

CMSI Consultation Response

Respondent Details

NAME

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COUNTRY

United Kingdom

PERMISSION

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

STAKEHOLDER

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

ORGANISATION

Business and Human Rights Resource Centre

COMMENTS & QUESTIONS BY DOCUMENT

Document:
Governance

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: **2: Below expectations**

The proposed governance model falls short of the necessary requirements to be inclusive, ensuring the perspectives of affected stakeholders are truly integrated into the standard decision-making process. The stated vision is to ‘promote responsible practices across metal value chains’. Given the breadth and persistence of human rights issues across mineral value chains, this must encompass addressing human rights issues. This means the governance of the standard must be rights-based and ensure effective, safe and inclusive participation, including in decision-making, of representatives of mining-affected rights-holders. Indigenous Peoples in particular, given their disproportionate exposure to mining related harms, must be guaranteed effective representation.

1. The CMS should specific minimum requirements applicable to member companies of the 4 partners on the board, including member exclusion policies and processes. Relatedly -the CMS should publish the list of companies that are members of the 4 partners and whether they meet or not the requirements of the CMS. 2. The proposed structure should be assessed guidance developed by MSI Integrity and https://www.msi-integrity.org/wp-content/uploads/2017/11/Essential_Elements_2017.pdf. In particular, any MSI should ‘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’. The current composition of 16 board members (16 in total) of which 4 directors from ‘mining affected stakeholders’ and 4 from an ill-defined category of ‘value chain stakeholders’ which can encompass “multi-lateral organisations, international NGOs, academics, multi-stakeholder initiatives”, does not meet this criteria as the definition for this last category is very vague and should be changed.

QUESTION 2

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

Response: **unsure**

Document:
Assurance

3. Who Can Conduct External Assurance?

COMMENT:

We don't understand why assurance providers are to accredited as individuals and not as part of the company they are associated with (both are recommended in our view).

4. Consolidated Standard External Assurance Process

COMMENT:

The Standard states that "The basis of the selection of interview subjects should begin with a discussion between the Assurance Provider and the Facility, during which the Facility will provide the Assurance Provider with a stakeholder map or equivalent register, including a list of stakeholders and rights holder groups (individuals, if available... [even if further down it says] the Assurance provide shall critically consider etc'"

The process should start with the Assurance provider independently researching stakeholders and rightsholders who need to be interviewed and consider as part of this initial scoping exercise, information provided by the Facility but not the other way around

COMMENT:

Having the Facility providing advance notice to rightsholders and stakeholders instead of the assurance provider could simply discourage them from participating in the audit especially in low-trust contexts.

COMMENT:

The Assurance report will contain "A rating for each sub-category of each Performance Area.

For any Performance Area that achieves a performance level below the Good Practice Level, identification of the individual requirements that have not been met to achieve that Good Practice Level."

-> If the Assurance report does not contain an individual assessment of individual requirements, how can improvement plans be discussed and agreed upon within the company?

=> Not having this level of disaggregated data undermines the credibility of the assurance process as there will be no public accountability on how the company/facility actually meets a 'good' or 'foundational level'".

QUESTION 1

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

Response: **2: Below expectations**

The biggest issue with the assurance process is the fact that it does not come with a 'conformance protocol', ie, there are no precise and detailed recommendations on how a company/facility can be assessed to have met, or not have met, individual requirements under each performance area. This is critical, as many requirements are vague and can be interpreted differently by different auditors, making it at best difficult to compare assessments, at worst, impossible to trust the audit results as giving a fair and accurate picture of the sustainability performance of the facility/company.

This is compounded by the fact that the Statement of Findings/Assurance report does not only include information on requirements that have not been met when the Facility does not meet the 'good practice' level, whereas it should contain information on requirements that have been deemed as met to and how this was appreciated by the auditor.

