CMSI Consultation Response

Respondent Details

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

STAKEHOLDER
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ORGANISATION
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Comments & Questions by Document

Document:
Governance

General comment

COMMENT:

CMSI should provide more clarity on its Governance Model, particularly on how CMSI meets civil society-backed, multi-stakeholder design and governance expectations. Such expectations lend important credibility in assessing ambitious responsible business practices. The Mining and Value Chain Committees, as outlined in the Governance Model draft, each allocate six seats for

"stakeholders" and "other interests". Particularly for the "other interests" group, it is not clear how these seats will be filled to ensure adequate representation from experts, rightsholders, impacted groups and civil society. Without clarity on the selection process and further specific criteria for seat allocation to create a balanced set of interests amongst members, the CMSI risks compromising its chance to be recognized as a multi-stakeholder-led framework.

Additionally, further transparency is needed regarding the selection of the board chair, particularly the specific criteria for selection and associated process to instill confidence in their independence and leadership to effectively balance interests of all stakeholders involved

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Document:
Standard

General comment on Performance Area

COMMENT:

There is accelerated demand for responsibly mined resources from downstream purchasers, as evidenced by the growing purchaser interest and membership in standards and development of certifications. This interest is being matched upstream by investors, as evidenced by the recently developed mining sector specific *investor standard, CA100+ Diversified Mining Sector Standard, and the establishment of the Global Investor Commission on Mining 2030, both seeking to manage for ESG risks that the mining industry has, historically, been unable to mitigate through voluntary standards. The investors we work with recognize the risk to a company's social license to operate, as well as business, reputational, operational, and regulatory risks when responsible mining practices are not implemented and publicly communicated.*

We believe that substantial gaps currently exist and should be addressed between the current draft of CMSI-defined responsible mining practices and best practice as defined by international ESG standards used by investors in their due diligence. Misalignment between the CMSI and other international standards may lead to a lower level of confidence among investors in the utility of the CMSI Standard. Left unaddressed, investors may perceive the passing grades provided by the CMSI Standard and audit assessments as overlooking material risks that may impact shareholders' longterm value.

The Appendix provides suggested additional references for select PAs that we would strongly encourage CMSI to integrate to demonstrate alignment with recognized international standards

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COMMENT:

Throughout the standard, the indicators applicable to facility-level disclosure and action are inconsistent. Public disclosure of actions taken by a company is also treated inconsistently, with few PAs containing a stand-alone public reporting indicator. Where there are stand-alone public reporting indicators, sub-indicators do not capture all activities listed in "Good" or "Leading Practice" indicators. PAs without a public reporting indicator have sub-indicators that rarely mention disclosure when detailing required efforts.

In aligning CMSI with best practice, we strongly encourage CMSI to ensure all PA indicators have a) clear, measurable criteria applicable to corporate and facility-level implementation and b) that all actions taken include an explicit element of public disclosure.

Performance Area 14: Indigenous Peoples

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

COMMENT:

UNDRIP alignment: The expectation that companies will act in alignment with the principles of the United Declaration on the Rights of Indigenous Peoples ("UNDRIP"), and other global standards on Indigenous rights, should be clearly identified throughout the foundational practice, good practice and leading practice areas. It is recommended that CSMI take the following actions to clarify the expectation of UNDRIP alignment.

• Include UNDRIP as part of the intent subheading of Performance Area 14:

o Respect Indigenous Peoples' rights by developing inclusive engagement processes and conducting human rights due diligence guided by the principles of Free, Prior, and Informed Consent (FPIC) laid out in the United Declaration on the Rights of Indigenous Peoples (UNDRIP) and obtaining agreement with affected Indigenous Peoples that demonstrates their consent to anticipated impacts to their land or other rights.

• Explicitly state the ongoing expectation of alignment with UNDRIP from Performance Area 14.1.1 onward

o The public commitment made to UNDIRP alignment in 14.1.1, is an expectation for all subsequent level requirements.

• Terminology: The use of the term "rights-holders", particularly when used in place of "Indigenous Peoples", fails to account for the way that globally, various legal and regulatory authorities recognize Indigenous rights and title. Based on where a company is operating, Indigenous peoples may not be acknowledged by legal and regulatory authorities; may not be afforded rights and protections as Indigenous Peoples; and even where their rights are recognized, the rights of corporations may be privileged over those of Indigenous peoples.

o CSMI should consistently use "Indigenous Peoples", as it is defined within their glossary, as the preferred term throughout the document; "Rights-holders" should not be used interchangeably or in place of "Indigenous Peoples".

