

# CMSI Consultation Response

## Respondent Details

NAME

Benjamin Hitchcock

COUNTRY

United States

PERMISSION

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

STAKEHOLDER

Non-governmental organisation (NGO) / civil society organization (CSO)

ORGANISATION

Earthworks

## COMMENTS & QUESTIONS BY DOCUMENT

Document:  
Governance

### 1. What is the vision?

COMMENT:

*Under best practice, minimum requirements for meaningful multi-stakeholder initiatives (MSI), ensure both equal representation of affected populations and civil society and their full equal decision making power:*

*“At a minimum, it is essential that a standard-setting MSI... allow NGOs and affected populations to have equal authority to participate, including the ability to participate in all governing bodies and full power to participate in decision-making functions of the MSI.”*

*While the EU Critical Raw Materials Act (CRMA) definition does not conform with best practice for meaningful MSIs, it acknowledges the need for multi-stakeholder governance to include “a formal, meaningful, and substantive role of... at least civil society, in the decision-making of a certification scheme...”*

*The Consolidated Standard’s Governance Model falls short of best practice and, arguably, of the CRMA definition too, notably for meaningful decision-making. Specifically:*

*The four partners will select the Independent Chair, who is in turn charged with overseeing the formation of the Board, meaning that the major bodies for oversight and decision-making could be filled with industry allies that may not properly check the industry’s proposals and power.*

*The four Consolidated Standard partners (ICMM, MAC, WGC, and CopperMark) are leading the design of the criteria and the process for selecting the “Independent” Chair. In Section 11 (pg 9), it is stated that the partners “will propose a limited number of criteria to guide the selection of an Independent Chair, which the Industry Advisory Group (IAG) and the Stakeholder Advisory Group (SAG) will review, refine and agree with the four partners.”*

*However, there is no transparency over the specific criteria or process being used to guide the selection of the leaders who will drive decision-making on the Board, or critically, of the “independent chair” tasked with oversight of the Board.*

*This could trickle down to the Committee level with the effect of industry interests still disproportionately influencing decisions. For example, the mining and value chain committees each have 6 seats for stakeholders, 6 seats for companies, and 6 for “other interests” which “could include investors, providers of finance, multilateral organisations, responsible mining or value chain initiatives, academics, think-tanks, international NGOs, etc.” Such ill-defined language provides no guarantees that the perspectives of rights holders, civil society, or any stakeholders critical of the mining sector will be represented in these spaces. Of additional concern is that there is no mechanism for affected stakeholders to be elected by their constituencies or to ensure that they are representative of the same.*

*There is therefore a strong risk that the scheme creates an illusion of having a multi-stakeholder governance (MSG) model, while in practice selecting industry allies who have moved onto other roles in finance, academia, think-tanks, consultancies, policy, etc. This tips the balance strongly in favor of corporate interests and detracts from the reasons to implement an MSG system in the first place.*

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QUESTION 1

**The governance principles that guided the development of the governance model are inclusive, effective, credible, impact-driven, pragmatic and efficient. From your perspective, does the proposed governance model meet expectations for consistency with these principles?**

Response: **1: Significantly below**

QUESTION 2

**Does the proposed governance model ensure no single group is able to unduly influence decisions?**

Response: **no**

Document:  
Assurance

## 2. Roles and Responsibilities

COMMENT:

*The assurance system gives companies and their facilities too much control over the assurance process, making it likely audits do not accurately capture a facility's human rights, environmental, and social impact. For example:*

*The mine, not the auditor, is the entity providing notice to stakeholders and rights holders about an upcoming audit, which in low trust environments is likely to discourage workers, communities, workers, and Indigenous Peoples from participating in the audit. The mine also determines the information and communication approach utilized to inform stakeholders and rightsholders.*

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COMMENT:

*The mine identifies the stakeholders, including workers and rightsholders, that auditors may decide to interview during the audit, giving companies too much control over the audit's outcome. The mine also provides auditors with “any context around the list provided, including any sensitivities, such as ongoing negotiations or legal action, local political influences or entrenched opposition of certain individuals/groups.” Although assurance providers are required to “critically consider” the list of stakeholders and rightsholders, and bring any significant gaps to the attention of the mine, the mine bears the bulk of the responsibility for determining the stakeholders within the scope of audit.*

*The auditor is required to give mines a proposed list of interviewees ahead of the audit, solicit feedback from the mine on the interviewees, and even in some cases remove an interviewee from audit at the request of the*

mining company. Mines are also encouraged to make the auditor aware of “any sensitivities with a particular interviewee and/or operating context to provide relevant background information.” These requirements give mining companies far too much opportunity to influence auditors’ views of the credibility and importance of stakeholders. Mines are also 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.” In low trust contexts, direct company outreach to rightsholders risks at best dissuading them from participating honestly and frankly in the interview process and at worst creates opportunities for intimidation and threats from the mining company to interviewees.

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COMMENT:

*The mining company is selecting the auditor and seems to pay them directly instead of a set-up that would financially separate the audit company from the mining company.*

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COMMENT:

*There is language suggesting that national panels (p. 9) might have a role in determining how assurance happens in specific countries. Would national panels be able to amend the standard or assurance process, potentially lowering the bar in some contexts?*

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COMMENT:

*The grievance mechanism is inadequately fleshed out.*

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COMMENT:

*Direct contracting between the facility (company in reality) and an Assurance Provider creates an inherent conflict - despite any measures that can be taken to mitigate such conflict (such as the requirement to eventually change Assurance Provider after a certain number of years) - contracts with Assurance Providers should be made directly with the CMSI Secretariat.*

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COMMENT:

*Isn't the Continual Improvement Plan (CIP) required for all facilities falling short of Good Practice in any Performance Area? Time-bound could be over the course of a decade or more... time-bound is meaningless without establishing a time limit for improvement - and means of sanctioning a facility for failure to meet its self-established CIP.*

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### **3. Who Can Conduct External Assurance?**

COMMENT:

*There is no requirement for accreditation of audit firms, only individuals. Audit firms are typically accredited against international standards, such as ISO 17021, which requires that firms have strong procedures in place to address conflicts of interest across the firm and for the companies they are auditing. The consolidated standard would not require audit firm accreditation meaning individual auditors would be responsible for verifying their own conflicts.*

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### **4. Consolidated Standard External Assurance Process**

COMMENT:

*Lack of clarity on assessment procedures, including: How much time will the auditor spend at the mine? Is there sufficient time for a thorough assessment?*

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COMMENT:

*"When a Facility has not achieved all the requirements at the Foundation Level in a particular Performance Area, it is characterised as "Does not meet the Foundation Level"."*

*This really needs to be highlighted - the CMSI gives the impression that Foundational practice is indeed Foundational - a threshold minimum - but there is no minimum whatsoever.*

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COMMENT:

*How is this commitment enforced? We see that it's ""monitored"" but there is no indication of what happens in the case of non-compliance... presumably a facility could be below foundational in every performance area and continue to receive an Assured Claim after Assured Claim - as long as they establish (of their own design) a CIP and report on any supposed progress made ""over time""?*

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COMMENT:

*There is no motivation/incentive whatsoever within the Assurance + Claims policies to every move beyond Good Practice to Leading Practice. This is vital to highlight - as in my experience having spoken with CMSI Execs - they reference Leading Practice Reqs as if they are representative of what the CMSI pushes companies toward - and it is evident here that there is no expectation or requirement to ever move beyond Good - even to get their ""highest mark"" - the Performance Claim."*

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## Appendices

SECTION: Reporting

COMMENT:

*Inadequately detailed audit reports exacerbate the vagueness within the standard itself.*

*The standard's proposed reporting process requires auditors to award ratings ("Foundational Practice Level," "Good Practice Level," or "Leading Practice Level") for each of the standards' 24 performance areas. Auditors are required to provide a "statement of findings" related to each of the 24 performance areas, and any sub-category, but are not required to address the facility's compliance or non-compliance with all the criteria contained in the standard itself. For example, the consolidated standard's section on Indigenous Peoples includes at least twelve different criteria under the Good Practice level, from the need for meaningful engagement and decision-making processes, respect for cultural heritage, to agreement and consent for anticipated mine impacts. Audit reports, however, will only discuss in a single section the mine's practices towards Indigenous Peoples, without a requirement to address each of the twelve criteria. This risks audits failing to address vital subjects, lacking a full picture of a mine's human rights, environmental, and social performance, and glossing over abusive corporate practices.*

*It is not clear whether non-compliances and corrective actions are mentioned in the assurance report or are omitted if corrective action has been taken.*

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## QUESTION 1

**From your perspective, does the Assurance process meet your expectations of a robust, credible, replicable and transparent approach?**

Response: **1: Significantly below**

## Document: Standard

### Introduction

#### COMMENT:

##### *Preface to this Submission*

*This submission to the first Public Consultation of the CMSI is the result of a collective effort made by civil society organizations to analyze the draft standard, the assurance process, claims and reporting policy, and proposed governance model.*

*The following organizations provided input and contributions for this submission: the Business and Human Rights Resource Centre (BHRRC), the Centre for Research on Multinational Corporations (SOMO), Public Citizen, Earthworks, IndustriALL Global Union, Rainforest Foundation Norway, Mighty Earth, the Sunrise Project, and the Securing Indigenous Peoples' Rights in the Green Economy (SIRGE) Coalition, among others.*

*Our collective analysis reveals several recurring, transversal gaps in the draft standard. Each of these cross-cutting issues, and many more, are explored in further detail in this submission:*

*The standard is too vague to provide meaningful guidance to companies and to enable effective auditing;*

*Non-conformance with fundamental international laws, principles, and guidance that protect the rights of Indigenous Peoples;*

*The lack of alignment with widely accepted international standards already used by industry;*

*Misalignment with government-backed international principles (the UN Guiding Principles on Business and Human Rights, or "the UNGPs") and guidance that promote responsible business conduct in supply chains (the Organization for Economic Cooperation and Development Guidelines for Multinational Enterprises on Responsible Business Conduct, or the "OECD Guidelines");*

*An assurance process that gives mining companies too much control, compromising its independence;*

*An assurance system that lacks guidance, adequate accreditation, and oversight, making independent, reliable audits improbable;*

*A governance model that gives mining companies too much control over processes that impact the standard's accountability measures; and*

*There are no incentives within the CMSI for companies to move beyond Good Practice for any Performance Area.*

##### *Overarching Comments on Indigenous Peoples Rights*

*Stronger framework for Indigenous Peoples rights: Indigenous Peoples' rights, which includes FPIC must be upheld across all stages of the mining lifecycle, as per UNDRIP.*

*Clear Linkages Across Performance Areas: Integrate clearer pathways on how each performance area (e.g., Indigenous rights in Performance Area 14 and Cultural Heritage in Area 15) interrelates, especially where these intersect with Indigenous values.*

*Strengthen Foundational Level Requirements to Avoid Loopholes: Need to ensure that Foundational Practices represent meaningful compliance rather than a minimal standard. A strong baseline is essential to avoid companies meeting only basic requirements without substantial action.*

*Clarify Distinctions between Good and Leading Practices: There should be clear, measurable benchmarks between Good and Leading Practices to prevent exploitation. Without a clear framework, companies may claim “best practice/leading practice” while achieving only modest improvements over baseline norms rather than transformative advancements. Provide proof that Leading Practices genuinely exceed international standards, rather than modestly extending Good Practice.*

*Equivalency with other standards: The lack of clarity on equivalency criteria raises concerns that weaker standards might be recognized, potentially compromising protections for Indigenous Peoples rights, including FPIC and cultural heritage safeguards. CMSI must ensure that equivalency assessments prioritize the protection of Indigenous Peoples’ rights as non-negotiable, aligning with global frameworks such as UNDRIP and ILO 169. Transparent criteria and rigorous oversight are critical to prevent the use of less stringent certifications that fail to uphold these essential protections.*

#### *Gaps and concerns*

*Missing Explicit Language on FPIC: The introduction mentions community consultation but lacks specific mention of FPIC as a baseline for Indigenous involvement. As FPIC is critical to international Indigenous Peoples rights, it should be a standard.*