Document:
Standard

Performance Area 1: Corporate Requirements

SECTION: 1.1 Board and Executive Accountability, Policy and Decision, Making, Foundational Practice

COMMENT:

This is below general expectations of companies. Board level oversight is mandated under the UNGPs/OECD Guidelines/

SECTION: 1.1 Board and Executive Accountability, Policy and Decision, Making, Good Practice

COMMENT:

One missing aspect is disclosure information on board member or board committee tasked with governance oversight of corporate-wide sustainability practices and performance, as well human rights (and wider sustainability expertise) or board members or board committee, in line with UNGPs and WBA CHRB revised methodology.

SECTION: 1.1 Board and Executive Accountability, Policy and Decision, Making, Good Practice

COMMENT:

Several performance areas require a company-level policy (human rights, among many others). We suggest removing "or" and "replace by "and, where applicable"

SECTION: 1.1 Board and Executive Accountability, Policy and Decision, Making, Good Practice

COMMENT:

While highlighting the importance of integrating performance areas into corporate strategy is crucial, one missing piece is ensuring policies, processes and due diligence, relating to performance areas, are duly embedded in the companies' internal processes, at all operational levels, in line with UNGP P16

SECTION: 1.1 Board and Executive Accountability, Policy and Decision, Making, Leading Practice

COMMENT:

This is unclear - GP requirements above already refer to sustainability metrics, are these any different?

SECTION: 1.2 Sustainability Reporting, Good Practice, 1

COMMENT:

It is not clear if the intergrated report must follow the OECD DDG for RBC or other listed instruments. We recommend it does explicitly reference the OECD Guidance and other standards as applicable (not 'or').

SECTION: 1.2 Sustainability Reporting, Leading Practice, 1

COMMENT:

Double materiality cannot be considered 'leading practice'. This is now requested by many standards and is the approach of the EU CSRD.

See this note by the Shift project: <https://shiftproject.org/wp-content/uploads/2023/08/Double-materiality-what-you-need-to-know.pdf>

SECTION: 1.3 Transparency of Mineral Revenues, Foundational Practice, 2

COMMENT:

Disclosing payments to governments at project level is the global norm (as per regulations in the EU, UK, Canada Norway and the EITI and existing practices of many oil & gas companies such as Shell and Total Energies, but also Orano and Anglo American. This should be considered foundational practice.

The standard should also request companies to provide a full Country by Country tax reporting (aligned with the GRI Standard) and in line with ICMM Social and Economic Reporting Framework.

SECTION: 1.3 Transparency of Mineral Revenues, Good Practice, 2

COMMENT:

See comment on FP 2 - project-level disclosure is the global accepted standard of disclosure, and that should be the requirement even in non-EITI countries.

SECTION: 1.3 Transparency of Mineral Revenues, Good Practice, 3

COMMENT:

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. We recommend this requirement aligns with this position and to remove language on legal prohibition of such disclosures, and consider adding in the notes a recommendation to company to list any such prohibitive clauses in countries where they operate, and their full legal reference.

SECTION: 1.3 Transparency of Mineral Revenues, Leading Practice, 1

COMMENT:

This should be considered good practice and not leading practice - acting upon companies' expectations for EITI supporting companies is fundamental to build accountability.

SECTION: 1.4 Risk Assessment, Leading Practice, 1

COMMENT:

Engaging external stakeholders cannot be considered leading practice but really is foundational.

SECTION: Glossary and Interpretive Guidance

COMMENT:

Disclosure of contracts: this definition should reference the EITI note, <https://eiti.org/guidance-notes/contracts-and-licenses>, and should explicitly call for disclosures going beyond fiscal terms.

COMMENT:

In many places, requirements under PA1 fall below available international guidance and reference standards and in particular, are misaligned with the UNGPs and the OECD Guidance on RBC, or other generally accepted standards.

It is particularly worrying that contract disclosure requirements fall below current policy consensus (as per the EITI standard), following more than a decade of engagement between civil society and the extractive sector.

Performance Area 12: Stakeholder Engagement

SECTION: 12.1 Stakeholder Identification and Engagement, Leading Practice, 1

COMMENT:

This is welcome and should be considered as good practice.

