

CMSI Consultation Response

Respondent Details

NAME

ROBERT Pitman

COUNTRY

United States

PERMISSION

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

STAKEHOLDER

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

ORGANISATION

Natural Resource Governance institute

COMMENTS & QUESTIONS BY DOCUMENT

Document:
Governance

10. Would other Committees be established?

COMMENT:

Other committees. There needs to be clarification whether these would be open to outside groups not on the main board (as is the case on the mining and value chain committees). We support participation of outside groups.

2. What is the mandate of the Legal Entity to deliver this vision?

COMMENT:

We believe that the proposed governance structure, which specifies representation of different interests in the CMSI Board and Committees, ensures some level of diversity but falls short of real multi-stakeholder governance in the following ways.

- First, stakeholder groups are not able to select their own representatives. Rather, the choice of Board and Committee representatives is for the Chair to decide in consultation with the Stakeholder Advisory Group and the Industry Advisory Group. This raises the possibility that representatives could be seen as illegitimate by the groups they represent.

- Second, there is no process for how different board members should engage with and represent their constituencies. This is critical to ensure that individuals and groups outside of the formal governance structures of the CMSI have their interests and perspectives heard in CMSI policy processes. A straightforward fix would be to require and resource different stakeholder groups to develop their own constituency processes.

- Third, the governance structure does not present any way of addressing the clear asymmetries of power that will be present in the proposed policy bodies. This presents the danger that powerful and well-resourced groups such as multinational companies are able to steamroll decisions, reducing the participation of less resourced groups to window dressing. We believe that the CMSI should support stakeholder groups to develop

their own coordination and support structures to ensure that constituency representatives are sufficiently prepared to engage in CMSI decision making processes.

- Fourth, we question whether some important stakeholder groups are missing from the proposed structure. A role for civil society is necessary for the CMSI to be recognized by the EU under the Critical Raw Materials Act, yet the governance model does not use the term civil society. Instead, it only mentions some of its constituent members under mining and value chain stakeholders. Another important omission is Governments, who are uniquely positioned to help mining companies meet the requirements of the CMSI.

3. What principles have guided the development of the governance model?

COMMENT:

Four partners are committed to a multi-stakeholder Board. This board structure is diverse, not multi-stakeholder.

1. A role for civil society is necessary for the CMSI to meet the EU definition of multi-stakeholder governance under the Critical Raw Materials Act, yet the governance model does not use the term civil society.

2. The role for civil society needs to be “documented by way of mandate... which confirms or supports the involvement of the multi-stakeholder representatives of that certification scheme”.

The proposed structure does not give a mandate to confirm or support different board members as “representatives”. Instead they are presented as bringing “perspectives”. Their role as representatives needs to be developed and strengthened in multiple ways.

– Constituencies should be able to choose their representatives.

– There should be a processes for representatievs to engage and consult with their constituencies.

– There should be mechanisms to addressing the clear asymmetries of power that will be present in the proposed policy bodies. Otherwise there is a danger that powerful and well-resourced groups such as multi-national companies will be able to steamroll decisions.

COMMENT:

Timing of the constitution of the new board. A new new governance model must be published and receive wide approval from all stakeholders including from civil society before the Board is constituted.

4. What are some of the key features the governance model needs to include?

COMMENT:

Embody multi-stakeholder oversight. It is not enough to just have multi-stakeholder oversight there needs to be multi-stakeholder decision making in all aspects of the decision making of the certification scheme. This includes agreement around the design of the standard and its governance model.

COMMENT:

Embrace a life cycle approach. Governments appear to be omitted from the proposed structure, yet they are uniquely positioned to help mining companies meet the requirements of the CMSI. We believe that there should be a space for them in the CMSI governance structure.

COMMENT:

Emphasize consensus-based decision-making. The standard notes that protections need to be provided for all groups. This is important. As part of these protections there needs systems in place to make sure that the most well resourced groups are not able to steamroller decisions, reducing the participation of less well resourced groups to window dressing.

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

COMMENT:

Independent Chair. There should be safeguards to prevent them from going to work for industry immediately after serving as the chair.

COMMENT:

Four "groups". Use of the word representation is inconsistent in the description of these groups. It is only used to describe certain types of mining companies. For other stakeholder groups talk is about bringing in "perspectives". The standard should use the same language throughout and it should be about representation, otherwise it's hard to see how it meets the CRMA definition of multi-stakeholder governance.