Suggested resources to use in developing CMSI Performance Area 14:

• The Truth and Reconciliation Commission of Canada's 94 Calls to Action

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Performance Area 20: Climate Action

SECTION: 20.1 Corporate Climate Change Strategy (Corporate Level), Good Practice, 1

COMMENT:

It is wonderful to see "Good Practice" focus on corporate climate action with a reference to the Paris Agreement. As you know, investors around the world are setting their own meaningful science-aligned GHG emissions reductions targets for their portfolios.2 As a result, climate action will be required from sectors including mining, demonstrated by robust disclosure. PA 20 is not yet consistent with investorled standards for corporate climate action and reporting. We strongly recommend reviewing and closely aligning with existing, globally accepted best practices such as Climate Engagement Canada ("CEC")'s Net Zero Benchmark.

Suggested resources to use in setting CMSI Performance Area 20:

• Climate Engagement Canada Company Benchmark

• CA100+ Net Zero Company Benchmark

• CA100+ Diversified Mining Sector Standard

• Initiative for Responsible Mining Assurance, DRAFT Standard for Responsible Mining and Mineral Processing 2.0, Chapter 4.5 Greenhouse Gas Emissions and Energy Consumption

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COMMENT:

1.5-degree aligned corporate climate action: As mentioned, we welcome PA 20's introductory statement describing the intent to reduce emissions in line with the Paris Agreement. To ensure this is the case, we recommend strengthening the language for the 20.1 "Good Practice" level to explicitly mention 1.5-degree alignment of sub-indicator 1, which describes a corporate-level climate change strategy.

To align with CEC and CA100+, the "Good Practice" indicator 20.1.1 should include public, quantified actions to reduce emissions with corresponding capital allocation and executive renumeration. These components should not be optional, as is currently designed in "Leading Practice" indicator 20.1.3, as both are essential for investors to understand the actualization of corporate climate targets. Furthermore, as defined by the Science Based Targets Initiative, for corporate climate change strategies to be 1.5-degreee aligned, scope 3 emissions targets and GHG reduction efforts must be present, something already done by ICMM members and numerous other company members of the four CMSI partners.

SECTION: 20.3 Annual Climate Change Public Reporting

COMMENT:

Disclosure of emissions and climate action: We note that climate change public reporting, as captured by Indicator 20.3, separates disclosure from climate action-related indicators described in 20.1 and 20.2, something out of step with the design of most other PAs. There is only one explicit mention of "disclosure" in 20.1 or 20.2, leading us to assume that other elements of climate action listed in these indicators are not required to be disclosed. Public information sharing regarding company climate action is a crucial element for stakeholders, *including investors, who are seeking information to confirm confidence in management's approach to climate action.*

From SHARE's assessment, many members of the four CMSI partners already meet most or all indicators in the "Leading Practice level" defined in 20.3, which risks the impression that CMSI's approach to climate action and associated public disclosure is lacking ambition and reinforcing status quo, instead of going "above and beyond responsible industry good practice and demonstrat(ing) leadership or best practice". 3 The ambition level of 20.3 does not adequately provide a pathway for advancement toward best practice for companies.

In addition, we suggest the following priority additions to 20.3:

a) To understand a company's risk profile for carbon price and regulatory developments, reported scope 3 emissions are an essential tool. Disclosing estimated scope 3 emissions should be a requirement of the "Good Practice" performance level, as it is defined across industry frameworks including the Taskforce on Climate-related Financial Disclosures ("TCFD") which includes Scope 3 disclosure. 20.3.1 references TCFD recommendations but omits requiring scope 3 disclosure creating an inconsistency.

b) Assurance on reported emissions should be included in PA 20.3's "Good Practice" performance level, given the importance for credible and trusted company reporting provided through third party verification on material data used by investors

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Performance Area 5: Human Rights

SECTION: 5.1 Human Rights, Good Practice, 1

COMMENT:

Human Rights Policy: Indicator 5.1, and Indicator 1 in "Good Practice Performance Level" should require all human rights-related policies to be reviewed and updated with feedback from rightsholders and stakeholders. There should be disclosure on the engagement process and disclosure on how the policy/policies were developed. Updates should occur annually and be reviewed and signed by the highest level of the company (e.g. the Chair of the Board of Directors and/or Chair of a board committee that oversees human rights).