SECTION: Glossary and Interpretive Guidance

COMMENT:

A reference to https://www.oecd.org/en/publications/oecd-due-diligence-guidance-for-meaningful-stakeholder-engagement-in-the-extractive-sector_9789264252462-en.html would be welcomed

Performance Area 13: Community Impacts and Benefits

SECTION: 13.1 Identify and Address Community Impacts, Leading Practice, 1

COMMENT:

See comments in the human rights chapter, this is not leading practice but must be considered foundational.

SECTION: 13.2 Community Development and Benefits, Good Practice, 2

COMMENT:

It's crucial to clearly state that this process cannot and should not replace FPIC with Indigenous Peoples.

SECTION: 13.2 Community Development and Benefits, Leading Practice

COMMENT:

All requirements here should be considered good practice.

SECTION: Glossary and Interpretive Guidance

COMMENT:

We recommend extending the definition of community development to also include explicit co-ownership and co-equity mechanisms, see our briefing note: <https://www.business-humanrights.org/en/from-us/briefings/from-mining-to-renewable-energy-lessons-learned-from-benefit-sharing-legislation-for-a-just-transition-in-africa/>

SECTION: Intent

COMMENT:

This section lacks of a proper definition of “benefits’ and of an approach to benefit-sharing. In particular, company policies should also commit to implement or facilitate fair and equitable benefit-sharing, including, where appropriate, equity co-ownership models, through fair procedures.

Performance Area 14: Indigenous Peoples

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

COMMENT:

FPIC is foundational and central to Indigenous Peoples self-determination. Suggest changing this definition to:

Publicly commit to respect Indigenous Peoples’ rights, 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, where the Facility’s activities impact assets or traditional land, territories and resources, in line with the principles set out in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). Communicate this commitment to Indigenous Peoples and to other stakeholders and rights-holders and publish a written policy commitment and implementing guidelines on the company website.

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

COMMENT:

A missing crucial requirement is to identify Indigenous Peoples’ lands, territories and resources, and Indigenous Peoples’ representative institutions through consultation with rights-holders and stakeholders.

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

COMMENT:

Suggest adding a reference to existing FPIC protocols

SECTION: 14.1 Managing Engagement, Impacts and Opportunities with Indigenous Peoples, Good Practice, 10

COMMENT:

after 'access to...' add 'Indigenous Peoples' lands, territories and resources, which may include...'

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

COMMENT:

Remediation is missing, for past, ongoing and future harms as a commitment

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

COMMENT:

The company should not unilaterally define engagement terms. Rather it should ensure it consults with Indigenous Peoples in the design of engagement protocols and follow existing protocols.

COMMENT:

replace 'be guided by' by 'in adherence to'

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

COMMENT:

This cannot be left to the discretion of companies. Suggest adding a requirement asking companies to engage with governments on the provision of such support.

Good faith must be removed, this is inappropriate as Indigenous Peoples should be presumed to be engaging in good faith

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

COMMENT:

'Agreement' -> 'legally binding agreement'

Suggest adding "including mutually agreed grievance and remediation mechanisms'

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

COMMENT:

This must be removed. Projects cannot go ahead if consent is not obtained - that renders void every other mention of FPIC and undermines any credible assessment of the company's policy or practice

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

COMMENT:

Compensation and remediation measures, discussed and agreed upon, should also be mentioned

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

COMMENT:

Companies should publicly report on engagement with Indigenous Peoples and agreement terms must be disclosed, if Indigenous Peoples agree to it.

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

COMMENT:

This cannot be called "leading practice" but should be considered foundational practice. FPIC is both a procedural and a substantive right - if there is no "collaboration" during engagement process around terms of the engagement, due process is not respected.