COMMENT:

Mining and value chain stakeholders. The structure needs to include civil society to meet the EU CRMA, yet the term is not used once in describing the structure. Some of the groups here are part of civil society but the concept is broader than what has been described here. Better just to name civil society and ensure that key groups are included within it.

8. What will the composition of the Mining and Value Chain Committees look like?

COMMENT:

Stakeholders affected by mining or value chain activities. It is critical that these stakeholders are incorporated into the governance structure. But this cannot be defined too narrowly. There needs to be space for organizations that represent those stakeholders to also participate.

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

QUESTION 1

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

Response: No Response

Document:
Standard

Introduction

COMMENT:

The facility / site definition of the CMSI should make clear that, where relevant, this should align with the definition of project established for payments to government reporting laws, such as chapter 10 of the EU accounting directive, and similar laws in Canada, the UK, Norway, Switzerland and other jurisdictions. This would reduce burden by ensuring alignment with existing reporting obligations.

COMMENT:

First para - There needs to be something here about how the standard will be revised in response to evolving norms, laws and good practices; and changing circumstances globally and in host countries. Even if just to say that this is dealt with in the governance section.

COMMENT:

The facility / site definition of the CMSI should make clear that, where relevant, this should align with the definition of project established for payments to government reporting laws, such as chapter 10 of the EU accounting directive, and similar laws in Canada, the UK, Norway, Switzerland and other jurisdictions. This would reduce burden by ensuring alignment with existing reporting obligations.

COMMENT:

Some general comments about these levels.

We understand how a gradual framework like this can present companies with a pathway to drive improved performance over time. But the requirements at each level currently need fine tuning in the following ways:

- Many of the foundational level requirements are currently so low that they risk undermining the whole standard, particularly given that the current draft standard allows companies to still claim that they are in alignment with the standard even if they only meet foundational practice in some areas. We suggest that the CMSI strongly reconsider the foundational practice requirements or remove the level altogether.

- The good practice level should be renamed if it is going to remain the level of practice that is in line with industry standards and international norms, frameworks and guidelines. We suggest calling it satisfactory practice. We also note that many requirements at this level currently fall short of existing standards including on contract transparency, payments to government, responsible taxation, and anticorruption. To demonstrate that this level aligns with the standards it claims to, the CMSI must publish an equivalency mapping ahead of the second consultation showing which existing standards, frameworks and guidelines have been considered and how they have been incorporated.

- The leading practice level should be called good practice since many of these practices are already carried out by so many companies that the title is inaccurate. We believe that true leading practice is about pushing new horizons and is a level beyond what can be contained in a standard like the CMSI.

- Finally, we have concerns about the way that international law relating to human rights, child labour, slavery, indigenous peoples and corruption is represented among the three practice levels. NNGI believes that full compliance with local and international laws is a foundational practice.

COMMENT:

Equivalency. To demonstrate that the CMSI is serious about equivalency, the CMSI needs to publish an equivalency mapping showing which other existing standards have been considered and how they have been incorporated.

COMMENT:

Where applicable law differs from the requirements of the CMSI. It is important to note that there are some requirements with carve outs when the host government prohibits implementation of the requirements of the standard (e.g. contract transparency). While companies should certainly respect all applicable laws and regulations set by home countries, the standard should set a consistent approach in instances where local laws prevent a company from implementing it.

We suggest that in these circumstances, companies should:

– Identify the specific legal text, that prohibits implementation. This should be noted in the published assurance report. This increases credibility by confirming that government rules do in fact prohibit implementation.

– Notify the government that its legal framework is not in line with the CMSI. This is important to continue to drive alignment of national rules with global standards. Governments and other stakeholders need to know what they need to change to align with global norms. Importantly, this can be a difficult issue for companies to broach on their own. Being able to point to the CMSI takes some of the heat off them.

COMMENT:

First, while accepting the general definitions provided for each level, we believe that the names should be changed to better reflect the complexity of each level. More realistic names would give the CMSI more credibility, and would also encourage companies to aim higher.

– Foundational practice should be called “basic” or “rudimentary” practice. Many of the requirements at this level are very low, and attainment of them should be recognized as such.

