companies who are committed to transparency and responsible mining practices and will need additional time or resources to reach Good Practice. Importantly, facilities at the Foundational Practice level are not permitted to make performance claims.

#### 4. Government-backed international human rights due diligence principles and guidance that promote responsible business conduct in supply chains.

The briefing focuses on three key concerns: 1) fulfilling EU regulations; 2) alignment with the UNGPs; and 3) alignment with the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (OECD Guidelines). Each point is addressed below:

- **Fulfillment of EU regulations:** The draft Standard is not a due diligence standard itself but seeks to ensure that facilities implementing it are able to demonstrate responsible practices across all issue areas covered by the Corporate Sustainability Due Diligence Directive (CSDDD), supporting due diligence of downstream actors. To achieve this, the CMSI conducted a mapping of an earlier draft of the Standard against the OECD RBC Due Diligence Guidance, the OECD minerals sector guidance, the EU Battery Regulation and the CSDDD. This process informed the draft Standard's development, ensuring all issue areas covered in the Annex of the CSDDD are addressed in the draft Standard with the explicit objective to support due diligence by downstream actors.
- **Alignment with OECD Guidelines:** The briefing correctly notes that Performance Area 3 (Responsible Supply Chains) is not OECD-aligned. However, this is intentional rather than an oversight. The CMSI does not seek to duplicate existing OECD-aligned standards but rather complement these existing systems. This is why Performance Area 3 requires facilities that are engaged in, or plan to engage in, sourcing and processing of minerals or metals to implement (and be audited against) an OECD-aligned standard to reach Good Practice level. The Copper Mark, the entity that will evolve to become the institutional home for the CMSI, will continue

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to maintain their already fully OECD-aligned Joint Due Diligence Standard (JDDS). Facilities that require an OECD-aligned standard will continue to be able to use the JDDS to complement the CMSI standard, or another OECD-aligned programme such as the Responsible Minerals Initiative (RMI)'s RMAP programme.

- **Alignment with the UNGPs:** The assertion that the draft Standard does not align with the UNGPs is too general and, in this form, incorrect. Performance Area 5 (Human Rights) begins with a requirement to publicly commit to respecting human rights consistent with the UNGPs at the Foundational Level; and the Good Practice Level requires the facility to establish and implement due diligence processes consistent with the UNGPs within the companies' own activities and within the supply chain and network of business partners. **This is a direct reference and requirement of alignment with UNGPs;** the actual requirements have not been listed to avoid duplication. Performance Area 17 (Grievance Management) also requires that the facility's grievance mechanism is aligned with the UNGPs, and that remedy is provided as per the UNGPs. All of these references mean that facilities will be assured based on the UNGPs. The briefing points out that Performance Area 3 (Responsible Supply Chains) does not require human rights due diligence and that is because, as stated above, Performance Area 5 requires this due diligence.

## 5. Assurance independence and credibility

The briefing accurately quotes the CMSI Assurance Framework as providing an opportunity for facilities to make the assurance provider aware of "any sensitivities with a particular interviewee and/or operating context to provide relevant background information". However, it overlooks key aspects of the process that safeguard its independence and rigor. For example, it does not acknowledge that the assurance provider is explicitly required to critically evaluate any list of stakeholders and rights holders provided by the facility and independently select the individuals and groups to be interviewed. Other points of clarification include:

- **Selection of interviewees:** The assurance provider is not required to share their list of interviewees with the facility in advance. Rather, it requires the facility to provide the assurance provider with a list of stakeholders as a starting point, enabling the assurance provider to independently validate and augment the list to ensure they have a complete understanding of the range of stakeholders. The assurance provider is further required to consider a variety of additional inputs to inform their engagement, including the selection of interviewees. This includes (Draft Assurance Process, Section 4.2.5)
  - The Facility's most recent self-assessment and key supporting evidence
  - The regulatory environment in the country of operation
  - Guidance from National Panels (where available)
  - Facility's risk register
  - Results of a media scan
  - Facility grievance register (and any grievances received by the Secretariat)
  - Industry and commodity risk profiles where they are available from a third-party provider or developed by the Consolidated Standard
  - Guidance from the Consolidated Standard
  - Any other relevant information (for example, this might include regulatory compliance issue registers, results of other recent studies or assessments).

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- **Stakeholder outreach:** The critique accurately highlights that facilities are further encouraged to “conduct outreach to the potential interviewees in advance to make introductions with the aim of increasing the likelihood of gaining the consent and cooperation of the interviewee to participate”. This is an encouragement, not a requirement and while there are some regions where, in a low trust environment, this approach may discourage participation, in other areas where stakeholders suffer from stakeholder fatigue or are distrustful of people they don’t know, this may result in a better response rate. The fact that this is in there as an option means that the assurance provider can include it in their assurance plan or not, depending on the circumstances.
- **Mitigating conflicts of interest:** The suggestion that allowing the facility to choose and pay their own assurance provider creates a conflict of interest overlooks safeguards embedded in the CMSI process. Facilities will be required to choose from a registry of accredited assurance providers managed by the evolved Copper Mark, similar to the model used by IRMA.
- **Financial arrangements:** The financial structure, where facilities directly fund the assurance process, aligns with established practices in other respected standards. The model is accompanied by quality oversight by the Secretariat (itself governed by an independent, diverse Board of Directors as proposed in the governance model) as well as by the requirements for accreditation for Assurance Providers which currently include the requirement to demonstrate the ability to manage any conflicts of interest.