*Lack of Integration on Cross-Cutting Areas: While the introduction references linkages between areas, it doesn’t clarify how Performance Areas like Cultural Heritage, Community Benefits, and Indigenous Rights will work together in practice*

*Insufficient Emphasis on Transparency: The introduction speaks broadly about risk assessment but could require transparent data-sharing directly with affected Indigenous communities.*

*International Human Rights Norms: UNDRIP and ILO 169 require FPIC and respect for Indigenous governance in activities impacting their lands. CMSI’s broad mention of “community engagement” lacks specificity to Indigenous Peoples rights.*

#### *Recommendations*

*Adopt FPIC Across All Performance Areas: Clearly articulate FPIC as the standard for any consultation processes involving Indigenous Peoples lands, territories (which also includes waters, Indigenous natural resources, ecosystems, and other means of livelihood and communities).*

*Strengthen Foundational Requirements: Redefine Foundational Practices to prevent low-standard compliance. This could include minimum criteria that guarantee substantial compliance in high-impact areas like environmental protection and Indigenous Peoples rights.*

*Establish Measurable Distinctions between Good and Leading Practices: CMSI should define clear, measurable criteria that distinguish Good from Leading Practices. These distinctions should encompass Indigenous Peoples engagement, FPIC, transparency, and environmental safeguards to ensure that Leading Practice genuinely reflects leadership.*

*Strengthen Cross-Area Integration: Outline how performance areas interconnect, especially where Indigenous Peoples, cultural rights, community impacts and benefits, Closure and other areas overlap, so Indigenous Peoples communities can see comprehensive protections.*

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## **Performance Area 1: Corporate Requirements**

### **COMMENT:**

*“Foundational practice” in almost every table subsection of this Performance Area to be below the level of, and thus out of alignment with, the OECD Guidelines.*

*“Foundational practice” should be aligned with the OECD Guidelines. They reflect government expectations of business practice all over the world. “Good practice” could then go beyond the baseline of the OECD Guidelines and follow all of the relevant “practical actions” provided by the OECD Due Diligence Guidance for RBC.*

## 1.1 Board and Executive Accountability, Policy and Decision-Making

### Foundational

#### Practice

1. Identify an individual(s) from senior management to be responsible for corporate-wide sustainability practice and performances.

*This is below the level of the OECD Guidelines. There should always be Board level responsibility assigned.*

## 1.2 Sustainability Reporting

### Foundational

#### Practice

1. Identify material sustainability risks and opportunities for inclusion in external company disclosure.

*Stakeholders are missing. Correct practice on reporting is providing stakeholders with enough information to enable them to judge the adequacy of due diligence / sustainability actions.*

#### Good Practice

1. Publicly disclose an annual corporate-wide sustainability or integrated report in line with an internationally recognised reporting standard, such as the OECD Due Diligence Guidance for RBC (step 5: Communicate), the Global Reporting Initiative (GRI), the International Financial Reporting Standards (IFRS) Sustainability Disclosure Standards and/or the European Sustainability Reporting Standards (ESRS).

*Foundational practice or good practice should follow the OECD Due Diligence Guidance as per Section II, 5.1 of the OECD Guidance:*

*“Communicate externally relevant information on due diligence policies, processes, activities conducted to identify and address actual or potential adverse impacts, including the findings and outcomes of those activities.*

### PRACTICAL ACTIONS

a. Publicly report relevant information on due diligence processes, with due regard for commercial confidentiality and other competitive or security concerns, e.g. through the enterprise’s annual, sustainability or corporate responsibility reports or other appropriate forms of disclosure. Include RBC policies, information on measures taken to embed RBC into policies and management systems, the enterprise’s identified areas of significant risks, the significant adverse impacts or risks identified, prioritised and assessed, as well as the prioritisation criteria, the actions taken to prevent or mitigate those risks, including where possible estimated timelines and benchmarks for improvement and their outcomes, measures to track implementation and results and the enterprise’s provision of or co-operation in any remediation.

b. Publish the above information in a way that is easily accessible and appropriate, e.g. on the enterprise’s website, at the enterprise’s premises and in local languages.

c. For human rights impacts that the enterprise causes or contributes to, be prepared to communicate with impacted or potentially impacted rightsholders in a timely, culturally sensitive and accessible manner, the information above that is specifically relevant to them, in particular when relevant concerns are raised by them or on their behalf.” <https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf> p. 33

#### Leading Practice

1. Integrate a double materiality approach into the corporate wide sustainability or integrated report.

*Double materiality is not a “leading” practice, it is basic practice according to the OECD GLs (and thus an expectation from the OECD and adhering governments), therefore it should be at the foundational level.*

## 1.3 Transparency of Mineral Revenues

## *Project-Level Payments to Governments Disclosure*

*In not specifying that disclosures must be project level and allowing companies to comply with national regulations instead of the EITI Standard, the draft standard from the Consolidated Mining Initiative considerably lowers the bar for transparency of minerals revenues. It falls short of the ICMM's commitment on payments-to-governments disclosures, which requires members to disclose "all material payments by country and by project at the appropriate levels of government," regardless of the country's status as an EITI-implementing country and the World Gold Council's Responsible Gold Mining Principles, which state that companies "will publish [their] tax, royalty and other payments to governments annually by country and project."*

*In classifying disclosures that don't meet the minimum project-level threshold in the ICMM commitment or other standards, such as that of the Extractive Industries Transparency Initiative (EITI), the Initiative for Responsible Mining Assurance (IRMA), the Global Reporting Initiative (GRI) Mining Sector Standard, or the IMF's Fiscal Transparency Initiative as "Foundational" or "Good" practice, the CMSI gives cover to companies that aren't meeting basic project-level payments-to-governments disclosure practices in all countries of operation.*

*Specifically, on payments to governments, the CMSI does not specify that that companies should report its payments to governments at the project level in non-EITI-implementing countries (as the EITI requires for its own Supporting Companies) and instead allows them to report in line with national regulations, which are often less rigorous. Reporting these payments at the aggregate level provides limited insight into project revenues and allows companies to obfuscate important information. Project-level disclosure is the global norm—the E.U, U.K., Canada, Norway, and the EITI have all required it for many years. Giving companies who are not meeting this basic requirement kudos for "good practice" under the CMSI would represent a major step backwards.*

*(Project-level disclosure is included in the EITI Standard, GRI, and IMF as well as in the laws of the countries listed above.) Further, CMSI does not include important information about what payments data should be disclosed, as IRMA and EITI, for example, do.*

*Recommendation: We recommend that the CMSI does not tier this requirement and instead requires all members to disclose their project-level payments to governments in all countries of operation.*

## *Contract Disclosure*

*The CMSI's requirements on contract disclosure are unclear and include loopholes. Both the EITI Standard and ICMM's own commitment on contract disclosure require disclosure of contracts entered into after January 1, 2021, with the EITI Standard going a step further and requiring retroactive disclosure of the underlying contract for any contract amended after that date. The CMSI does not include contract disclosure under "foundational practice." Its "good practice" standard requires simply that "new" contracts are disclosed, which creates a gap between present day and the 2021 requirement. Its leading practice requirement potentially goes a significant step further by calling for the public disclosure of existing contracts, which would put it ahead of both the EITI and ICMM requirements. However, it caveats that these contracts should be disclosed "where applicable" and does not specify that all contracts should be disclosed.*

*Further, the CMSI includes an exemption to not disclose contracts if legally prohibited by the host government. Companies should instead be required to specify the legal text that they believe prohibits them from disclosing the contract to make sure that this has been correctly interpreted and to notify the government that it is not in line with the CMSI.*

*The CMSI significantly alters the definition of contract disclosure in its glossary by limiting disclosures to merely fiscal terms. The EITI Standard requires disclosure of the full text of all contracts and licenses with no redactions, as well as annexes, addenda, and riders which include documents such as site maps, accounting procedures, details of the project cycle, takeover procedures, management procedures, guarantees and feasibility studies. This alteration also falls short of the ICMM's commitment on contract disclosure.*

*Recommendation:*

*We appreciate that the CMSI links to the EITI's Guidance Note on contract disclosure in the glossary and interpretive guidance and recommend that the document is referenced in the text of the requirement. For example, the text could say, "Publicly disclose new mineral development contracts (as defined in the EITI Guidance Note on contract disclosure) with host governments."*

*The CMSI should require contract disclosure of all contracts entered into after January 1, 2021 as “foundational practice.” It should Require contract disclosure of all contracts entered into after January 1, 2021 and the retroactive disclosure of the underlying contract for any contract amended after January 1, 2021 as “good practice.” It should require public disclosure of all contracts as “leading practice.”*

*The CMSI should remove the loophole allowing companies to not disclose contracts where it’s legally prohibited and instead require companies to detail the legal provision that prohibits them from disclosing and to inform the host government that they are not in line with CMSI.*

*Additionally, the CMSI should require its companies create a list that details which contracts and licenses are publicly available and which are not. The overview should include a reference or link to the location where the contract of license is published. If the contract or license is not published, the legal or practical barriers should be documented and explained. (This is required by the EITI Standard.) This is included in the EITI’s Guidance Note on contract disclosure, which is included in the CMSI’s glossary, but we recommend that the CMSI is explicit about creating this list.*

*Finally, we recommend the CMSI fixes its definition of contract disclosure to define contracts in line with the EITI’s contract disclosure definition.*

#### *Country-by-Country Tax Reporting*

*The CMSI doesn’t include anything about country-by-country tax reporting, an important disclosure for identifying aggressive tax practices and comparing fiscal, legal, and contractual terms across countries. ICMM companies are committed to country-by-country tax reporting (ICMM’s Social and Economic Reporting). It is included in GRI’s Standard (on tax, which is cross-referenced in their mining standard) and OECD’s Action 13 BEPS. Many mining companies, such as Rio Tinto, Anglo American, Newmont, BHP, and South 32 already report this information.*

*Recommendation: We recommend that the CMSI includes country-by-country tax reporting as “foundational practice” in line with the ICMM Social and Economic Reporting Framework and Guidance. There is no need to tier this requirement.*

#### *Responsible Tax*

*The CMSI fails to incorporate the WGC’s commitment on responsible tax and transfer pricing included in its Responsible Gold Mining Principles. It also lags behind global standards on responsible tax, such as the B Team’s Responsible Tax Principles, OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, and the OECD’s Guiding Principles for Durable Extractive Contracts.*

*Recommendation: We recommend that the CMSI builds a new requirement on responsible tax practices based off the B-Team Responsible Tax Practices.*

#### *Beneficial Ownership*

*The CMSI has no requirements on beneficial ownership disclosure. The EITI requires that companies publish an anti-corruption policy setting out how the company manages corruption risk, including their use of beneficial ownership data and to engage in rigorous due diligence processes. It encourages companies to disclose their ownership structure, including the full chain of legal entities leading to the beneficial owner.*

*Recommendation: We recommend that the CMSI requires its companies 1) publish an anti-corruption policy setting out how the company manages corruption risk, including their use of beneficial ownership data and to engage in rigorous due diligence processes, and 2) to disclose their ownership structure, including the full chain of legal entities leading to the beneficial owner. These recommendations should both be included at the foundational level.*

### *1.4 Risk Assessment*

#### *Leading Practice*

*1. Engage external stakeholders in the risk assessment process.*

*Under the CSDDD, meaningful engagement with stakeholders is an obligation in some steps of the due diligence process, including in risk assessment.*

*This obligation comprises identification, assessment and prioritisation of actual or potential adverse impacts as per CSDDD Art. 8 and 9; prevention and corrective measures pursuant to Art. 10(2) and (6), 11(3) and (7); bringing actual adverse impacts to an end or mitigating them as per Art. 10 (6) and 11(7); remediation as stated in Art. 12; and monitoring pursuant to Art. 15.*

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## **Performance Area 10: Emergency Preparedness and Response**

SECTION: 10.1 Emergency Preparedness and Response Planning, Foundational Practice, 1

COMMENT:

*Worst-case scenarios should be the baseline for emergency planning. For ERMPs for tailing facilities, worst-case scenarios must model the complete loss of stored tailings and water.*

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SECTION: 10.1 Emergency Preparedness and Response Planning, Foundational Practice, 2

COMMENT:

*This should be updated yearly or whenever there is a change of material consequence in surrounding conditions, not on a "defined interval"*

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SECTION: 10.1 Emergency Preparedness and Response Planning, Good Practice, 11

COMMENT:

*This should be done annually.*

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SECTION: 10.1 Emergency Preparedness and Response Planning, Good Practice, 2

COMMENT:

*Emergency and evacuation drills should be held on an annual basis, and their planning and execution must include participation from affected communities, workers, local authorities, and emergency management.*

*Emergency and evacuation drills can be traumatizing for communities. Special care must be given during planning so that communities are able to access the information they need for their safety, while ensuring they are not negatively impacted by the process.*

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SECTION: 10.1 Emergency Preparedness and Response Planning, Good Practice, 5

COMMENT:

*Worker training....should be...Foundational. [Comment split by ERM]*

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SECTION: 10.1 Emergency Preparedness and Response Planning, Good Practice, 6

COMMENT:

*[C]o-development of Emergency Response plans with potentially affected communities, mine workers, agricultural producers and businesses downstream of the flow of a potential failure, and in collaboration with first responders and relevant government agencies should...be Foundational. [Comment split by ERM]*

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COMMENT:

*Emergency Response planning should be co-developed with potentially affected communities, mine workers, agricultural producers and businesses downstream, as well as local governments and emergency responders.*

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SECTION: 10.1 Emergency Preparedness and Response Planning, Good Practice, 7

COMMENT:

*Companies should make a commitment that trained professional support will be provided during an emergency and will reach all affected populations in a timely manner.*

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COMMENT:

*[E]stablishing communication mechanisms for emergency response should...be Foundational. [Comment split by ERM]*

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COMMENT:

*Recommend replacing: "could" with "should include"*

*Recommend adding: "all relevant public sector agencies"*

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SECTION: 10.1 Emergency Preparedness and Response Planning, Good Practice, 8

COMMENT:

*Emergency and evacuation drills should be held on an annual basis, and their planning and execution must include participation from affected communities, workers, local authorities, and emergency management.*

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SECTION: 10.1 Emergency Preparedness and Response Planning, Good Practice

COMMENT:

*Recommend adding: "Create policies, sign agreements with rights holders and stakeholders, and publicly commit that in the case of an emergency, the operating company is responsible for taking all steps necessary to save lives and provide appropriate humanitarian aid. This includes all needed resources and support to local and national governments and first responders during and after a failure. The operating company commits to assume the entirety of the costs of indemnification, remediation, and reclamation for any emergency causing harm beyond the mine site, including any additional damages incurred during remediation and reclamation efforts."*

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COMMENT:

*Recommend adding: "Publish Emergency Response Plans in all local languages that include worst-case scenario modeling."*

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SECTION: 10.1 Emergency Preparedness and Response Planning, Leading Practice, 1

COMMENT:

*Recommend replacing: "two years" with "annually"*

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## **Performance Area 12: Stakeholder Engagement**

SECTION: 12.1 Stakeholder Identification and Engagement, Foundational Practice, 4

COMMENT:

*Welcome recognition of the need to provide materials that are accessible, understandable and culturally appropriate. This should be further clarified to stipulate that materials should be available in multiple formats, such as online, by mail, in person, etc. In addition, all information and engagement must be provided in relevant local languages.*

*Co-design with impacted rights holders should be integrated as foundational practice.*

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### **Performance Area 13: Community Impacts and Benefits**

SECTION: 13.2 Community Development and Benefits

COMMENT:

*Lack of FPIC in Performance Area 13 (Community Impacts and Benefits): As part of delivering benefits to communities, community agreements should be based on FPIC. Community benefit agreements cannot substitute for obtaining FPIC regarding the project. Furthermore, this guarantees that Indigenous Peoples communities are not just passive beneficiaries but active decision-makers in benefit-sharing processes.*

*Furthermore, reporting should explicitly show how Indigenous Peoples communities benefit from projects, including disaggregated data on economic, social, and cultural impacts.*

*It is also important to note that ICMM's commitments on local procurement in its Social and Economic Reporting Framework and Guidance are missing from the CMSI and should be included.*

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### **Performance Area 14: Indigenous Peoples**

SECTION: 14.1 Managing Engagement, Impacts and Opportunities with Indigenous Peoples, Foundational Practice, 1

COMMENT:

*Recommend adding: "including their right to give or withhold their Free, Prior and Informed Consent (FPIC) regarding whether and how projects move forward, including their right to define the process by which FPIC is achieved and to withhold consent through FPIC protocols, regardless of an opposing claim by the government," after ""Publicly commit to respect Indigenous Peoples' rights,""*

*and*

*Recommend adding: "and publish a written policy commitment and implementing guidelines on the company website" at the end of this requirement.*

*Please note that a public commitment is of little use without a means of implementing and enforcing it.*

*Furthermore, ""In line with principles of UNDRIP"" would require FPIC - so why is FPIC broken out and only mentioned in the GP Level? How is a company and assurance provider to interpret this?*

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

COMMENT:

*Should be publicly accessible, and it should also follow affected-IP protocols.*

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SECTION: 14.1 Managing Engagement, Impacts and Opportunities with Indigenous Peoples, Good Practice, 1

COMMENT:

*This should not be defined by companies, but rather consulted. Companies should respect traditional decision making processes.*

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SECTION: 14.1 Managing Engagement, Impacts and Opportunities with Indigenous Peoples, Good Practice, 2

COMMENT:

*The right to FPIC and to modify/withdraw consent is ongoing.  
Also, due diligence should be considered foundational practice, not good practice.*

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

COMMENT:

*Remediation for ongoing and past harms must also be a Foundational requirement.*

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SECTION: 14.1 Managing Engagement, Impacts and Opportunities with Indigenous Peoples, Good Practice, 4

COMMENT:

*This is foundational also, and would be a violation of human rights if not implemented.*

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

COMMENT:

*Again - this is a requirement for FPIC to be ""Free"" and ""Informed"" - and this paragraph contains so many conditional statements that it is rendered largely meaningless. The "good faith" qualifier here is wholly inappropriate.*

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SECTION: 14.1 Managing Engagement, Impacts and Opportunities with Indigenous Peoples, Good Practice, 6

COMMENT:

*And respect the lack of agreement/withholding of consent - this must be a Foundational requirement.*

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

COMMENT:

*This completely undermines and renders void any possibility of a genuine FPIC requirement in requirement 6 above. In this instance, it should be clear that the project should not move forward.*

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SECTION: 14.1 Managing Engagement, Impacts and Opportunities with Indigenous Peoples, Good Practice, 9

COMMENT:

*Agreements should be publicly disclosed and companies report regularly on progress towards delivering on commitments.*

---

SECTION: 14.1 Managing Engagement, Impacts and Opportunities with Indigenous Peoples, Leading Practice, 1

COMMENT:

*So many of the Leading Practice requirements read as repeats, with minor changes, of Good Practice requirements.*

*Everything articulated in Good and Leading Practice are fundamental requirements for the respect of FPIC, by way of example here is old OHCHR Guidance from 11 years ago saying the same: [https://www.ohchr.org/sites/default/files/Documents/Operational\\_Guidance/OG\\_FPIC-2020-5.pdf](https://www.ohchr.org/sites/default/files/Documents/Operational_Guidance/OG_FPIC-2020-5.pdf)*

*Guidance on FPIC abounds - here is another example of a document that is now 5 years old and established much clearer practices for companies to meet their duty to respect Indigenous Peoples' right: [https://accountability-framework.org/fileadmin/uploads/afi/Documents/Operational\\_Guidance/OG\\_FPIC-2020-5.pdf](https://accountability-framework.org/fileadmin/uploads/afi/Documents/Operational_Guidance/OG_FPIC-2020-5.pdf)*

*Or an even older UN report on the Study of the Expert Mechanism on the Rights of Indigenous Peoples: <https://documents.un.org/doc/undoc/gen/g18/245/94/pdf/g1824594.pdf>*

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

COMMENT:

*Should not be contingent on company agreement.*

---

SECTION: 14.1 Managing Engagement, Impacts and Opportunities with Indigenous Peoples, Leading Practice, 4

COMMENT:

*Required to be published? can be disputed?*

*Shouldn't the affected IPs be who is best placed to determine said effectiveness?*

---

SECTION: Glossary and Interpretive Guidance

COMMENT:

*"Agreement(s): Agreement is the act of approving or accepting something, often arrived at after a process of engagement and negotiation. Agreements between companies and Indigenous Peoples are the products of such a process. They can take many forms (e.g., relationship agreements, impact benefit agreements, collaboration agreements). Agreements can be a means by which Indigenous Peoples manifest their consent to impacts on their rights anticipated from mining and mining-related projects, and by which equitable terms for those impacts and for mutually beneficial relations are established. Agreements can reflect consent and/or be a means to demonstrate consent."*

*Should specify that Indigenous peoples are under no obligation to reach agreement and may withhold their consent.*

---

COMMENT:

*“Critical Cultural Heritage: This includes cultural heritage that is essential to the identity and/or cultural, ceremonial, or spiritual impacts of affected Indigenous Peoples’ lives. It includes natural areas with significant cultural and/or spiritual value such as sacred groves, sacred bodies of water and waterways, sacred trees and sacred rocks. It is defined as either (i) the internationally recognised heritage of communities who use or have used within living memory the cultural heritage for long-standing cultural purposes; or (ii) legally protected cultural heritage areas, including those proposed by host governments for such designation. Co-identifying these areas of critical cultural heritage on a project-by-project basis and in consultation with affected Indigenous Peoples is an integral step in understanding their spiritual, cultural or historical significance and value.”*

*This implies that sacred sites need to be externally validated in order to be recognized by companies. There may be sites of significant cultural value that have not yet been recognized by national law or internationally, yet are still relevant to communities. Should be clear the communities should be consulted to identify cultural heritage sites and these sites should be respected.*

---

COMMENT:

*“Free, Prior and Informed Consent (FPIC): FPIC comprises a process, and an outcome (for a point in time). Through this process Indigenous Peoples are: (i) able to freely make decisions without coercion, intimidation, or manipulation; (ii) given sufficient time to be involved in decision-making before key decisions are made and impacts occur; and (iii) fully informed about proposed activities and their potential impacts and benefits. The outcome is that Indigenous Peoples can collectively grant or withhold their consent for a specified activity as part of a given decision-making process. These decision-making processes for proposed activities should be based on good faith negotiation, while striving to be consistent with Indigenous Peoples’ traditional decision-making processes and respecting internationally recognised human rights.”*

*Should not be striving to be consistent with Indigenous Peoples’ traditional decision-making processes - it must be consistent with Indigenous Peoples’ traditional decision-making processes and international human rights standards. UNDRIP Article 34 says so. Companies may otherwise use traditional decision-making as a grudge to justify other unethical practices like not including voices of women, youth, etc., or only consulting certain leadership groups in non-transparent ways.*

*Also should apply to ongoing activities and harms generated by past activities. The lack of an ongoing application of an FPIC requirement is a fundamental, and unacceptable, flaw.*

---

COMMENT:

*“Indigenous Peoples: Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present nondominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system.”*

*In the African context, the definition of Indigenous Peoples does not generally reference pre-colonial societies or aboriginality. Rather, the African Commission on Human and Peoples’ Rights (ACHPR) has identified the following characteristics that embody the concept of indigenous peoples: self-identification; a special attachment to and use of traditional land; and a state of subjugation or marginalization resulting from ways of life or modes of production different from the national hegemonic and dominant model. The standard’s definition of Indigenous Peoples should mention this regional distinction and cite to the ACHPR. “Report of the African Commission’s Working Group of Experts on Indigenous Populations/Communities”, African Commission on Human and Peoples Rights [https://www.iwgia.org/images/publications//African\\_Commission\\_book.pdf](https://www.iwgia.org/images/publications//African_Commission_book.pdf) (pp. 92-93)*

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COMMENT:

*"Where agreement is not obtained: In such circumstances, steps can include renewed or expanded efforts for dialogue with affected Indigenous Peoples and relevant parties to resolve differences of opinion. Companies could decide they should reconsider the scope of an activity given its potential for adverse impacts, or decide whether they ought to remain involved with a project and consider the decision to responsibly disengage."*