SECTION: 5.1 Human Rights, Good Practice, 2

COMMENT:

Objectives and Targets: Indicator 5.1, and Indicator 2 in "Good Practice Performance Level" refers to establishing due diligence processes with the "intention of avoiding human rights infringement". Due diligence processes must go beyond aspirational intentions and demonstrate measurable, verifiable outcomes that effectively mitigate harm and prevent rights infringements. "Good Practice" should require companies to establish measurable human rights objectives and targets. As per the UNGPs, "an ongoing risk management process that a reasonable and prudent company needs to follow in order to identify, prevent, mitigate and account for how it addresses its adverse human rights impacts. It includes four key steps: assessing actual and potential human rights impacts; integrating and acting on the findings; tracking responses; and communicating about how impacts are addressed." We also encourage the CMSI to request companies to explicitly use human rights impact assessments as a tool to identify and assess human rights impacts. Human rights impact assessments should be publicly disclosed for shareholders and other stakeholders and rightsholders to review, as such disclosure will provide investors with a better understanding of existing or potential impacts that were identified, recommendations by the assessor to close gaps, and how a company will leverage findings to identify and address human rights impacts.

SECTION: 5.1 Human Rights, Good Practice, 6

COMMENT:

Grievance mechanisms: Indicator 5.1 and Indicator 6 in "Good Practice Performance Level" refers to disclosing how impacts are being addressed and/or remedied if severe human rights impacts occur. CMSI should define what "severe human rights impacts" are as per the UNGPs. Additionally, reporting and disclosure requirements should go beyond the occurrence of severe human rights impacts. Reporting of how impacts are addressed and remedied should 1) be disclosed in annual reporting to provide more clarity on the effectiveness of a company's existing grievance mechanisms; 2) make explicit how the company is identifying, addressing, and providing access to remedy; and 3) clarify how the company is mitigating such adverse human rights impacts from occurring again. Further, we encourage CMSI to remove "and/or" from the indicator, as disclosure of both how a company is addressing and remedying adverse human rights impacts is important information for investors. We also encourage CMSI to integrate requirements for companies to disclose case studies in annual reporting related to its grievance mechanism so investors have a better understanding of how its grievance mechanism(s) function in practice, and how a company considers and implements stakeholder and rightsholder feedback.

SECTION: 5.1 Human Rights, Good Practice, 7

COMMENT:

Human Rights Due Diligence: Indicator 5.1, and Indicator 7 in "Good Practice Performance Level" establishes a fixed three-year timeline for human rights due diligence reviews of the effectiveness of the implementation of the UNGPs. Human rights due diligence efforts should be responsive to company-specific operational contexts, and should be responsive to the severity, likelihood, saliency, and materiality of an adverse human rights impact. The OECD Guidelines for Multinational Enterprises also recommends enterprises to conduct risk-based due diligence, meaning that the measures that an enterprise takes to conduct due diligence should be commensurate to the severity and likelihood of the adverse impact. The Consolidated Mining Standards should prioritize the conduction of routine, prompt reviews responsive to existing or potential human rights impacts and stakeholder and rightsholders concerns. Timelines divorced from specific operational contexts have the outcome of undermining, rather than supporting a company's due diligence responsibilities, which generally require or demand some measure of foresight and proactive identification and mitigation of salient human rights risks. Human rights due diligence efforts should also ensure periodic engagement with relevant stakeholders and rightsholders to review, update, and ensure adequacy of existing human rights due diligence efforts, which is in line with the UNGPs.