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

COMMENT:

This cannot be considered leading practice, this should be expected of all companies engaging with Indigenous Peoples

SECTION: Glossary and Interpretive Guidance

COMMENT:

Agreement: This seems to be conflating "agreement" with "consent". An agreement can be developed following due process and achievement of consent. Suggest replacing 'agreements can reflect etc', by 'A clear distinction should be made between Free, Prior, and Informed Consent (FPIC) and agreements. However, where FPIC is granted, it should be documented through binding agreements.' Finally, the definition should specify that Indigenous peoples are under no obligation to reach agreement and may withhold their consent.-

Benefit-sharing - We suggest the definition to include 'co-equity', see our report: <https://www.business-humanrights.org/en/from-us/briefings/exploring-shared-prosperity-indigenous-leadership-and-partnerships-for-a-just-transition/>. We also suggest deleting the sentence that reads 'i.e., to offset etc" as language on 'offsetting" human rights impacts is inappropriate.

Critical Cultural Heritage: Replace 'essential" by 'that holds significance". It may encompass the entire territory, this must be mentioned. It should also clarify that Indigenous Peoples must be consulted to identify such sites.

FPIC definition: 'striving" should be removed. Suggest adding 'Consent should be based on a collective consensus decision, and if divisions exist, then projects shall not proceed until a consensus exists. If consent is withheld, then projects shall not proceed. "

Indigenous Peoples: A mention of the fact that some are in voluntary isolation and that it must be respected needs to be inserted.

Giving a definition may be problematic and it could be better to refer to guidance on identification such as <https://aluminium-stewardship.org/wp-content/uploads/2017/04/ASI-IPAF-Fact-Sheet-1-Identifying-IPs-2015.pdf> should also be referenced. Another useful definition comes from Nature Action 100 "Nature Action 100 does not promote a single definition of Indigenous Peoples and recognizes the right of Indigenous Peoples to self- identify. Indigenous Peoples who identify as such may be characterized as tribal peoples whose social, cultural, and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations. Non-exhaustive lists of characteristics often shared by Indigenous Peoples can be found in, the United Nations Permanent Forum on Indigenous Issues, The Study of the Problem of Discrimination Against Indigenous Populations (UN Doc. E/CN.4/Sub.2/1986/7/Add.4), Working Paper by the Chairperson-Rapporteur, Mrs. Erica-Irene A. Daes, on the concept of "indigenous people" (UN Doc. E/CN.4/Sub.2/AC.4/1996/2), and Chapter 4: Land rights of indigenous peoples and local communities of the Land Gap Report. Indigenous Peoples have distinct and differentiated rights as affirmed by the United Nations Permanent Forum on Indigenous Issues, the International Labor Organization Indigenous and Tribal peoples Convention (ILO Convention 169), and the United Nations Declaration on the Rights of Indigenous Peoples.

<https://www.natureaction100.org/media/2024/10/Nature-Action-100-Company-Benchmark-Methodology-October-2024.pdf>

'When agreement is not obtained" etc: This is not aligned with international law and must be removed.

Additional references

<https://www.ohchr.org/sites/default/files/Documents/Issues/IPeoples/FreePriorandInformedConsent.pdf>

Strongly encourage the CMSI to also include guidance developed by Indigenous Peoples movements, in the spirit of 'meaningful engagement'.

SECTION: Intent

COMMENT:

This performance area should not be "guided by" but rather be fully aligned with FPIC as defined by international law. We suggest replacing this sentence by

"Respect Indigenous Peoples' rights by developing inclusive engagement processes and conducting human rights due diligence, adhering to and respecting the right to Free, Prior and Informed Consent (FPIC) of Indigenous Peoples "

COMMENT:

- Indigenous Peoples have specific rights to give or withhold their FPIC over projects that affect their cultures, land, territories and resources and other rights; 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. It is derived from the right of Indigenous Peoples to self-determination and is affirmed within United Nations Declaration on the Rights of Indigenous Peoples and also informed by ILO Convention 169 on Indigenous and Tribal Peoples. Broken down, the right means that consent - which may be withheld - must be given in a context without coercion or duress ('free'), prior to the start of any activity that may impact the rights of Indigenous Peoples ('prior') and with the requisite full information about all impacts, including all potential risks and benefits ('informed').