– Good practice should be called “satisfactory” or “foundational” practice. As you outline, meeting industry standards, frameworks and guidelines is what every company should be able to do. Good practice suggests going beyond this.

– Leading practice should be called “good” practice. The leading practices detailed in this standard are simply good practices that are already carried out by many companies. Leading practices cannot be listed in a standard like this. They push new horizons and drive the industry to do better.

COMMENT:

Second, it must be noted that many of requirements throughout the standard particularly at the first level are so general that it is hard to say with certainty whether or not a company is in line with them. We suggest that these requirements are reviewed to ensure that they are specific and measurable by outside auditors.

COMMENT:

Third, the practice of dividing international laws and standards that are not tiered among the three performance levels is problematic. This is especially pronounced with international law where compliance is a binary matter

(i.e. you comply or you don't). More generally acting in line with law (including international law) is basic practice and should be treated as such

Overarching Glossary

COMMENT:

The facility / site definition of the CMSI should link the idea of facility to already existing definitions such as the definition of project established for payments to government reporting laws, such as chapter 10 of the EU accounting directive, and similar laws in Canada, the UK, Norway, Switzerland and other jurisdictions. This would reduce burden by ensuring alignment with existing reporting obligations.

Performance Area 1: Corporate Requirements

SECTION: 1.2 Sustainability Reporting, Leading Practice, 1

COMMENT:

1.2 LP1 - Double materiality is fairly standard and should be considered as part of the second level. For example, it is already incorporated into ESRS and GRI.

SECTION: 1.2 Sustainability Reporting, Leading Practice, 2

COMMENT:

1.2 LP2 - Independent assurance on the annual sustainability report is increasingly carried out by companies, and is required under ESRS.

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

COMMENT:

1.3 FP1 - This needs to be made more specific and verifiable. Would suggest that the CMSI use the language "Publicly declare and publish support on the responsible management..." in line with expectation 1 of the Expectations for EITI supporting companies.

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

COMMENT:

1.3 GP1 - This should absolutely be a lowest level requirement. It is basic practice to comply with EITI requirements in an EITI implementing country.

It also needs to be made clear that meeting this requirement entails facility or project-level disclosure. This is important given that applicability criteria say that PA1 requirements are intended to be implemented and assured at the corporate level.

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

COMMENT:

1.3 GP2 - It needs to be made clear that meeting this requirement entails facility or project-level disclosure. This is important given that applicability criteria say that PA1 requirements are intended to be implemented and assured at the corporate level.

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

COMMENT:

1.3 GP3 - There are multiple issues with this contract transparency provision:

- First, the standard established in EITI and in the ICMM's own standard is not limited to "new" contracts, it is limited to contracts agreed since 1 January 2021. The CMSI should uphold this existing standard
- Second, CMSI is behind the standard established in EITI because it does not apply to contracts amended since 1 January 2021. The CMSI should be brought in line with the established norm in EITI.
- Third, the definition of contract should align with the definitions contained in footnote 2 of the ICMM position statement on transparency of mineral revenues and EITI requirement 2.4 (d) and (e). Importantly it should specify that disclosures should be of full text, and should apply to any annexe, addendum or rider, and/or any alteration or amendment.
- Fourth, on the carve out in situations where host governments may have legally prohibited disclosure, while companies should certainly respect all applicable laws and regulations set by home countries, the CMSI should set guardrails in instances like this where legal prohibitions prevent a company from meeting an CMSI requirement. Specifically, we believe that companies should: (a) Identify the specific legal text, that prohibits implementation. This should be noted in the published assurance report. This increases credibility by confirming that government rules do in fact prohibit implementation and closing potential for a company to erroneously conclude that host government rules prohibit disclosure; (b) Notify the government that its legal framework is not in line with the CMSI. This is important to continue to drive alignment of national rules with global standards. Governments and other stakeholders need to know what they need to change to align with global norms. In line with this, the ICMM position statement on transparency of mineral revenues currently states that "company members will encourage the government... to provide consent to the company member for the contract to be disclosed" (see footnote 5).
- Fifth, the standard falls short of the approach established in GRI 14, which specifies not only that the company should provided details about where public contracts are published, but states that in instances where contracts are not publicly available, the company should provide "the reason for this and actions taken to make them public in the future". The best way to fulfil this standard would be to list all contracts and provide links to those that are public and explanations to those that are not public. Providing such a list would be a top level practice.