## 6. Assurance system: guidance, adequate accreditation, and oversight

This critique suggests that the CMSI assurance reports will lack transparency because they do not require individual statements for each of the Standard’s requirements. This understanding is inaccurate. The proposed assurance process is structured to provide a holistic management system approach for each performance area. The assurance report will:

- Address each performance area
- Require a clear statement of what rating has been achieved and a clear articulation of the evidence observed, and interviews conducted to arrive at that conclusion.
- Require assurance providers to **clearly state which individual requirements have not been met to get to the next level of performance.**

To reinforce accountability, facilities are required to publish and annually update improvement plans addressing any unmet requirements. These plans will be publicly available on the evolved Copper Mark website, ensuring stakeholders have a complete picture of facility performance and progress.

## 7. Governance model: ensuring balance and accountability

The briefing sets out that best practice requirements for meaningful multi-stakeholder initiatives ensure both equal representation of affected populations and civil society and their full equal decision-making power. The CMSI is fully aligned with this statement and this principle is reflected in the proposed governance model.

Key clarifications include:

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- **Independent Chair and Board selection:** The briefing raises concern about the appointment of the Independent Chair and Board members, suggesting a lack of transparency and potential for undue industry influence. This does not accurately present the process outlined in the consultation document: the Stakeholder Advisory Group (SAG) and Industry Advisory Group (IAG) to the CMSI, in collaboration with the CMSI partners, will agree on a set of criteria for selecting the independent Chair. Independence is defined as not having been directly involved with the industry for the past 3 years. The SAG and IAG then propose a shortlist of suitable potential Independent Chairs that satisfy the agreed criteria, from which the four partners select a Chair.

Other than the four Board seats allocated to mining companies (which the partners choose), the choice of Board representatives is for the Chair to decide in consultation with the SAG and IAG, following an open call for applications. The only exception to this is that for the inaugural Board, some of the current serving members of the 6-person Board of Copper Mark will be included in the inaugural Board to enable continuity as Copper Mark transitions to be the entity responsible for the Standard. However, this will not compromise the ironclad commitment of the CMSI partners to establish a Board that has an equal split of company and stakeholder participants, and value chain and mining participants.

- **Relinquishing industry control:** Through the CMSI – and in particular through its proposed governance model – the mining industry is relinquishing rather than entrenching control. Two of the current Standards developed by the partners are currently governed by industry alone (ICMM and World Gold Council), which has been subject to criticism. The CMSI responds to these criticisms in addition to its stated objective of developing a global standard that reduces complexity and clarifies responsible practices for mining companies of all sizes, across all locations and commodities.

## 8. Incentives for continuous improvement

The critique suggesting that the CMSI lacks incentives to encourage companies to move beyond Good Practice overlooks key mechanisms designed to drive continuous improvement. We acknowledge that further development of recognition thresholds is a priority and appreciate feedback on this. Importantly, the framework already includes strong incentives to promote progress, as outlined below:

- **Transparency as a driver for improvement:** Transparency is a corner stone of the CMSI, and one of several incentive mechanisms to drive improvement. Unlike aggregate scoring systems, which can obscure poor performance in certain areas, the CMSI reports facility performance for each performance area individually.
- **Effectiveness of multi-level standards:** The architecture of the multiple levels of performance in the standard is based on the experience of TSM which, over its 20-year existence has demonstrated the power of a standard based on multiple levels of performance to drive quantifiable and meaningful improvement across an industry and within companies and facilities. When TSM published its first verified results in 2006, only about half of the participating facilities could meet or exceed the good practice Level A. Today, the

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majority of mines meet or exceed that level, and the bar set by each protocol has been increased several times over that 20-year period to continue to drive performance.

- **Voluntary standards with accountability mechanisms:** While the CMSI is a voluntary standard and not a regulatory body, its assurance process incorporates mechanisms to enforce compliance. Facilities must meet clear requirements throughout the assurance cycle to remain in good standing. Companies that fail to meet the standard's terms risk being removed from the system, mirroring practices successfully implemented by partner standards like TSM and The Copper Mark.

## Next Steps

Once the public consultation has closed on 16 December, the next steps will be to consolidate all the feedback into a consultation report, summarising the input received. With consent of the contributors, we will also disclose individual responses submitted through the consultation portal. Members of the Stakeholder and Industry Advisory Groups will then collaborate to review the feedback and refine the next iteration of the Standard and oversight system. This revised version will then be shared for a second round of public consultation in 2025.

## Engagement with the authors of the briefing

We value the opportunity to engage with the authors of the briefing note, both collectively and individually, and have had ongoing dialogue throughout the CSMI process. Below is a summary of engagements to date:

- September 2023: A letter sent by a group of civil society organisations (CSO) to the Consolidation partners, [here](#)
- October 2023: The CMSI response, [here](#)
- January 2024: A virtual call between CMSI partners and CSO representatives
- September 2024: A letter sent by a group of CSO representatives to CMSI, [here](#).
- September 2024: The CMSI response, [here](#).
- October 2024: A follow-up call between CSO representatives and CMSI
- December 2024: CSO briefing published online and sent to CMSI via downstream stakeholders.
- December 2024: The CMSI response (this document).

We deeply value all feedback and continue to welcome dialogue and constructive discussions with briefing signatories, and any other civil society organisation, representative and individual.

## Looking ahead

We believe the CMSI's vision – a sustainable society, enabled by the responsible production, sourcing, and recycling of metals and minerals – addresses an urgent need. With over 25,000 mining companies globally, the majority of which currently operate outside of any standard, the CMSI aims to encourage broad industry participation and drive meaningful improvement across the sector.

We look forward to continuing to improve the draft documents and oversight system based on valuable feedback received through this public consultation. Together, we can work towards achieving a shared vision of responsible mining that benefits communities, the environment and supply chains worldwide.