

CMSI Consultation Response

Respondent Details

NAME

Antonina Gorbunova, Aleksei Tsykarev, Eirik Larsen, Nalori Chakma, Robeliza Halip & 6 anonymous participants

COUNTRY

Switzerland

PERMISSION

Yes, CMSI can disclose my feedback, name, and organisation.

STAKEHOLDER

Indigenous peoples / organisation

ORGANISATION

In-person Engagement with Indigenous Peoples

COMMENTS & QUESTIONS BY DOCUMENT

Document:
Governance

6. What will the composition of the Board look like?

COMMENT:

Transparent and inclusive representation: The nomination process for Indigenous Peoples' representatives in the CMSI governance bodies should ensure that representatives are endorsed by Indigenous Peoples (and the organisations they represent).

COMMENT:

Balance of power on boards: The governance structure should ensure equal representation between corporate and non-corporate stakeholders and rightsholders. There should be mechanisms to prevent corporate dominance in decision-making and uphold the concerns and interests of rightsholders.

Document:
Assurance

4. Consolidated Standard External Assurance Process

COMMENT:

Transparent and inclusive communication to Indigenous representatives/ leadership and community members: Participants sought more information on how facilities and assurance providers will engage with rightsholders on assurance processes.

6. Public Grievance Mechanism

COMMENT:

Safe Spaces for rightsholders in assurance processes: The assurance process should explicitly require “safe space” mechanisms that protect Indigenous Peoples and human rights defenders from intimidation and reprisals during audits and assessments. This should include a zero-tolerance approach.

COMMENT:

Grievance Mechanism Limitations: Concerns were raised about the effectiveness and timeliness of grievance mechanisms, particularly the risk of prolonged processes disadvantaging Indigenous Peoples. The assurance process should define clear timelines for facilities to respond, progress and conclude grievances.

Document:
Standard

Performance Area 14: Indigenous Peoples

SECTION: 14.1 Managing Engagement, Impacts and Opportunities with Indigenous Peoples, Foundational Practice, 3

COMMENT:

Point made in post-meeting side discussion: Indigenous Peoples engagement should commence from the outset, i.e. at the exploration and feasibility stage of a mine project.

SECTION: 14.1 Managing Engagement, Impacts and Opportunities with Indigenous Peoples, Foundational Practice

COMMENT:

Right to FPIC recognised as part of Foundational, Good and Leading Practice: PA14 must include recognition of Free, Prior, and Informed Consent (FPIC) especially in the foundational level as this is a baseline requirement for the Indigenous Peoples represented in the room.

- PA14 requirements should at least reflect the definition of FPIC included in the glossary, which includes the ability to withhold consent.

- One participant encouraged CMSI to make use of the FPIC study from 2018 by EMRIP (Expert Mechanism on the rights of Indigenous Peoples) which uses the terms “norm” and “safeguard” when referring to FPIC including what should happen when consent is not given.

- Participants noted that CMSI should not lower the bar at this level to get more companies onboard with the Initiative.

- Good faith negotiations, grievance and remedy, capacity building/ support (to eliminate imbalances in power), specific no go zones (e.g. sacred sites) are basic things that should be considered in Foundational Practice.

COMMENT:

Recognition of Environmental and Social Impact Assessments (ESIA) and the need to involve Indigenous Peoples.

COMMENT:

Concerns on companies remaining at foundational practice level: Fear that companies might meet only the minimum standards of foundational level and remain part of the initiative.

SECTION: 14.1 Managing Engagement, Impacts and Opportunities with Indigenous Peoples, Good Practice, 11

COMMENT:

Zero Tolerance for intimidation and reprisals against defenders: This should be a part of the standard (as well as assurance process) as there needs to be a safe space to bring grievances.

SECTION: 14.1 Managing Engagement, Impacts and Opportunities with Indigenous Peoples, Good Practice, 3

COMMENT:

No relocation without consent: The standard should explicitly recognise that there should not be any relocation without Indigenous Peoples' consent.

SECTION: 14.1 Managing Engagement, Impacts and Opportunities with Indigenous Peoples, Good Practice, 7

COMMENT:

A rights-based approach must be followed, and the right to say no needs to be respected: Participants noted that the consolidated standard allows mining companies to move forward with operations without consent. When a rights-based approach is taken, this should look at how rights are impacted and how these impacts should be addressed. (i.e. those who could be adversely affected should be the ones to give consent and their concerns should be addressed).

- The starting point of any engagement must be rights respecting rather than "agreement-seeking", i.e. what is predominantly occurring in practice where communities are approached and need to negotiate because they cannot say no. This is why FPIC as a minimum is crucial so that communities are not "forced" into agreement and have a framework to participate meaningfully.

- Companies should also consider how decision-making processes do not cause or amplify community division.

- In some regions, if one community is affected, other communities also have the right to FPIC (including wider regional governance bodies). This is the case in Saami regions where the Saami Parliament also has the right to FPIC given lands sustain livelihoods, culture and language, rather than job opportunities that can come from projects like mines.

SECTION: 14.1 Managing Engagement, Impacts and Opportunities with Indigenous Peoples, Good Practice, 8

COMMENT:

Provisions for post-mine closure rehabilitation to rebuild trust. There does not seem to be a requirement for rehabilitation of closed mines. Lots of communities currently impacted by sites that are essentially abandoned with no compensation and ability to restore livelihoods and allow communities to claim back the land.

SECTION: 14.1 Managing Engagement, Impacts and Opportunities with Indigenous Peoples, Leading Practice, 5

COMMENT:

Clarity on “associated facilities” and their inclusion in scope. CMSI should ensure associated facilities, even if not controlled or managed by facilities/companies, should be in scope of the standard.

SECTION: 14.1 Managing Engagement, Impacts and Opportunities with Indigenous Peoples

COMMENT:

Recognising Indigenous Peoples independent of state legal frameworks: In countries where Indigenous Peoples are not legally recognised, participants emphasised the need for CMSI’s standard to acknowledge and protect their rights independently of state definitions. The identification of Indigenous Peoples should not be on the terms of state legal recognition as this would result in more than half of Indigenous Peoples not being recognised in the scoping of projects.

COMMENT:

Alignment with leading standards and frameworks: Participants noted that the draft lowers the bar compared to existing frameworks including the Copper Mark Risk Readiness Assessment Standard and insisted that CMSI align with well-established and higher international standards in relation to FPIC.