*Inconsistent with international law - if they do not have consent companies should withdraw."*

---

COMMENT:

*Performance Area 14 (Indigenous Peoples): Embedding land-for-land compensation directly in the performance area sets a higher standard for engagements that impact Indigenous Peoples land, aligning with UNDRIP's emphasis on land rights and cultural preservation.*

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COMMENT:

*Meaningful Free Prior Informed consent must be in the foundational practice.*

*How can the fundamental rights of Indigenous Peoples to sovereignty and self-determination be tiered - as they are in Performance Area 14? They are either fully recognized and respected or they are not - and if they are not - then no such practice can be considered foundational, good or otherwise.*

*Furthermore, how can the CMSI claim to require respect for FPIC as in Good Practice requirement 6 - defined in the glossary as encompassing the right to withhold consent - and then state in Good Practice requirement 7 that a company may go ahead with its intended activities, despite not obtaining full consent, as long as it publishes a mitigation plan?*

*Finally, given that FPIC is an ongoing right, meaning that any agreement is iterative - why does the CMSI fail to account for the ongoing impacts of past decisions made without the FPIC of affected Indigenous Peoples. Especially given that countless mines around the world entered into operation in clear violation of the rights of affected Indigenous Peoples - why allow companies to evade their duty to respect Indigenous Rights for having violated the rights of Indigenous Peoples in the past - again, especially given that FPIC is understood to be a continuous, ongoing right?*

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COMMENT:

*We understand that the CMSI's position is that the requirement in Foundational Practice for a facility to commit to the principles of UNDRIP includes FPIC - but given that there is no explicit mention of FPIC in the Foundational Practice requirements of Performance Area 14 on Indigenous Rights, and yet there is in the Good Practice level - how is this inconsistency to be interpreted?*

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COMMENT:

*Why did the CMSI, after the publication of the ICMM Position Statement on Indigenous Peoples and Mining on August 8th, 2024, choose to publish requirements in Performance Area 14 - which even when read in their entirety - fall short of the ICMM's Position Statement? Especially given that the ICMM has received substantial criticism on the loopholes and weaknesses contained in its Position Statement since its publication over 3 months ago - how was that feedback and ICMM's consultation with Indigenous Peoples not accounted for in the drafting of Performance Area 14?*

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COMMENT:

## *Free, prior and Informed Consent as a Fundamental Standard Across All Relevant Performance Areas*

*The current Consolidated Mining Standard Initiative (CSMI) lacks comprehensive, actionable guidance on the implementation of FPIC, which is essential for upholding Indigenous Peoples right to self-determination. Terms like “consent”, “demonstrating consent” “agreement” are inconsistently defined or referenced, which leads to ambiguity in applications across different performance areas. This gap could lead to superficial consultations rather than meaningful consent, contrary to the United Declaration on the Rights of Indigenous Peoples (UNDRIP) and Indigenous and Tribal Peoples Convention, (Convention No. 169 or ILO 169), which view FPIC as essential to Indigenous Peoples rights regarding their land, resources, territories, environment and communities. Without a robust, standardized FPIC process, there is a risk that facilities may proceed with projects based on limited or non-binding engagements with Indigenous Peoples communities, undermining the integrity of the consent process.*

*FPIC is foundational in recognizing and respecting Indigenous Peoples self-determination and their right to control activities on their lands and territories. Rather than isolating FPIC requirements within just Performance Area 14, FPIC should be a baseline principle across all performance areas where there may be impacts on Indigenous Peoples. Aligning with UNDRIP, ILO169 and IFC Performance Standard 7(IFC PS7) on Indigenous Peoples right to FPIC, would ensure that consent is obtained in a culturally respectful and non-coercive manner.*

*Although this area focuses directly on Indigenous Peoples rights, FPIC should be reinforced as a minimum standard for any engagement, decision, or activity impacting Indigenous territories.*

### *Recommendations*

*Establish a clear, robust, and actionable implementing guidelines for FPIC and consent: This definition should emphasize that FPIC involves informed, voluntary decision-making by Indigenous Peoples, free from any form of coercion or manipulation and includes the right to withhold consent. Clarifying FPIC as a requirement that applies from project inception to post-closure will strengthen the CSMI as to Indigenous Peoples rights.*

*Mandate FPIC as a non-negotiable standard in all relevant performance areas where Indigenous Peoples lands and communities are impacted, particularly in supply chain, land use, environmental impact, and mine closure contexts. This would align with both UNDRIP and IFC frameworks and ensure Indigenous communities have equity in both participatory and decision-making in all relevant project phases.*

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### **COMMENT:**

#### *Transparent and Comprehensive Reporting on Impacts to Indigenous Peoples, FPIC Processes, and Mitigation Actions Across All Relevant Areas*

*Transparent reporting is essential for accountability and provides Indigenous Peoples communities and stakeholders with insights into how well their rights and interests are being safeguarded. ILO Convention 169 (Article 7) mandates Indigenous participation in decision-making affecting their lands, and UNDRIP (Article 29) calls for states and corporations to disclose any activity impacting Indigenous Peoples lands, territories and resources. Comprehensive reporting on FPIC processes, Indigenous-specific impacts, and mitigation actions ensures that companies and facilities adhere to high standards of transparency and respect for Indigenous Peoples self-determination.*

#### *Gaps:*

*Absence of Required Disclosures on Indigenous Peoples' Impacts in Performance Area Reporting: The CSMI does not mandate specific reporting on Indigenous Peoples' impacts in key areas such as Performance Area 3 (Responsible Supply Chains), Performance Area 13 (Community Impacts and Benefits), and Performance Area 19 (Biodiversity, Ecosystem Services, and Nature). Without such reporting, stakeholders lack visibility into operational impacts on Indigenous lands, cultural practices, or livelihoods, undermining the standard's stated intent to promote accountability and responsible business conduct.*

*Inadequate Detail and Transparency on FPIC Process and Outcomes in Performance Areas 4, 14, and 24: Reporting on FPIC is insufficient across areas involving land use and project phases. Performance Area 4 (New*

Projects, Expansions, and Resettlement) and Performance Area 24 (Closure), which involve direct changes to land access, do not currently require detailed disclosures on FPIC processes and outcomes, such as how Indigenous Peoples consent was obtained, and how it will be maintained, and respected throughout the project lifecycle. Performance Area 14 (Indigenous Peoples) does include FPIC as a concept but fails to specify in-depth reporting on each stage of the consent process, leaving questions about the integrity and authenticity of any FPIC process. The CMSI Claims and Reporting Policy does not appear to emphasize FPIC as a key element of reporting, creating a critical gap.

*Limited Information on Indigenous-Specific Mitigation and Remediation Actions:* While the standard requires general mitigation and remediation disclosures, it does not mandate disclosures specific to actions taken in response to Indigenous Peoples concerns in Performance Area 17 (Grievance Management) or Performance Area 15 (Cultural Heritage). This gap in Indigenous-focused reporting limits accountability for resolving Indigenous Peoples grievances related to cultural heritage, land, or environmental impacts, as stakeholders cannot evaluate the effectiveness of mitigation efforts specific to Indigenous issues.

#### Recommendations

*Mandate Indigenous-Specific Disclosures Across Relevant Performance Areas:* The Consolidated Standard should publicly require regular, detailed reporting on Indigenous Peoples impacts, FPIC processes (including how consent was obtained, respected, and maintained), and mitigation outcomes. These disclosures should be accessible to Indigenous Peoples.

*Include FPIC as a Central Element in Reporting:* FPIC reporting should cover the entire consent process, from initial engagement to final outcomes, ensuring it reflects a rigorous and culturally respectful approach.

*Detail Indigenous-Focused Mitigation and Remediation:* Disclosures should specify any mitigation measures and remedial actions tailored to Indigenous Peoples to ensure accountability and transparency as to how issues are resolved.

Furthermore, cultural heritage should be defined broadly to include intangible aspects, such as Indigenous knowledge, languages, and practices. Requirements should specify that Indigenous Peoples have control over how their cultural heritage is managed.

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## Performance Area 15: Cultural Heritage

### COMMENT:

#### *Unified Cultural Heritage Protections Across Performance Areas Impacting Indigenous Peoples' Rights and Interests*

*Indigenous cultural heritage is not limited to physical artifacts or sites but extends to landscapes, ecosystems, and Indigenous knowledge that hold cultural and spiritual significance. Cultural heritage protections must encompass both tangible and intangible elements in a consistent and cohesive way across all performance areas where Indigenous Peoples rights and interests are engaged. ILO Convention 169 (Article 5) emphasizes the right of Indigenous Peoples to maintain and protect their social, cultural, religious, and spiritual values and practices, while UNDRIP (Article 11) affirms the right of Indigenous Peoples to preserve and control their cultural heritage, which includes knowledge systems, languages, and spiritual traditions tied to the natural environment.*

#### *Gaps:*

#### *Fragmented Cultural Heritage Protections Across Performance Areas*

*Although Performance Area 15 (Cultural Heritage) contains specific protections, other areas like Performance Area 3 (Responsible Supply Chains) and Performance Area 19 (Biodiversity, Ecosystem Services, and Nature) do not consistently incorporate protections for cultural heritage, especially concerning intangible elements. This gap risks leaving critical aspects of Indigenous cultural heritage—such as culturally significant landscapes and biodiversity—unprotected because they are not directly addressed.*

*Lack of Mandated Indigenous-Led Cultural Assessments: The Consolidated Standard does not explicitly require Indigenous-led assessments to identify and define cultural heritage elements in areas impacted by projects. Without Indigenous leadership in cultural heritage assessments, companies may overlook or inadequately address elements that are less tangible, such as Indigenous knowledge or spiritual values.*

*Inadequate Protection for Intangible Cultural Heritage: Although physical cultural sites may receive some level of protection, intangible elements like oral histories, languages, and Indigenous practices tied to land and nature often lack specific safeguarding measures. This omission contradicts UNDRIP's holistic view of Indigenous cultural heritage and fails to protect the full scope of Indigenous values.*

*Recommendations:*

*Incorporate Cultural Heritage Protections in Relevant Non-Cultural*

*Performance Areas*

*Require that cultural heritage considerations are embedded within non-cultural areas like Performance Area 3 (Responsible Supply Chains) and Performance Area 19 (Biodiversity). This means incorporating protocols for protecting landscapes, sacred natural sites, and resources essential to Indigenous culture wherever supply chains or biodiversity efforts intersect with Indigenous Peoples lands.*

*Mandate Indigenous-Led Cultural Heritage Assessments:*

*To ensure that all elements of cultural heritage are fully recognized and respected, the Standard should mandate Indigenous-led cultural heritage assessments. This aligns with the ILO 169 and UNDRIP standards and ensures that Indigenous communities directly contribute to identifying and safeguarding cultural values that may be affected.*

*Strengthen Protections for Intangible Cultural Heritage:*

*Include specific requirements to protect intangible heritage, such as oral traditions, ecological knowledge, and spiritual practices, within Performance Area 15 and extend these protections to other relevant areas, ensuring that intangible heritage is safeguarded across all stages of project planning and operations.*

*Furthermore, this area should require consultation with Indigenous Peoples communities on the management of cultural sites, ensuring that protections are not only respectful but also led by Indigenous Peoples communities input.*

---

## **Performance Area 17: Grievance Management**

SECTION: 17.1 Grievance Mechanism for Stakeholders and Rights, Holders, Foundational Practice

COMMENT:

*Recommending Adding: "including an option for confidentiality and anonymity, if requested."*

*Grievance mechanisms must be functionally independent from the project's operating company, for example, it may be run by a third-party trusted by the rights holders for whom it is intended.*

*This section should include details around appropriate remedy:*

*Remedy for complaints must be adequate, effective, and prompt, and may include one or more of the following: an apology, guarantees of non-repetition, restitution, rehabilitation, financial or non-financial compensation, and punitive sanctions.*

---

SECTION: 17.1 Grievance Mechanism for Stakeholders and Rights, Holders, Foundational Practice

COMMENT:

*This should specify that the system for reporting and filing grievances must be available in multiple formats, such as online, by mail, in person, etc. Also, that all pertinent information and documentation related to the grievance procedure must be culturally appropriate and provided in relevant local languages.*

---

SECTION: 17.1 Grievance Mechanism for Stakeholders and Rights, Holders, Foundational Practice

COMMENT:

*Recommend Adding: "Publicly commit through statements and policies that stakeholders and rights holders who use the grievance mechanisms will not face discrimination, reprisals, harassment, threats or intimidation from the company."*

*Recommend Adding: "Develop whistleblower protections based on international best practices that apply to all workers as well as vendors, contractors and auditors. Protections should stipulate that mine workers have the right to refuse unsafe work, and must be allowed to stop their tasks at any time if they identify imminent risk to health and safety without suffering any punishment."*

---

SECTION: 17.1 Grievance Mechanism for Stakeholders and Rights, Holders, Good Practice

COMMENT:

*1. Establish and implement an operational-level grievance mechanism that meets the eight UNGPs' effectiveness criteria for such mechanisms. These emphasise legitimacy accessibility, etc. (see glossary for full details), and protection against discrimination or reprisals for those raising grievances,*

*supported by confidentiality to protect their identity.*

*2. Consult with potentially affected stakeholders and rights-holders on the design of the grievance mechanisms in a manner that responds to their needs, which should outline clear process steps, timelines and milestones to assess and address grievances in an impartial manner."*

*These should both be foundational.*

*Recommend Adding: "Policy that commits the company will not use non-disclosure agreements to prevent individuals from openly filing and/or pursuing a complaint."*

*Recommend Adding: "Implement a system where complainants are provided the funds necessary to access independent forms of support (e.g. legal, technical or medical) in all phases of engagement with the procedure, including during the initial filing of the complaint."*

*In addition to access to information, the company must provide access to advice and expertise.*

---

SECTION: 17.1 Grievance Mechanism for Stakeholders and Rights, Holders, Good Practice

COMMENT:

*This should be foundational. What is the point of a grievance mechanism system if there is no remedy? Why would stakeholders and rights holders participate if they will not access remedy.*

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SECTION: 17.1 Grievance Mechanism for Stakeholders and Rights, Holders, Leading Practice

COMMENT:

*Recommend replacing: "internal" with "external third party"*

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SECTION: 17.1 Grievance Mechanism for Stakeholders and Rights, Holders, Leading Practice

COMMENT:

*This should be foundational or good, not leading.*

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SECTION: 17.1 Grievance Mechanism for Stakeholders and Rights, Holders, Leading Practice

COMMENT:

*Recommend Adding: "Communicate decisions made based on this review publicly."*

---

SECTION: 17.1 Grievance Mechanism for Stakeholders and Rights, Holders, Leading Practice

COMMENT:

*The intent section says ""Provide or enable access"" that is not the same as directing. This language should be strengthened to match the intent."*

---

COMMENT:

*Culturally Appropriate Grievance Mechanisms Across All Areas with Potential Impacts to Indigenous Peoples*  
*Indigenous Peoples communities require grievance mechanisms that respect their cultural protocols, languages, and governance systems to ensure accessibility and trust in the process. The UN Guiding Principles on Business and Human Rights (UNGPs) emphasize that effective grievance mechanisms must be legitimate, accessible, predictable, and rights-compatible. Indigenous communities face unique barriers to using general grievance systems, which often lack accommodations for cultural values or may not involve Indigenous representatives in the resolution process. ILO Convention 169 (Article 12) calls for grievance processes that are accessible and understandable to Indigenous peoples, while UNDRIP emphasizes Indigenous rights to justice and culturally appropriate procedures (Articles 40 and 27).*

*Gaps:*

*Lack of Specific Indigenous Grievance Channels: While the Consolidated Standard includes general grievance requirements, it does not mandate Indigenous-specific channels that would allow Indigenous Peoples to file and resolve grievances in a culturally sensitive way. This omission risks alienating Indigenous Peoples communities, limiting their recourse when impacted by a facility's activities.*

*Absence of Indigenous Leadership in Grievance Resolution: Indigenous representatives are not specifically included in the development of the grievance process, which is crucial for legitimacy in the eyes of the community. Indigenous representatives should be actively involved in the grievance process by serving as mediators, advisors, or monitors, ensuring that the process respects cultural norms and reflects community perspectives. This involvement could include participating in grievance review committees, co-designing reporting mechanisms, or overseeing the implementation of resolution outcomes. Without Indigenous participation, grievances may not be resolved in a manner that aligns with the community's needs and values, limiting the effectiveness of resolutions.*

*Inadequate Transparency in Grievance Outcomes: Current standards do not require detailed reporting on grievances from Indigenous communities, limiting accountability. Transparent disclosure of grievances, outcomes, and timelines is essential for building trust with Indigenous communities.*

*Recommendations:*

*Create Indigenous-Specific Grievance Mechanisms: The Consolidated Standard should require grievance mechanisms tailored to Indigenous communities, ensuring accessibility in local languages, cultural considerations in communication, and location options for in-person reporting. This mechanism should include anonymous reporting options to encourage openness without fear of retaliation.*

*Mandate Indigenous Leadership in Grievance Processes: To increase trust and legitimacy, grievance mechanisms should include Indigenous representatives or leaders in mediating and resolving complaints, particularly*

those involving land, culture, or livelihoods. This aligns with ILO 169 and UNDRIP's emphasis on Indigenous self-determination.

*Require Detailed Reporting on Indigenous Grievances: Regular, transparent reporting on grievances specific to Indigenous communities, including issue type, resolution status, and resolution timeline, should be mandatory. This accountability would signal genuine commitment to Indigenous Peoples rights and cultural respect.*

Examples:

*Performance Area 3 (Responsible Supply Chains): Adding Indigenous-specific grievance mechanisms for supply chain-related impacts would provide Indigenous communities with a direct and accessible way to voice concerns over sourcing activities. This aligns with UNGPs and ensures that facilities and their supply chain partners are accountable for any adverse impacts.*

*Performance Area 17 (Grievance Management): As this area governs grievance processes, it should establish specific requirements for Indigenous grievance systems, incorporating Indigenous languages, respect for community governance, and accessible channels that empower Indigenous representatives to lead or mediate grievances. Following IFC Performance Standard 1, such a mechanism should also ensure that grievances are tracked, addressed, and disclosed transparently.*

*Performance Area 19 (Biodiversity, Ecosystem Services, and Nature): Biodiversity impacts are often particularly significant for Indigenous communities due to their direct ties to the land. Adding an Indigenous-specific grievance channel here ensures that biodiversity impacts on Indigenous lands, including loss of flora, fauna, or ecosystem services essential to cultural practices, are formally addressed.*

*Performance Area 15 (Cultural Heritage): The grievance mechanism here should enable Indigenous communities to report and resolve issues related to cultural heritage, particularly the destruction or alteration of sacred sites. A culturally relevant grievance mechanism that includes Indigenous leaders or representatives would ensure that community values are upheld.*

*Furthermore, disclosure should include details of Indigenous-specific grievances, the resolutions achieved, and the timeframes for responses. This would support transparency and highlight responsiveness to Indigenous Peoples concerns.*

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## **Performance Area 18: Water Stewardship**

COMMENT:

*Positive to see public disclosure of facility-level water data, independent audits of public reporting on water and publicly available results as leading practice. However, these are critical requirements when it comes to water stewardship, and should be included as foundational or good practice.*

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COMMENT:

*In addition, ICMM Water Reporting: Good Practice Guide and MCA Water Accounting Framework are leading practices. These should be the minimum requirements, as is the case under ICMM.*

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COMMENT:

*We welcome the focus on Collaborative Watershed Management. This section could be strengthened to include identification of future uses of water in collaboration with relevant stakeholders.*

*Water monitoring programme for both water quality and water quantity should include participation of stakeholders from affected communities.*

*Whilst there is a commitment to identify water quality and quantity requirements for the Facility over its operating life cycle, this should be strengthened by including a commitment to ensure waters affected by the*

mining project are maintained at a quality that enables safe use for current purposes and for the potential future uses identified in collaboration with relevant stakeholders.

---

COMMENT:

*Whilst mention of need to identify opportunities to improve the efficiency of process water use and to seek to reduce process water use, this could be strengthened to include a specific commitment on recovery and recycling, referencing the use of water recovery and recycling technologies, closed loop water systems and tailings dewatering techniques as well as adopting Zero Liquid Discharge approaches.*

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## **Performance Area 19: Biodiversity, Ecosystem Services and Nature**

SECTION: 19.1 Biodiversity and Ecosystem Services and Nature, Foundational Practice, 2

COMMENT:

*Key Biodiversity Areas are not defined in the Glossary.*

*This requirement only applies to changes/new infrastructure - no retroactive application - a flaw throughout the CMSI.*

*It also implies that industrial-scale mining can somehow be compatible with "the value" of Key Biodiversity Areas, Ramsar Sites, and legally designated protected areas - worse yet, the determination of this supposed compatibility is to be made by the company itself.*

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SECTION: 19.1 Biodiversity and Ecosystem Services and Nature, Foundational Practice, 5

COMMENT:

*This should be done before starting any activity.*

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SECTION: 19.1 Biodiversity and Ecosystem Services and Nature, Leading Practice, 1

COMMENT:

*There should be no-go zone areas defined here as leading practice. Better to have a specific timeline, ie. 3 months - rather than the current language of "defined intervals."*

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COMMENT:

*Many Indigenous cultures are intertwined with their natural environments. Requiring that biodiversity efforts consider cultural implications, such as species or landscapes of significance, aligns with both environmental stewardship and cultural preservation.*

*There is no mention of land cover change/deforestation or degradation in this Performance Area.*

*There is no mention of high-carbon stock areas, intact forest landscapes and primary forest.*

*Recommendations:*

*To have specific deforestation and degradation indicator, at least on foundational practice.*

*In leading practice: to have no-go zone areas, ie. small islands, primary forest, high carbon stock areas, key biodiversity areas.*

*To have documents on deforestation and biodiversity policy in place.*

Need to include forests/land use change/natural habitat in avoidance; In addition to world heritage sites ☒ HCS, KBAs, primary forest

Reconsider language of “net loss” or have more rigid pathway to establish baseline.

---

COMMENT:

*On no go zones, we welcome commitment to prohibit exploring or operating within World Heritage Sites, and to comply with restrictions established for Key Biodiversity Areas, Ramsar Sites (wetlands of international importance), legally designated protected areas and their buffer zones (where restrictions are defined) at the foundational level. This could be strengthened to further name specific areas, including International Union for Conservation of Nature (IUCN) protected areas (I-IV) and Buffer zones and core areas of UNESCO biosphere reserves.*

---

COMMENT:

*Development and implementation of a biodiversity management plan to achieve no net biodiversity loss by 2030 should be foundational or good practice not leading. Aiming for a net gain in important biodiversity values should be leading.*

*While there are some references to rehabilitation and/or restoration, this must be further strengthened to include the requirement to implement habitat restoration and reforestation programs throughout the life cycle of the mine.*

*Positive to see monitoring of progress with implementing management actions and progress towards no net loss or net gain at defined intervals. However, this should be strengthened to specify detailed and frequent monitoring of key biodiversity indicators (as to be agreed under the CBD framework).*

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## **Performance Area 2: Business Integrity**

SECTION: 2.1 Legal Compliance, Foundational Practice, 2

COMMENT:

*Foundational practice must require compliance with applicable law. That is the bare minimum, to comply with the law, not “” establish processes to comply.”*

---

SECTION: 2.1 Legal Compliance, Good Practice, 2

COMMENT:

*The EU Batteries Regulation, REGULATION (EU) 2023/1542, goes further. It requires reporting on main findings of adverse impacts and how they have been addressed.*

*Art. 52.3 “”review and make publicly available, including on the internet, a report on its battery due diligence policy. That report shall contain, in a manner that is easily comprehensible for end-users and clearly identifies the batteries concerned, the data and information on steps taken by that economic operator to comply with the requirements laid down in Articles 49 and 50, including findings of significant adverse impacts in the risk categories listed in point 2 of Annex X, and how they have been addressed.”” <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2023:191:FULL>*