- For Indigenous Peoples, states and companies should respect their rights to FPIC before any steps in mineral development are taken, as well as from a supply chain perspective, even when recognition of Indigenous Peoples' rights in domestic legal frameworks is often inadequate.

- Terms like "consent", "demonstrating consent" "agreement" are inconsistently defined or referenced, which leads to ambiguity in applications across different performance areas.

- The proposed requirements lack specific details on reporting -transparency at every stage of the process is crucial.

- More information and guidance: The Resource Centre and Indigenous Peoples Rights International report *Protector not prisoner* (<https://www.business-humanrights.org/en/from-us/briefings/protector-not-prisoner-exploring-the-rights-violations-criminalization-of-indigenous-peoples-in-climate-actions/>) and *Cultural Survival, First Peoples Worldwide and SIRGE Coalition's Securing IPs' Right to Self-Determination: A Guide on FPIC* (<https://www.sirgecoalition.org/fpic-guide>)

Currently, requirements in this chapter are not aligned with UNDRIP, see comments.

Performance Area 17: Grievance Management

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

COMMENT:

Grievance mechanisms must be independent, for example, run by trusted third parties.

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."

SECTION: NA

COMMENT:

All requirements under good practice should be considered foundational

Performance Area 2: Business Integrity

SECTION: 2.1 Legal Compliance, Foundational Practice, 2

COMMENT:

'Establish processes' is confusing language - is the requirement to comply with the law or to have processes in place - in other words, is it an outcome focused requirement or a process-focused requirement? We recommend the former, foundational practice should be to be compliant with the law.

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

COMMENT:

'Including' ethical and integrity business practices is not enough. The Company should commit to the principles outlined in the OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions including, at a minimum, prohibiting bribes to foreign public officials and the Company

should extend this expectation to all relevant suppliers, contractors, subcontractors, and other business relationships.

The glossary can reference the OECD Guidelines too.

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

COMMENT:

Reporting publicly (while respecting concerns over anonymity) on breach of policy or bribery complaints/concerns should be regarded good practice and not 'leading'.

Performance Area 3: Responsible Supply Chains

SECTION: 3.2 Responsible Mineral Sourcing, Foundational Practice, 2

COMMENT:

We recommend the standard to explicitly spell out that proper due diligence consists of: a public commitment / statement of expectations towards the mining sector (beyond Tier 1), processes to identify, assess, prevent and account for risks of violations in minerals supply chains. A remedy process must also be in place.

SECTION: 3.2 Responsible Mineral Sourcing, Good Practice, 1

COMMENT:

The OECD Due Dlligence Guidance for Responsible Supply Chains of Minerals should be referenced. The OECD has clarified it is applicable to all minerals supply chain, not just CAHRAs related.

SECTION: Other Relevant Performance Areas

COMMENT:

PA14 on Indigenous Peoples should be mentioned too.

Performance Area 4: New Projects, Expansions and Resettlement

SECTION: 4.1 Risk and Impact Assessments of New Projects and Expansions, Foundational Practice, 2

COMMENT:

Engagement with Indigenous Peoples should be replaced by a commitment to obtain FPIC (see comments in PA14).

SECTION: 4.2 Land Acquisition and Resettlement, Foundational Practice, 1

COMMENT:

This is good to have this level but should be changed to "The Company uses physical and economic displacement as a matter of last resort, following IFC Performance Standard 5"

COMMENT:

A clear commitment to respecting land rights is missing. Consider adding “The Company has a public commitment to respecting land rights of legitimate tenure rights holders as set out in the Voluntary

Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests, including where land and ownership rights are customary and/or not formally recorded.

When acquiring, leasing or making other arrangements to use (or restrict the use of) land and/or resources in its own operations, the

Company discloses how it identifies legitimate tenure rights holders, with particular attention to vulnerable tenure rights holders.