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

COMMENT:

1.3 LP1 - The "Expectations for EITI Supporting Companies" is an international standard implemented by over 50 companies. Would suggest that this be moved to the second tier, since this is "a level of practice in line with industry standards and international norms". It is certainly not a top tier practice.

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

COMMENT:

1.3 LP2 - The carve out in situations where host governments may have legally prohibited disclosure, while companies should certainly respect all applicable laws and regulations set by home countries, the CMSI should set guardrails in instances like this where legal prohibitions prevent a company from meeting an CMSI requirement. Specifically, we believe that companies should: (a) Identify the specific legal text, that prohibits

implementation. This should be noted in the published assurance report. This increases credibility by confirming that government rules do in fact prohibit implementation and closing potential for a company to erroneously conclude that host government rules prohibit disclosure; (b) Notify the government that its legal framework is not in line with the CMSI. This is important to continue to drive alignment of national rules with global standards. Governments and other stakeholders need to know what they need to change to align with global norms. In line with this, the ICMM position statement on transparency of mineral revenues currently states that “company members will encourage the government... to provide consent to the company member for the contract to be disclosed” (see footnote 5).

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

COMMENT:

1.3 LP3 - As a top level practice on payments to government, we would also suggest that companies should list “all payments” to government, since from a corruption perspective even a relatively small payment in the context of extractive industry financial flows can be enough to change behavior.

SECTION: Applicability

COMMENT:

PA 1. Applicability - It should be noted that in some instances, global standards and home country laws require facility level disclosure particularly for requirement 1.3 GP1 on payments to government.

SECTION: Glossary and Interpretive Guidance

COMMENT:

PA1. Glossary. Disclosure of contracts. This is a sharp step back from the standard already established in EITI and the ICMM position statement on transparency of mineral revenues. Neither standard limits disclosure of contracts merely to fiscal terms. Indeed the EITI guidance note on contracts linked above in this section states that key terms include fiscal terms, but also preliminary provisions, non-fiscal terms, and administrative provisions. The CMSI should not walk back this international norm.

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Performance Area 12: Stakeholder Engagement

SECTION: 12.1 Stakeholder Identification and Engagement, Foundational Practice, 2

COMMENT:

12.1 FP2 - This is very important. At the project level there is often tension btw companies and organizations that are not local but that play an important role in providing advice and support to communities. Companies often discredit them on the basis that they are not local stakeholders. I think it is important to recognize their role and if communities have given their consent for them to be stakeholders then also participate in certain spaces. Very much in the same way that companies bring their advisors, legal teams and others.

SECTION: 12.1 Stakeholder Identification and Engagement, Foundational Practice, 3

COMMENT:

12.1 FP3 - It should be acknowledged that when they are authorized by local stakeholders, interested organizations playing and advisory or support role to communities should be included these rules.

SECTION: 12.1 Stakeholder Identification and Engagement, Good Practice, 5

COMMENT:

12.1 GP5 - Training should apply to more than just workers. At a minimum it should also apply to consultants, agents, contractors and suppliers.

SECTION: 12.1 Stakeholder Identification and Engagement, Good Practice, 7

COMMENT:

12.1 GP7 - It is not the job of the company to support stakeholders and rights holders to engage with them. The requirement should be for companies to support and respect the role of other interested parties who provide stakeholders and rights holders with this kind of support.

SECTION: Applicability

COMMENT:

PA12 - Other relevant performance areas. 8 DEI should be included in this list.

Performance Area 13: Community Impacts and Benefits

SECTION: 13.1 Identify and Address Community Impacts, Foundational Practice, 2

COMMENT:

13.1 FP2 - This should be framed within the mitigation hierarchy. Minimize, and compensate are missing.

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

COMMENT:

13.1 GP1&2 - These should be first tier requirements. It is not possible to to do identification, implementation and monitoring of risks without engaging stakeholders and encouraging the participation of vulnerable people in these activities.

SECTION: 13.1 Identify and Address Community Impacts, Good Practice, 2

COMMENT:

13.1 GP1&2 - These should be first tier requirements. It is not possible to to do identification, implementation and monitoring of risks without engaging stakeholders and encouraging the participation of vulnerable people in these activities.