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SECTION: 2.2 Business Ethics and Accountability, Foundational Practice, 1

COMMENT:

*Foundational practice should align with the OECD Guidelines.*

*Chapter VII of the OECD Guidelines calls for companies to: “Not engage in any act of corruption, including the offering, promising or giving of any undue pecuniary or other advantage to public officials or employees of persons or entities with which an enterprise has a business relationship or to their relatives or associates. Likewise, enterprises should not request, agree to or accept any undue pecuniary or other advantage from public officials or the employees of persons or entities with which an enterprise has a business relationship.” Guidelines for Multinational Enterprises on Responsible Business Conduct | OECD p. 12*

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SECTION: 2.2 Business Ethics and Accountability, Good Practice, 2

COMMENT:

*This could be far more specific according to OECD Guidelines Ch. VII:*

*“Develop and adopt adequate internal controls, ethics and compliance programmes or measures for adequately preventing, detecting and addressing bribery and other forms of corruption, developed on the basis of a risk-based assessment, taking into account the individual circumstances of an enterprise”. Guidelines for Multinational Enterprises on Responsible Business Conduct | OECD p. 12*

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SECTION: 2.2 Business Ethics and Accountability, Good Practice, 3

COMMENT:

*The OECD Guidelines recommend taking into account applicable language, cultural and technological barriers.*

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SECTION: 2.2 Business Ethics and Accountability, Good Practice, 5

COMMENT:

*OECD Guidelines call for an updated list of agents engaged in connection with transactions with public bodies and State-owned enterprises to be kept and made available to competent authorities.*

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SECTION: 2.2 Business Ethics and Accountability, Good Practice, 6

COMMENT:

*Gap with the OECD Guidelines - which calls to prohibit or discourage, in internal company controls, ethics and compliance programmes or measures, the use of small facilitation payments, which are generally illegal in the countries where they are made, and, when such payments are made, accurately record these in books and financial records.*

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SECTION: 2.2 Business Ethics and Accountability, Leading Practice, 1

COMMENT:

*This is not a leading practice. Leading practice would be to actively fight corruption and bribery.*

*The EU Batteries Regulation requires this. See recital 87: “the battery due diligence policies should include information on how the economic operator has contributed to the prevention of human rights abuses and on the instruments in place within the operator’s business structure to fight corruption and bribery.” <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2023:191:FULL>*

*[Applies to LP 1-3 -ERM]*

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SECTION: 2.2 Business Ethics and Accountability, Leading Practice

COMMENT:

*Missing: Do not make illegal contributions to candidates for public office or to political parties or to other organisations linked to political parties or political candidates - as reflected in the OECD Guidelines."*

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## **Performance Area 20: Climate Action**

COMMENT:

*Positive to see some focus on minimising climate change impacts from mine sites through increased energy efficiency, reduced energy consumption and reduced emissions of greenhouse gases.*

*Welcome commitment to adoption of widely recognized methods for measuring and reporting greenhouse gas emissions, such as the GHG Protocol Corporate Standard as a foundational requirement.*

*At facility level, strong focus on scope 1 and 2 however setting of targets should be foundational and clearer wording needed to specify targets are aimed at reduction of emissions. Language on scope 3 can be much stronger and should be included as foundational or good practice, rather than leading.*

*It is positive to see some alignment of business planning and decision-making for existing activities and new projects with the goals of the Paris Agreement. However, this should be strengthened to include specific reference to aligning with science-based targets consistent with global climate goals, such as the Paris Agreement, to limit temperature increases to 1.5°C above pre-industrial levels.*

*Performance area could be further strengthened with inclusion of time-bound commitments to phase out fossil fuel use in operations.*

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## **Performance Area 21: Tailings Management**

SECTION: 21.1 Tailings Management

COMMENT:

*Non-Conventional Tailings Management Solutions*

*IFC Environmental, Health and Safety Guidelines on Mining related to riverine (river, lakes, and lagoons) and deep sea tailings placement (DSTP) is more rigorous than the CMSI, while still falling short of measure to adequately protect ecosystems and communities, particularly given increasing pressures and threats due to climate change.*

*The IFC states that riverine or shallow marine tailings disposal is not considered good international industry practice and that deep sea tailings placement should be "considered only in the absence of environmental and socially sound land-based alternatives and should be based on an independent scientific impact assessment."*

*While the IFC guidance, drafted in 2007, is stronger than the CMSI draft of 2024, it ignores growing evidence of the long-term harms of submarine tailings disposal and the growing momentum, particularly from the financial sector and downstream purchasing companies and government, against the practice.*

*Submarine tailings disposal is an outdated practice that is only being proposed in new mining projects in Norway and Papua New Guinea. Inclusion in the CMSI as "good practice" would be a massive step backwards.*

*Relevant sources: <https://earthworks.org/releases/norwegian-asset-manager-divests-from-operator-of-controversial-ramu-mine/>*

*<https://www.responsible-investor.com/the-world-s-oceans-are-under-pressure-but-investors-still-have-time-to-help-solve-the-challenge/>*

Could strengthen GISTM further by including:

*New mines must adopt Best Available Technologies (BAT) and Best Available Practices (BAP), such as dewatering and filtering tailings, as well as using dry stacking and backfilling techniques.*

*No new tailings facilities where inhabited areas are in the path of a tailings dam failure, and no new upstream dams.*

*Continuous monitoring systems in place to identify, disclose and mitigate risks, with regular independent inspections.*

*“Non-conventional tailings management solutions: This would include lake, riverine and deep-sea tailings disposal, or other tailings disposal options that don’t involve the construction of a dam. In reviewing and implementing applicable requirements of the GISTM or Tailings Protocol of MAC, facilities should demonstrate that they: identify potential and actual risks and impacts from tailings; respect the rights of affected stakeholders and meaningfully engage them at all phases of the tailings system lifecycle, including closure; implement a system to manage tailings; conduct monitoring and review; and publicly disclose relevant information.”*

*Parties to the London Convention-London Protocol have not so far agreed to adapt their regime to look at regulating land-based discharges such as these, though legal advice provided by IMO confirmed that there is no legal impediment to them doing so if the political will was there. They have, however, looked at the issue from a technical standpoint a number of times, seeking to work cooperatively with other bodies. A technical report on the issue was published under the LC-LP around 10 years ago. We have managed to resist repeated calls from some quarters to develop ‘best practice guidance’ that could end up facilitating DSTP rather than restricting it.*

*The UN expert group GESAMP has a working group that has been preparing a technical document on DSTP for many years, led by someone who has also worked in an advisory capacity for a number of mining companies in the past. This work still seems to have been in its final draft phase for several years now. We submitted yet more comments earlier this year as it was still far too open to the idea of setting guidelines for DSTP rather than identifying it as an altogether bad idea. Understanding is that it will be finalised and published late 2024/early 2025.*

*Relevant sources: <https://wwwcdn.imo.org/localresources/en/OurWork/Environment/Documents/Mine%20Tailings%20Marin>  
<http://www.gesamp.org/work/groups/42>*

*<https://www.hi.no/en/hi/news/2024/august/scientists-trace-pollutants-from-the-brown-crab-back-to-the-source>*

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#### COMMENT:

*Current industry standards, including the Global Industry Standard on Tailings Management, do not go far enough to adequately protect communities and ecosystems from failures. In 2020 and 2022, an international group of scientists, community groups, and human rights and environmental organizations published a set of guidelines for the safer storage of mine waste. Safety First: Guidelines for Responsible Mine Tailings Management that aim to protect communities and workers from the risks posed by mine waste storage facilities.*

*Safety First is available here: <https://earthworks.org/resources/safety-first/>*

*Comparisons between the GISTM and Safety First have shown multiple gaps in the GISTM that the CMSI should address and remedy.*

*Some of those gaps have been identified here: <https://earthworks.org/wp-content/uploads/2021/09/Global-Tailings-Scorecard-Final.pdf>*

*Specifically, the CMSI should go beyond the GISTM to require:*

*A commitment to zero harm to people and the environment.*

*No aqueous tailings disposal under any circumstances.*

*Based on the goal of zero harm to people, companies must ensure that trained professional support will be provided during an emergency and will reach all affected populations in a timely manner.*

*New tailings facilities must not be constructed if the operating company cannot ensure the safe and timely assisted evacuation of any population that lives in the zone of a possible failure path.*

*Operating companies must not build infrastructure in which workers are likely to be present—offices, cafeterias, warehouses—in the zone of a possible failure path.*

*The location and safety of a tailings facility must not only contemplate the impact to human lives in the case of a failure, but the environmental and economic impacts as well.*

*Tailings facilities must not be constructed in a location where a failure would materially impact public water supplies or critical habitats, or near protected ecological resources.*

*Tailings facilities must not be constructed where there are facilities that present considerable evacuation challenges in the zone of influence, including, but not limited to, jails or prisons, hospitals, and assisted-living or elder care facilities. Even if operating companies carry out training and emergency drills, certain social groups (the elderly, small children, people with disabilities, etc.) require special assistance.*

*Affected communities must be able to define no-go zones, or zones where a tailings facility is not permitted due to environmental, cultural or economic factors.*

*All new mines that create tailings carry out an analysis of the best available technology (BAT) for tailings disposal and implement decisions for BAT based on the analysis. Companies must reduce the water content in a tailings facility and reduce the amount of tailings stored above ground as much as possible. Filtered tailings can be compacted in the tailings facility, which reduces the likelihood of liquefaction.*

*If an operating company, regulatory agency, or independent third-party identifies any potential loss of life as a result of a tailings dam failure, the dam must be designed to withstand the Probable Maximum Flood (PMF), which is the largest flood that is theoretically possible at a given location, and the Maximum Credible Earthquake (MCE), which is the largest earthquake that is theoretically possible at a given location. All modeling and design for floods must take climate change into account—this applies for both closed and operating facilities.*

*All information relevant to safety and the stability of tailings facilities must be publicly available. Safety practices must be considered “non-competitive”.*

*Require companies stop building new upstream tailing dam facilities. The CSMI should also require the expansion of existing upstream tailings facilities cease, and these facilities must be safely closed as soon as possible. This includes dams where companies have been approved for permits that have not begun or are just beginning construction. The deadline for safe closure must depend on engineering and the safety of affected communities, rather than economic considerations.*

*There must be an independent evaluation of all aspects of the design, construction, operation, and maintenance—including during closure and rehabilitation—of tailings and other mine waste facilities, regardless of the projected consequences of failure of the mine waste facility, by a group of competent, objective, third-party reviewers (e.g., an Independent Tailings Review Board). The operating company must not be able to influence decisions made by the ITRB, and its members must not be dismissed or terminated during a review in an attempt to influence the outcomes or as an intimidation tactic. Any fees paid to the ITRB must be independent of the conclusions reached during the review. ITRB members, as individuals or as representatives of organizations, must not have a financial conflict with the mine being reviewed. Financial conflicts include but are not limited to direct financial interest (employment, contracts, stock, etc.), and personal or family connections to the mine or operating company that could incur any kind of benefits.*

*Additionally, the CSMI should specify that the structural zone of a filtered tailings facility is an engineered structure that should be treated as a tailings dam under the standard.*

*Companies are increasingly exploring the option to use materials contained in operating, closed or abandoned mine sites via remining. Remining is not specifically referenced in the GISTM. At a minimum, remining facilities should be required to adhere to all relevant mining regulations, and mining regulations and best practices should be updated to reflect the unique circumstances surrounding remining, including the CSMI. Where not*

already required by law, proposed remining operations should undergo a rigorous environmental and social impact assessment to provide frontline communities, governments, and regulatory agencies with information about the full range of potential benefits and impacts of the remining project. The assessment process must include the opportunity for public comment and appropriate remedies. Additionally, the waste streams that remain after remining, which can be significant, will require careful disposal, monitoring, and maintenance in perpetuity to avoid additional adverse environmental effects and possible ecological disasters. Remining waste should not be exempt from hazardous waste regulations.