SECTION: 5.1 Human Rights

COMMENT:

We appreciate CMSI's approach to have consistent alignment with the UN Guiding Principles on Business and Human Rights, however, we note that several PAs under indicator 5.1 do not wholly align with the UNGPs. Therefore, we encourage CMSI to consider and adopt the following feedback. [see next comments ERM]

Suggested resources to use in setting CMSI Performance Area 5:

• OECD Guidelines for Multinational Enterprises on Responsible Business Conduct

• The Danish Institute for Human Rights: Human Rights Impact Assessment Guidance

• Universal Declaration on Human Rights

• UN International Covenant on Civil and Political Rights

• UN International Covenant on Economic, Social, and Cultural Rights

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Performance Area 7: Rights of Workers

SECTION: 7.1 Workers' Rights Risk, Mitigation and Operational Performance, Good Practice, 13

COMMENT:

Freedom of Association and Collective Bargaining: Indicator 7.1, indicator 13 in "Good Practice Performance Level" requires companies to inform workers of their right to form, join and organise trade union(s) of their choice and to bargain collectively on their behalf with the employer. We encourage CMSI to inform and explicitly respect such rights. This should be communicated in a

company's Human Rights Policy, supplier-related policies and contracts, and in other human rightsrelated policies.

SECTION: 7.1 Workers' Rights Risk, Mitigation and Operational Performance, Good Practice, 15

COMMENT:

Responsible Recruitment: Indicator 7.1, indicator 15 in "Good Practice Performance Level" to establish practices that demonstrate responsible recruitment. We encourage the definition to include zero tolerance for debt bondage, which is a form of modern slavery that is common in exploitative recruitment practices of workers, particularly of migrant workers.

SECTION: 7.1 Workers' Rights Risk, Mitigation and Operational Performance, Good Practice, 2

COMMENT:

Anti-Discrimination: Indicator 7.1, indicator 2 in "Good Practice Performance Level" explicitly requests companies to implement policies and practices to respect the rights and interests of women that reflect gender-informed approaches. We encourage CMSI to also include anti-discrimination, antiharassment, and inclusion measures for workers that have other marginalized characteristics, including those possessing compound intersectional identities. This omission limits the effectiveness of this standard in promoting inclusive and equitable environments, as it overlooks other inclusion needs. This should include inclusive language around race, gender (e.g. 2SLGBTQIA+), and Indigenity.

SECTION: 7.2 Grievance Mechanism for Employees and Contractors (Workers), Foundational Practice, 3

COMMENT:

Grievance mechanisms: Similar to expectations under PA 5 (Human Rights), grievance mechanisms should be wholly aligned with UNGPs 31. Additionally, grievance mechanisms for workers should explicitly highlight the principle of non-retaliation when grievances are raised.

All relevant policies (e.g. whistleblower policies) should be easily accessible to all workers. Grievance mechanisms should be designed with a clear understanding of other local rights frameworks to ensure workers have access to all available avenues for remedy.

To prevent workers from unknowingly waiving their rights to seek external remedies, union stewards or other designated ombudspersons should be assigned to this role, ensuring workers understand and have access to judicial or quasi-judicial processes outside the company framework. This approach not only protects workers' rights but also aligns with international human rights principles, ensuring that grievance mechanisms are both accessible and fair.

SECTION: 7.2 Grievance Mechanism for Employees and Contractors (Workers), Good Practice, 5

COMMENT:

Under Indicator 7.2, indicator 5 in "Good Practice Performance Level" we encourage reporting on the number and types of issues/grievances to be disclosed publicly to provide investors with more clarity on the effectiveness of a company's grievance mechanism. Disclosure of case studies to identify, address, remedy, and mitigate grievances is also encouraged.

COMMENT:

Applicability: We encourage CMSI to ensure that actions to meet requirements under PA 7 should not be different for directly employed workers (i.e., employees) than for indirectly employed workers (e.g. contractors, agency workers, etc.). The responsibility of a company to respect the rights of all workers is imperative under the ILO Declaration and Core Conventions, as well as the UNGPs.

Suggested resources to use in setting CMSI Performance Area 7:

- *ILO Declaration on Fundamental Rights and Right to Work*
- *ILO Occupational Safety and Health Convention (no. 155)*
- *ILO Discrimination (Employment and Occupation) Convention (No.111)*
- *ILO Minimum Age Convention (No. 138)*
- *ILO Abolition of Forced Labour Convention (No. 105)*
- *United Nations Guiding Principles on Business and Human Rights*

COMMENT:

Supplier Code of Conduct: CMSI does not have an indicator related to the integration of worker rights obligations and expectations in supplier-related policies and contracts (including a public Supplier Code of Conduct and internal supplier contracts). Given the nature of mining operations globally, it is imperative for companies to provide expectations to their suppliers (beyond tier 1 and direct suppliers) to respect fundamental labour rights as well as integrate their own policies and practices to meet the indicators set forth in PA 7.