SECTION: 13.2 Community Development and Benefits, Good Practice, 9

COMMENT:

13.2 GP9 - Public information on local procurement is really important. Ideally this reporting should align with existing standards such as the Local Procurement Reporting Mechanism.

In NRG's publication on procurement, Beneath the Surface, we identify several areas of good practice including:

– Procurement process. Rules and practical procurement information. E.g. Rio Tinto-operated Oyu Tolgoi mine in Mongolia publishes detailed project-level information about procurement policies, procedures and standards, as well as practical information about upcoming tenders and expressions of interest and how to apply.

– Supplier lists. By naming their main suppliers, companies can help local businesses gain awareness of which supplier companies may have further contracting opportunities available. E.g. The U.K. Oil and Gas Authority Oil and Gas Pathfinder portal allows companies to list the main contracts they have awarded, including the identity of the winning company and who can be contacted for further information.

– Spending on suppliers. Transparency can help governments and citizens understand the scale and composition of spending on suppliers and help rights holders to communicate the broader economic impacts of their operations. Project-level reporting is more common in the mining sector. Examples include Ivanhoe mines and Lundin Gold (both using the Mining Local Procurement Reporting Mechanism (LPRM)), and the AngloGold Ashanti operated Geita Mine in Tanzania.

See here for the full report https://resourcegovernance.org/sites/default/files/documents/beneath_the_surface.pdf

SECTION: 13.2 Community Development and Benefits, Good Practice

COMMENT:

13.2 GP - In line with principle 4 of the report of the UN Secretary-General's Panel on Critical Energy Transition Minerals, it is good practice for companies to foster development through benefit sharing, value addition and efforts to support economic diversification.

A good practice requirement: Support value addition and fair trade through technology transfer, infrastructure provision, regional coordination, access to finance, scientific research and development, as well as skills and knowledge transfer via education, training and capacity building.

SECTION: 13.2 Community Development and Benefits, Leading Practice

COMMENT:

13.2 LP1&4 - These are not top level practices.

Performance Area 2: Business Integrity

SECTION: 2.1 Legal Compliance, Good Practice

COMMENT:

2.1 GP - We suggest that something is added on stabilization.

Companies should commit to act in line with the OECD Guiding Principles on Durable Extractive Contracts on the issue of stabilization.

These principles state that companies should commit to not make stabilization agreements on non-fiscal issues including, but not limited to climate change, environmental protection, human rights, or labour rights.

This is important because it allows governments to continue to align regulations with internationally recognized rules.

Note that the guiding principles acknowledge that there may be situations where fiscal issues can be subject to stabilization. But in these instances, the investor should demonstrate a legitimate commercial need—and if that's the case, the time and scope should be limited, with the option for review.

COMMENT:

2.1 GP - We also suggest that something is added on responsible tax. Following the OECD BEP's project and numerous offshore scandals, several principles of principles of fair taxation have emerged. These include:

- World Gold Council's Responsible Gold Mining Principles, Governance section C,1.6.*
- B Team responsible tax principles.*
- OECD Guidelines for Multinational Enterprises on Responsible Business Conduct.*
- OECD Guiding principles on durable extractive contracts*

Such a requirement could build on the B-Team Responsible tax principles. Important principles that could be reflected in the requirement include:

☒ We will not undertake transactions whose sole purpose is to create a tax benefit which is in excess of a reasonable interpretation of relevant tax rules (legislation, regulation or treaties).

☒ We do not use so-called "tax havens" in order to avoid taxes on activities which take place elsewhere. Entities which are based in low or nil-rate jurisdictions exist for substantive and commercial reasons.

☒ We pay tax on profits according to where value is created within the normal course of commercial activity; we do not use artificially fragmented structures or contracts to avoid establishing a taxable presence in jurisdictions where we do business.

☒ We are open and transparent with tax authorities, responding to relevant tax authority enquiries in a straightforward and timely manner (providing information held in other jurisdictions where relevant) to assist in the evaluation of tax liability.

☒ We will only use tax incentives where they are aligned with our business and operational objectives and where they require economic substance.

☒ Ideally, tax exemptions and reliefs should be specified by law and generally available to all market participants. Where there are exceptions, we will work with relevant authorities to encourage publication of those incentives and contracts.