---

## **Performance Area 22: Pollution Prevention**

### COMMENT:

*Welcome compliance with the International Cyanide Management Code (The Cyanide Code).*

*Welcome commitment to manage and minimise non tailings waste in line with the waste mitigation hierarchy.*

*Welcome commitment to manage waste containing mercury in line with the Minamata Convention, as well as requirement to quantify and publicly disclose material point source mercury air emissions from operations in line with internationally recognised reporting standards (as good practice).*

*The section on noise pollution could be further strengthened to include commitments to ensure mining-related noise does not exceed clearly set levels.*

*If noise or vibration from blasting activities is found in monitoring to impact human receptors, clear conditions should be set for conducting blasting e.g. only on normal working days.*

*Noise data and information should be made available to stakeholders.*

---

## **Performance Area 23: Circular Economy**

SECTION: 23.1 Circular Economy Management at all facilities, Foundational Practice, 1

### COMMENT:

*This means little without effective enforcement mechanisms.*

---

SECTION: 23.1 Circular Economy Management at all facilities, Good Practice, 2

### COMMENT:

*Good, but must be combined with proper tailings storage/management - which as seen in PA21 is lacking.*

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SECTION: 23.1 Circular Economy Management at all facilities, Leading Practice, 1

### COMMENT:

*Again this is largely meaningless without enforcement mechanisms.*

---

SECTION: 23.2 Additional Requirements for Smelters, Good Practice, 3

### COMMENT:

*What kinds of recycling methods are considered acceptable here? If it's pyrometallurgy it shouldn't be called recycling.*

---

SECTION: 23.2 Additional Requirements for Smelters, Good Practice, 4

COMMENT:

*If facilities can track/monitor scrap they should also be doing so for other mineral inputs.*

---

SECTION: 23.2 Additional Requirements for Smelters, Leading Practice, 1

COMMENT:

*Should be publicly disclosed - not only on request.*

---

SECTION: 23.2 Additional Requirements for Smelters, Leading Practice, 2

COMMENT:

*This should be the approach to all minerals a smelter facility uses, not just scrap.*

---

SECTION: 23.2 Additional Requirements for Smelters, Leading Practice, 4

COMMENT:

*Also needs to prioritize worker safety.*

---

SECTION: Glossary and Interpretive Guidance

COMMENT:

*“Circular economy: Within a circular economy, material producers and product manufacturers work with end users, communities, retailers, service providers and waste management facilities to “close loops” by reusing, performing maintenance on, repairing, refurbishing and recycling products and materials. In the mining sector, circular economy encompasses “process circularity”, which refers to the application of circular principles to the mining process, and “product circularity”, which focuses on ensuring that metals and minerals are kept in circulation through recovery, reprocessing and reuse.*

*Principles of circular economy: The circular economy is based on three principles, driven by product and process design: eliminate waste and pollution; circulate products and materials (at their highest value); regenerate nature.”*

*The non-inclusion of demand reduction strategies in these definitions greatly limits their potential positive impact.*

---

COMMENT:

*“Recycled Content: Recycled material refers to minerals or metals that have been previously processed, such as end-user, post-consumer, scrap and waste minerals or metals arising during minerals or metals processing and product manufacturing, which is returned to a minerals or metals processor or other downstream intermediate processor to begin a new life cycle.”*

*There needs to be a recycling definition in the glossary.*

---

COMMENT:

*Positive to see a dedicated chapter on circular economy with commitment to apply the principles of circular economy in the Facility’s operations through increased resource efficiency, reprocessing, reuse, recovery and*

*recycling as foundational practice. When it comes to requirements for smelters, we welcome the requirement to identify opportunities to promote collection, reuse and recycling of post-consumer products at their end-of-life.*

---

## **Performance Area 24: Closure**

SECTION: 24.1 Closure Management, Foundational Practice, 1

COMMENT:

*"Responsible" is too vague and subjective.*

---

SECTION: 24.1 Closure Management, Foundational Practice, 2

COMMENT:

*Closure plans should be co-designed with stakeholders and rights holders, not informed by.*

*Recommend Adding: "Companies must declare bankruptcy or sell to junior companies to avoid closure monitoring and liability.*

*Companies must present documentation showing they have successfully eliminated all credible failure modes in order to close a tailing storage facility."*

---

SECTION: 24.1 Closure Management, Good Practice, 1

COMMENT:

*There should be a publicly available plan to mitigate any risks identified in the assessment.*

---

SECTION: 24.1 Closure Management, Good Practice, 2

COMMENT:

*Co-design.*

---

SECTION: 24.1 Closure Management, Good Practice, 3

COMMENT:

*Co-design.*

---

SECTION: 24.1 Closure Management, Good Practice, 5

COMMENT:

*There should be a requirement for reclamation and closure of tailings facilities to be a factor in their initial design and siting.*

---

SECTION: 24.1 Closure Management, Good Practice, 6

COMMENT:

*Recommend adding: "and fund the monitoring"*

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SECTION: 24.1 Closure Management, Good Practice, 7

COMMENT:

*Financial assurance must be independently guaranteed, reliable, and readily liquid to ensure that funds will be available in the event of bankruptcy by the operating company. There must be no limitations on the use of funds for mine-related cleanup activities. Financial assurance must undergo review by third-party analysts, using accepted accounting methods, at least every three years or whenever there is a material change either to the tailings facility or to the social, environmental, and local economic context. Unless the financial assurance is updated annually, the cost for inflation until the next financial review must also be included in the financial assurance calculation.*

---

SECTION: 24.1 Closure Management, Good Practice, 8

COMMENT:

*This should be foundational.*

---

SECTION: 24.1 Closure Management, Leading Practice, 1

COMMENT:

*This should be foundational.*

---

SECTION: Glossary and Interpretive Guidance

COMMENT:

*“Closure: A process of planning and managing the decommissioning of a Facility, smelter and associated infrastructure and facilities, mitigating impacts, and undertaking rehabilitation to achieve post-closure environmental and social objectives.119”*

*Recommend specifying in the definitions that: A tailings facility is safely closed when deposition of tailings has ceased and all closure activities have been completed so that the facility requires only routine monitoring, inspection and maintenance in perpetuity or until there are no credible failure modes.*

---

COMMENT:

*It is positive to see commitment to undertake monitoring, maintenance and management of closure and rehabilitation activities during closure and post-closure (whilst only as good practice). However, it is necessary to include clear timelines for monitoring and liability post closure. The foundational level of “public commitment to responsible closure” is too vague.*

*Financial assistance must be independently guaranteed. In addition, financial assistance is currently only included as good practice, and only in cases in which a financial assurance is required under national law.*

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### **Performance Area 3: Responsible Supply Chains**

SECTION: 3.1 Responsible Supply Chain (applicable to all facilities)

COMMENT:

*Lack of FPIC in Performance Area 3 (Responsible Supply Chains): Respecting Indigenous Peoples rights to FPIC is crucial for obtaining and maintaining a social licence to operate, even in jurisdictions where FPIC may*

not be legally required. Facilities should seek FPIC before initiating any activities that take place on Indigenous Peoples' territories that would impact their land, livelihood, environment and communities. Beyond this, CSMI companies must ensure that respect for Indigenous Peoples' rights is upheld throughout the supply chain by embedding these principles into Supplier Codes of Conduct and due diligence processes. Supplier Codes should explicitly require suppliers to adhere to FPIC principles, conduct risk-based assessments for potential impacts on Indigenous Peoples' lands and resources, and implement mechanisms to mitigate risks. To complement these efforts, grievance mechanisms should be provided to address any concerns that arise during the implementation of sourcing activities, ensuring transparency and accountability. This approach aligns with UNDRIP and promotes responsible sourcing practices across all tiers of the supply chain, particularly in high-risk or extractive sectors.

Currently, FPIC is not mentioned or addressed in the due diligence and policy requirements for supply chain management. CSMI should require facilities to incorporate Indigenous Peoples rights to FPIC, into their supplier code of conduct and supply chain due diligence processes. This means ensuring the suppliers respect Indigenous Peoples lands, resources and rights and that they proactively identify and mitigate potential impacts on Indigenous territories.

Furthermore, reporting on supply chain impacts should include disclosures about sourcing practices from Indigenous Peoples lands including FPIC agreements, benefit agreements and mitigation measures taken. This would promote transparency in sourcing decisions and encourage responsible supply chain management.

Finally, cultural heritage considerations should be integrated within supply chain policies, especially when sourcing activities take place near Indigenous cultural sites. This would ensure that supply chains respect cultural heritage as a foundational principle.

LEVEL

REQUIREMENT

### 3.1 Responsible Supply Chain (applicable to all facilities)

Further detail is needed, and commitments could be strengthened to include continuous monitoring, including access to remedy at good practice instead of leading.

The Foundational Practice level of Section 3.1 does not require companies to undertake human rights due diligence at all. It loosely aligns with the initial steps of due diligence: establishing policies and management to embed responsible business conduct. However, it does not provide clear details or guidance on the minimum requirements of policies or effective management systems.

Good Practice under 3.1 is also not OECD-aligned. The requirement for access to grievance is not aligned with international norms either. The standard only requires access to file complaints or grievances to be made available to business relationships in the facility's supply chain; the UNGPs and the OECD Guidelines require access to complaints and remedy be provided to affected rights-holders or their legitimate representatives too. It also does not detail or require core elements of effective grievance mechanisms (Principle 31 of the UNGPs).

Exacerbating these gaps is the non-binding and qualifying language, such as "impractical," "where feasible", "intended to be implemented," etc., used throughout the standard, weakening it further and leaving unclear if action is required and by whom and how that decision is ultimately made.

The draft standard claims alignment with the UNGP mitigation hierarchy principles. However, the overarching glossary defines unavoidable impacts as "significant impacts that will arise from the action and where mitigation is impractical" without giving a definition or criteria where action would be deemed impractical. This gives the industry a loophole to delay or avoid taking action on anything they perceive as impractical.

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## Performance Area 4: New Projects, Expansions and Resettlement

COMMENT:

*Lack of FPIC in Performance Area 4 (New Projects, Expansions, and Resettlement): FPIC should be mandatory here, especially given that new projects or expansions often lead to displacement or alteration of land use. UNDRIP Article 10 explicitly prohibits the forcible removal of Indigenous Peoples from their lands or territories and requires FPIC as a precondition for any relocation, along with fair compensation and, where possible, the option of return. IFC Performance Standard 5 on Land Acquisition and Resettlement recognizes the need for voluntary agreements and FPIC for Indigenous populations, making it critical to secure genuine consent as a precondition for any new development impacting Indigenous Peoples territories.*

---

**COMMENT:**

*Prioritization of Land-for-Land Compensation to Address the Unique Cultural and Livelihood Value of Land for Indigenous Communities*

*For Indigenous communities, land is not merely an economic asset but a foundation of cultural identity, spirituality, and survival. ILO Convention 169 (Article 16) emphasizes that, where relocation is unavoidable, Indigenous Peoples should be provided with lands of equal quality and status. UNDRIP (Articles 10 and 26) similarly asserts the right of Indigenous communities to lands and resources, insisting that any displacement must prioritize land-for-land compensation to maintain continuity of cultural and livelihood practices. Monetary compensation alone fails to account for the intangible, irreplaceable values that land holds for Indigenous Peoples.*

*When Indigenous land is replaced, the Standard does not mandate that the new land should reflect similar ecological or cultural characteristics. Without these requirements, relocated land may fail to meet Indigenous communities' needs for culturally compatible and resource-rich environments.*

*The Standard currently lacks a mechanism for Indigenous communities to co-design compensation packages that reflect their cultural and economic preferences.*

**Recommendations:**

*Make Land-for-Land Compensation the Default for Indigenous Communities: The Consolidated Standard should explicitly require land-for-land compensation as the first option for any Indigenous displacement or resettlement, in line with ILO 169 and UNDRIP. Only when equivalent land is unavailable should monetary compensation be considered, and this must be accompanied by additional supports for cultural continuity and livelihood restoration.*

*Require Cultural and Environmental Equivalency: Any replacement of land should be of similar quality and ecological characteristics, ensuring that the new land supports the community's spiritual, cultural, and subsistence needs.*

*Involve Indigenous Peoples Communities in Compensation Design: Indigenous Peoples representatives should actively participate in crafting compensation packages that meet their unique cultural and economic needs, including deciding the type, location, and use of replacement land.*