The Company also discloses the locations of its projects including number or percentage of projects in urban, rural or natural area”

SECTION: 4.2 Land Acquisition and Resettlement, Good Practice, 5

COMMENT:

We recommend the standard to 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.

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.

Indigenous Peoples representatives should actively participate in designing and deciding on compensation policies and taking into account their unique perspectives and needs.

Performance Area 5: Human Rights

SECTION: 5.1 Human Rights, Foundational Practice, 1

COMMENT:

The company should commit to respecting the UNGPs and to respect human rights, not just be consistent with the UNGPs

SECTION: 5.1 Human Rights, Foundational Practice, 2

COMMENT:

While a reference to human rights defenders is welcome, this remains insufficient and the following should be included at this level:

- Having a 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.

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

- Having a 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.

As the UN Working Group’s Guidance on HRDs (submitted to the Human Rights Council in July 2021) clearly states, “pursuant to the UN Guiding Principles, business enterprises have a responsibility to avoid infringing

the human rights of those who defend them. This entails business enterprises adapting their procedures to anticipate risks to rights holders including human rights defenders. Concretely, it means that business enterprises need to ensure, as a minimum, that their activities, actions and omissions, do not lead to retaliation, violence, death, legal harassment or any other form of silencing or stigmatisation of human rights defenders, and they need to address adverse impacts on human rights defenders with which they are involved, either through their own activities or as a result of their business relationships. Managing and addressing these risks is a policy, governance and operational issue for the Board of each business enterprise". Moreover, adequate and effective due diligence in relation to these risks needs to be further defined. As the Guidance states, three over-arching elements key to adequate due diligence on risks to HRDs are:

o (a) *Understanding context-specific risks and take adequate action: Where risks to defenders are identified, effective follow-up should involve tailored responses by consulting with defenders about the risks they face when defending human rights, such as reprisals, arrest, lawsuits, and threats to physical safety, among others. Businesses should also develop stronger relationships with organisations that work with rights holders and human right defenders. They should also consult databases that collect data on attacks and risks to defenders. All of this will help businesses to better understand the contextual risks faced by defenders and how to address them. After identifying risks, business enterprises need to construct plans for how to prevent or mitigate such impacts;*

o (b) *Building leverage by joining responsible business initiatives in the sector or geographical area that they operate in, partnering with relevant NGOs and international organisations. Leverage should be exercised by, for example, using the information gathered to engage with States and entities with which they have business relationships to develop a safer and more enabling environment for human rights defenders. To track the effectiveness of such efforts, business enterprises should develop suitable indicators;*

o (c) *Integrating meaningful engagement as a cross-cutting element. A fundamental component for realising this in practice is to treat human rights defenders as valued partners by engaging with them early, consulting them regularly to understand a business enterprise's impacts on the ground, and pursuing genuine attempts to remediate harm where efforts to prevent abuses against human rights defenders have failed.*

(For reference, see our HRDs policy tracker, based on CHRB methodology): <https://www.business-humanrights.org/en/from-us/human-rights-defenders-policy-tracker/>, our recommendations in our latest annual report on business & HRDs, and https://www.ohchr.org/sites/default/files/2022-02/Formatted-version-of-the-guidance-EN_0.pdf)

SECTION: 5.1 Human Rights, Foundational Practice

COMMENT:

Requirements for this performance area are misaligned with international standards and the UNGPs in particular. They also severely lack specificity and measurability -as compared to the recently updated CHRB methodology by the Worldbenchmarking Alliance: <https://assets.worldbenchmarkingalliance.org/app/uploads/2024/10/2024CHRBm>

Applicability of this performance area at the Facility level only is also concerning as policies should be adopted at the level of the company then operationalised at the Facility level.

All essential elements under the UNGPs - some are found under the good practice requirements should be in the Foundational practice category. 'Tiering' the UNGPs is not recommended and undermines the credibility of the chapter as a whole. For example, the fact that the foundational level does not require the company (the facility here) to conduct human rights due diligence is concerning as this is a clear requirement under the UNGPs for companies to demonstrate how they respect human rights.