☒ We will publish:

☒ A tax strategy or policy, including details of governance arrangements, our tax risk management strategy and our approach to dealing with tax authorities.

☒ A regular update on our progress and key issues related to our tax strategy and principles.

☒ An overview of our group structure and a list of all entities, with ownership information and a brief explanation of the type and geographic scope of activities. An explanation of why we have subsidiaries, branches and joint ventures operating in low tax jurisdictions.

☒ Annual information that explains our overall effective tax rate and gives information on the taxes we pay at a country level, together with information on our economic activity.

☒ Information on financially-material tax incentives (e.g. tax holidays), where appropriate, including an outline of the incentive requirements and when it expires.

☒ An outline of the advocacy approach we take on tax issues, the channels through which we engage in regard to policy development and the overall purpose of our engagement.

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

COMMENT:

2.2 FP2 - Code of conduct should apply to more than just workers. At a minimum it should also apply to consultants, agents, contractors and suppliers.

SECTION: 2.2 Business Ethics and Accountability, Foundational Practice, 4

COMMENT:

2.2 FP4 - It is not clear if this is supposed to be a whistleblowing policy. It should meet the minimum requirements. The policy should:

- Invite reports regarding any suspected wrongdoing committed in, by or for the company, including from any person who might acquire such information in the context of their work-related activities.*
- Designate a person or department responsible for the operation of the whistleblowing system.*
- Ensure multiple reporting channels and diligent follow-up of all reports received.*
- Outline support and protections for whistleblowers.*

See Transparency International. Internal Whistleblowing Systems: Best Practice Principles for Public and Private Organisations. November 2022; OECD. OECD Guidelines for Multinational Enterprises on Responsible Business Conduct. June 2023.

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

COMMENT:

2.2 GP1 - Surely this should be listed as a basic level practice.

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

COMMENT:

2.2 LP 2 - In addition we recommend that the company to disclose key information on allegations of corruption, including:

- Total number and nature of confirmed incidents of corruption or other unacceptable behavior related to the project/operation;*
- Total number of confirmed incidents in which the project's/operation's employees were dismissed or disciplined for corruption or other unacceptable behavior;*
- Total number of confirmed incidents where the project's/operation's contracts with contractors or business partners were terminated or not renewed due to violations of the entity's anti-corruption policy and procedures.*
- Public legal cases regarding corruption brought against the company or its employees during the reporting period and the outcomes of such cases, including Deferred Prosecution Agreements (DPAs) and cases in countries other than the site of operations.*

- Total number and nature of allegations of corruption related to suppliers, third parties or other business relationships beyond tier 1.
 - Mitigation measures put in place to address corruption allegations in the supply chain, and efforts made to monitor and track performance for risk mitigation.
 - Incorporates the existence of corruption cases or credible allegations into the certification assessment process, requiring the company to explain what investigation or action took place in response to these allegations as part of the audit process. Credible allegations could include, for example, concerns raised by the local community or workers, media reporting, or analysis carried out by CSOs or NGOs.
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SECTION: 2.2 Business Ethics and Accountability, Leading Practice

COMMENT:

2.2 LP - Another leading practice that should be included:

– Companies prohibit the use of third-party agents for business transactions wherever possible. Where the use of these agents remains, companies should be required to explain why, implement strong restrictions on their activities in line with the company’s anticorruption policy, and provide full transparency over the ownership of these agents.

COMMENT:

PA 2 - Overall, this is fairly basic. NRCI carried out a recent assessment on anticorruption in mining sector certification schemes, including the ICMM, Copper Mark and TSM. Our recommendations stem from this analysis.

<https://resourcegovernance.org/publications/behind-schemes-anticorruption-gaps-mining-sector-certifications>

Performance Area 20: Climate Action

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

COMMENT:

20.1 GP1 - Alignment with the TCFD is basic practice and should be in the lowest tier.

SECTION: 20.2 Climate Change Management (Facility Level), Good Practice, 1

COMMENT:

20.2 GP 1 - Should say “define and publish Facility-level contributions.

In addition to publishing facility-level scope 1 and 2 emissions, companies should also publish the method they used to measure those emissions.

Moreover, in line with most standards, emissions should be disaggregated by type of greenhouse gas.