**Examples:**

*Performance Area 4 (New Projects, Expansions, and Resettlement): Land-for-land compensation should be a non-negotiable aspect of any displacement or resettlement for Indigenous communities. This continuity for Indigenous ways of life, cultural practices, and economic activities. Cash compensation should be reserved only for circumstances where equivalent land is unavailable.*

---

## **Performance Area 5: Human Rights**

SECTION: 5.1 Human Rights, Foundational Practice, 1

**COMMENT:**

*Wording on “respecting HR consistent with the UNGP is ambiguous’ - recommend changing to “The company publicly commits to respect all internationally recognised human rights across its activities, and commits to respect the UNGPs, publicly disclosing related policies and management plans’*

*Strength - the 3 pillars of principle 15 of the UNGPs are present at the GP level (policy, DD, remediation). However, all of these pillars should also be present at foundational level.*

---

SECTION: 5.1 Human Rights, Foundational Practice

COMMENT:

*Foundational is not useful given its fundamental misalignment with the UNGPs and other relevant norms.*

---

COMMENT:

*Defenders: it’s good to see language on defenders, recommend including the following requirements at foundational level:*

*Publicly available policy commitment not to tolerate nor contribute to attacks on HRDs: The company has a publicly available policy statement committing it to neither tolerate nor contribute to threats, intimidation and attacks (both physical and legal) against human rights defenders.*

*Expects business relationships to commit to zero tolerance of attacks against HRDs: The company expects its business relationships (suppliers, etc.) to make this commitment.*

*Policy commitment to work with HRDs to create enabling environments: The company commits to working with human rights defenders to create safe and enabling environments for civic engagement and human rights at local, national or international levels.*

---

COMMENT:

*Foundational Practice does not fully align with fundamental requirements under the UNGPs, even though it references it. Minimum practice by companies should not only align with international laws, standards and norms, but seek to address the known and persistent implementation gaps so that the standard is designed to drive progress towards achieving international norms, not undermine them.*

*Guiding principle 15 states clearly that businesses must have in place policies and processes, including a policy commitment to meet their responsibility to respect human rights; a human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights; and processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.*

*Lacks sufficient detail to be meaningfully implemented by companies.*

---

COMMENT:

*Foundational level does not require the company to implement human rights due diligence. This is extremely problematic, as evidence shows that while there is growing commitments by companies, these commitments are not met with robust management systems or human rights due diligence processes to implement them.*

*As noted in the 2021 the UNGP stocktaking (UGPS at 10+), while there are a growing number of corporate commitments to take up the Guiding Principles, nearly half (46.2%) of companies assessed in the 2020 Corporate Human Rights Benchmark failed to score any points under due diligence indicators. (<https://www.ohchr.org/sites/default/files/Documents/Issues/Business/UNGPs10/Stocktaking-reader-friendly.pdf>, pg 14).*

*The most recent corporate benchmark (2023) demonstrated additional gaps in company failure to meaningfully consult and include rights-holders in their processes. More than half (55%) of HRDD*

processes assessed in the benchmark do not include any evidence of rightsholder consultation, while only 27% provided evidence. Rightsholder consultation is foundation for more ethical business practice and for management systems that are fully informed of and able to prevent, address and remedy site-level risks. The Benchmark also shows that the top ten performing companies in the Benchmark all involve rightsholders in their HRDD processes, but only 20% of the other 100 companies do. <https://www.worldbenchmarkingalliance.org/publication/chrb/findings/most-companies-fail-to-include-rightsholders-in-their-human-rights-due-diligence-processes/>

---

SECTION: 5.1 Human Rights, Good Practice, 1

COMMENT:

*This is also missing the important operationalisation recommendations of UNGPs P16 (policy is approved by Senior Mgt, informed by relevant internal/external expertise, etc - and is embedded at all levels of the company)*

---

SECTION: 5.1 Human Rights, Good Practice, 2

COMMENT:

*UNGPs say DD processes must "identify, prevent and account".*

*"with the intention of avoiding infringing on the human rights of others..." is ambiguous language. Companies should commit to avoid causing or contributing to HR adverse impacts and seek to prevent / mitigate adverse HR impacts that are directly linked to their operations (UNGPs P13). It should recognise that DD processes may evolve over time and need to be informed by engagement with stakeholders and integration of findings from impact assessments*

---

COMMENT:

*Out of alignment with the known gaps in implementation of the UNGPs (per the UNGPs at 10 assessment by OHCHR). Specifically, there is the lack of inclusion of rights-holders in 'good practice.'*

*Items 2 and 3 on due diligence are foundational to the UNGPs, so again, they should be in the foundational practice level.*

---

SECTION: 5.1 Human Rights, Good Practice, 5

COMMENT:

*It is good that remedy features in Good Practice Requirement 5 - but there should be a clear commitment to provide remedy (again, this is at the policy level in any case).*

---

SECTION: 5.1 Human Rights, Good Practice, 6

COMMENT:

*Key gaps:*

*'severe human rights impacts' is not defined and there is no guidance given for how to define it. The UNGPs specify that businesses should prioritize risks according to severity (Severity of impacts will be judged by their scale, scope and irremediable character) and likelihood.*

*The impact itself, in detail, should be disclosed, not just the disclosure of how it is being addressed.*

*Noting, moreover, the language directly from the UNGPs (principle 21, pg 23) in reference to public disclosure and communication around human rights impacts: "Business enterprises whose operations or operating*

contexts pose risks of severe human rights impacts should report formally on how they address them. In all instances, communications should: Be of a form and frequency that reflect an enterprise's human rights impacts and that are accessible to its intended audiences; Provide information that is sufficient to evaluate the adequacy of an enterprise's response to the particular human rights impact involved; In turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality." "Formal reporting by enterprises is expected where risks of severe human rights impacts exist, whether this is due to the nature of the business operations or operating contexts. The reporting should cover topics and indicators concerning how enterprises identify and address adverse impacts on human rights. Independent verification of human rights reporting can strengthen its content and credibility. Sector-specific indicators can provide helpful additional detail."

---

SECTION: 5.1 Human Rights, Good Practice

COMMENT:

*At the GP level, companies should publish their operational guidance related to the protection of human rights defenders (in addition to policy commitments) and should also use their leverage and speak out in defense of human rights defenders and against legal reforms that are aimed at restricting civil society space. Companies must refrain from supporting strategic lawsuits against public participation (SLAPPs) or other legal strategies that diminish established legal protections for HRDs.*

---

SECTION: 5.1 Human Rights, Leading Practice, 2

COMMENT:

*There is nothing 'leading' about leading practice. All of these are fundamental under the UNGPs and so should be foundational practice. Dividing/tiering the UNGPs further fragments the landscape, rather than building on it. This is particularly problematic considering one of the largest gaps identified by the UNGPs at 10 assessment found that HRDD implementation was inadequate, even as companies increased their uptake on UNGP-aligned policy commitments. Further fragmenting the UNGP requirements into different bands of practices, rather than as elemental to starting in the CMSI, will only worsen these implementation gaps.*

*Collaboration with rights holders in the due diligence process, is fundamental to the UNGPs, it should not be considered 'leading practice,' but foundational. This is also a foundational requirement for assessing a businesses effectiveness of due Diligence. Specifically, Principle 20, which defines how businesses should track the effectiveness of their response. The two effectiveness criteria for tracking are, 1) based on appropriate qualitative and quantitative indicators; and 2) draw on feedback from both internal and external sources, including affected stakeholders.*

*It's also worth noting that complexity of the situation and the resulting impacts to rights holders is what should to note that the UNGPs state, "The more complex the situation and its implications for human rights, the stronger is the case for the enterprise to draw on independent expert advice in deciding how to respond."*

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SECTION: 5.1 Human Rights, Leading Practice, 3

COMMENT:

*Again, this is foundational under the UNGPs. As it relates to businesses, principle 18 states: ""To enable business enterprises to assess their human rights impacts accurately, they should seek to understand the concerns of potentially affected stakeholders by consulting them directly in a manner that takes into account language and other potential barriers to effective engagement. In situations where such consultation is not possible, business enterprises should consider reasonable alternatives such as consulting credible, independent expert resources, including human rights defenders and others from civil society.*

---

SECTION: 5.1 Human Rights, Leading Practice

COMMENT:

*There is nothing 'leading' about leading practice here. All of the LP reqs are fundamental under the UNGPs and so should be foundational practice. Dividing/tiering the UNGPs further fragments the landscape, rather than building on it.*

---

SECTION: 5.1 Human Rights

COMMENT:

*Generally, this is misaligned with WBA CHRFB <https://assets.worldbenchmarkingalliance.org/app/uploads/2024/10/2024CHRFB> (the reference assessment of companies' policies alignment with UNGPs and others).*

*One key thing to note is that this PA seems to apply at the facility level, but this does not make sense, as most required policies will need to be adopted at the corporate level.*

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## **Performance Area 7: Rights of Workers**

SECTION: 7.1 Workers' Rights Risk, Mitigation and Operational Performance, Foundational Practice, 1

COMMENT:

*Include ILO's Fundamental Principles.*

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

COMMENT:

*Commit to non-interference, including a commitment to neutrality and no retaliation.*

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COMMENT:

*Would be important to reference the ILO's 5 Fundamental Principles and Rights at Work.*

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COMMENT:

*Important to also include workers in companies' supply chains. According to the UNGPs, companies' responsibilities extend throughout their supply chains. See also: [https://www.industrialunion.org/sites/default/files/uploads/documents/supply\\_chains.pdf](https://www.industrialunion.org/sites/default/files/uploads/documents/supply_chains.pdf)*

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COMMENT:

*It should also be noted that ICMM's commitments under their Social and Economic Reporting Framework and Guidance on Pay Equity, Training, Education and Skills, and Capacity and Institutional Support are all missing from the CMSI and should be included.*

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## **Performance Area 9: Safe, Healthy and Respectful Workplaces**

SECTION: 9.1 Health and Safety Management, Good Practice, 1

COMMENT:

*Recommend replacing: "are under" with "and the rights of workers are under".*

*Good practice should also recognize the rights of workers under ILO OHS conventions and these must be explicitly mentioned in the OHS management system.*

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SECTION: 9.1 Health and Safety Management, Good Practice, 2

COMMENT:

*Joint health and safety committees should be at the center of good practice OHS management systems.*

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QUESTION 1

**Does the scope, content, and narrative style of the consolidated standard meet your individual expectations and the collective industry expectation for responsible production practices?**

Response: 1: Significantly below

QUESTION 2

**Do the requirements meet your expectations for being sufficiently clear to support consistent and practical implementation and to achieve necessary performance improvement?**

Response: 1: Significantly below

QUESTION 3

**From your perspective, does the three-level performance structure (Foundational, Good, Leading) of the Consolidated Standard meet your expectations for providing an effective on ramp and clear articulation of good practice and effective path to continuous improvement?**

Response: 1: Significantly below

Document:  
Claims

### 3. Types of Reporting & Claims

COMMENT:

*This Claim requires nothing in the way of compliance with even Foundational Level requirements in any PA (as per the Assurance Policy doc) - and yet will surely serve to meet the DD requirements of any number of investors and downstream buyers who are not sufficiently familiar with the CMSI or not sufficiently discerning.*

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COMMENT:

*Neither of these formulas require/incentivize/promote complying with Leading Practice reqs in any PA - which themselves are far short of leading, in any case - rendering the Leading Practice Reqs of the Standard irrelevant for the purpose of any serious assessment of the CMSI's potential to push mining companies to reduce harm.*

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SECTION: Participant Claim

COMMENT:

*How will the CMSI ensure that companies are required to clearly distinguish between the facility's participation in the CMSI and the company as a participant in the CMSI - given that communications rarely come from individual facilities, but the company as a whole?*

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QUESTION 1

**We would value perspectives on a few additional questions related to threshold of performance associated with achievement claims. Please click here/ see page 11 of Reporting and Claims Policy.**

Response:

Neither of these formulas require/incentivize/promote complying with Leading Practice reqs in any PA - which themselves are far short of leading, in any case - rendering the Leading Practice Reqs of the Standard irrelevant for the purpose of any serious assessment of the CMSI's potential to push mining companies to reduce harm.