SECTION: 5.1 Human Rights, Good Practice, 2

COMMENT:

A key aspect that's missing here at all levels is around engagement with key stakeholders and rights-holders which needs to inform key decisions taken by the board and due diligence conducted by the company (on how human rights impacts are identified, assessed and then integrated into operational processes)

COMMENT:

This specific requirement is misaligned with the UNGPs. First, 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.

-> 'Identify and asses' should be replaced by 'Identify, prevent, mitigate and account'.

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

SECTION: 5.1 Human Rights, Good Practice, 3

COMMENT:

Change "consistent" to "aligned".

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

SECTION: 5.1 Human Rights, Good Practice, 5

COMMENT:

This should start with having a policy committing to provide remedy in place.

SECTION: 5.1 Human Rights, Good Practice, 6

COMMENT:

'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.

SECTION: 5.1 Human Rights, Leading Practice, 2

COMMENT:

Collaboration with rights holders in the due diligence process, is fundamental to the UNGPs, it should not be considered 'leading practice,' but foundational (P18 of the UNGPs: In order to gauge human rights risks, business enterprises should identify

and assess any actual or potential adverse human rights impacts with

which they may be involved either through their own activities or as a result of their business relationships. This process should:

(a) Draw on internal and/or independent external human rights expertise;

(b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.)

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 again drawing on feedback from both internal and external sources, including affected stakeholders.

SECTION: 5.1 Human Rights, Leading Practice, 3

COMMENT:

“Actively engag(ing) with human rights defenders to inform human rights due diligence processes” should not be seen as leading and aspirational practice that goes above and beyond. The UN Working Group’s guidance (https://www.ohchr.org/sites/default/files/2022-02/Formatted-version-of-the-guidance-EN_0.pdf) stated unequivocally that “Human rights defenders should be consulted in the process of identifying and assessing the real and potential impacts of a business’ proposed activities, as an essential component of human rights due diligence”, and that “due diligence should not be based solely on the work of external consultants and desk-based assessments, but on the assessment and findings of rights holders and communities on the ground”, and that “potential intimidation and reprisals against, or harm to, human rights defenders should be included as a potential impact to be evaluated as part of human rights due diligence and impact assessments under the Guiding Principles, and this is a risk that needs to be monitored over time”.

Performance Area 7: Rights of Workers

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

COMMENT:

A reference to ILO Fundamental Principles and Rights at Work is missing

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**

We have serious concerns over several PAs that we have reviewed where requirements are not aligned with best international laws, standards and practices. In particular -PA5 is not aligned with the UNGPs and PA14 lacks of an approach to FPIC that is aligned with UNDRIP and worryingly, contains language allowing mining projects to take place without the consent of Indigenous Peoples.

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: **2: Below expectations**

Many requirements are worded in a very vague manner and come with qualifiers such as 'where feasible' etc. We recommend developing more detailed requirements and explicitly define expectations.

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: 2: Below expectations

While a tiered structure is a standard approach in certification processes, requirements in the 'Foundational level' are generally below generally accepted standards of corporate behaviours, and several requirements in the 'Leading practice' area are actually aligned with existing international standards and guidance. When Facilities are assessed as having met 'Foundational level' -this can erroneously communicate they are meeting 'basic' sustainability standards, whereas that is not the case. We suggest changing to a 2-steps framework, realigning the 'Foundational level' with existing international policy and standards and generally accepted norms of RBC, associated with 'Leading practice' going beyond existing practice.

Document:
Claims

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: No Response \begin{quote}We disagree with both. If foundational is meant to be foundational, all requirements should be met to claim performance (notwithstanding other comments across different performance areas on the fact that those requirements are not aligned with international standards). We recommend a 2 steps structure - 100% foundational and X% of aspirational met (as opposed to the current 3 tiered structure).\end{quote}