COMMENT:

20.1 LP1 - Should say define and publish Facility-level contribution.

In addition to publishing facility level scope 3 emissions, the company should publish how it estimated scope 3 emissions. It should also disaggregate disclosures by type of GHG emitted.

COMMENT:

PA 20 - General comment. Methane is not mentioned in this section. This seems like a major gap given the links between methane and coal mining, but also given the methane releases associated with other kinds of mining including salt, potash, trona, diamond, gold, base metals, and lead mining.

Performance Area 24: Closure

SECTION: 24.1 Closure Management, Good Practice, 7

COMMENT:

24.1 GP7 - Cost figures must be published. They must also include undiscounted figures. This is critical so that costs are known and accounted for when assets are sold.

Performance Area 4: New Projects, Expansions and Resettlement

SECTION: 4.1 Risk and Impact Assessments of New Projects and Expansions, Foundational Practice, 1

COMMENT:

4.1 FP1 - This is missing the governance context. This is critical since governance is an integral part of ESG. Additionally, bad governance increases the environmental and social risks.

SECTION: 4.1 Risk and Impact Assessments of New Projects and Expansions, Good Practice, 1

COMMENT:

4.1 GP1 - Engaging potentially affected stakeholders and rights-holders is a foundational practice. In many of the locals where extraction happens, the kind of detailed and extensive data that could allow all the information above to be collected is lacking. It is not possible to meet the lowest level without engaging local actors.

SECTION: 4.1 Risk and Impact Assessments of New Projects and Expansions, Good Practice, 3

COMMENT:

4.1 GP3 - This is a basic level practice. It is unclear how you can have an ESIA without the plans or actions are designed as a consequence of it.

SECTION: 4.2 Land Acquisition and Resettlement, Foundational Practice, 3

COMMENT:

4.2 FP3 - baseline study should not be limited to socio/economic issues. In many instances, the difficulties of resettlement are related also to cultural linkages to land (example the importance of a mountain for indigenous peoples). Moreover, it is critical to think of the wider economic and governance context. Bad governance only exacerbates environmental and social risks.

SECTION: 4.2 Land Acquisition and Resettlement, Good Practice

COMMENT:

4.2 GP - It seems generous to call most of these requirements good practice. Resettlement must be based on a plan. This is basic practice.

SECTION: 4.2 Land Acquisition and Resettlement, Leading Practice, 2

COMMENT:

4.2 LP2 - is this really a top level practice? Resettlement should ensure that there is land security and legal rights when an individual or group is resettle.

SECTION: Glossary and Interpretive Guidance

COMMENT:

PA 4 - Glossary. Must include definition of "significant changes".

SECTION: Intent

COMMENT:

PA4. Intent - One of the more important challenges in this context is often who defines what a significant change is and based on what criteria. I would suggest there is a clear definition of what is a significant change or at least some criteria or best practices to assess this. There are many experiences where conflict arises because the company and relevant authorities do not consider changes are significant, therefore no need to assess impacts or consult communities, etc. The case of Peru and copper projects in the south Andean region is an example of this.

Performance Area 8: Diversity, Equity, and Inclusion

SECTION: 8.2 Diversity, Equity, and Inclusion Management (Facility Level), Good Practice, 4

COMMENT:

8.2 GP4 - This is foundational practice. The company must ensure this is respected also by indirect employees who often are closer to stakeholders.

SECTION: Applicability

COMMENT:

PA8. Applicability - DEI should apply to more than just workers. At a minimum it should also apply to consultants, agents, contractors and suppliers.

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

Disclaimer

COMMENT:

Much of the CMSI's credibility will rest on how easy it is for companies to say that they meet the performance requirements of the CMSI. While we recognize that there is a danger in setting this threshold so high that it acts as a deterrent to uptake and implementation, we believe that there is greater risk that the threshold be set so low that CMSI claims do not convey meaningful information about company practice. We believe that the policy should require facilities to meet all of the good practice requirements to make a performance claim. Anything less than 100% presents the issue that not all performance claims are equal, leaving uncertainty as to whether specific performance areas have been met (e.g. child labour or human rights), and ultimately making the performance claim less meaningful. One alternative might be to identify core good practice requirements that must be met as part of a performance claim. However, we would advise against this approach, given that it would add further complexity to the standard, and that it may not be possible to reach consensus about which requirements should be excluded. The best option is to require facilities to meet all of the good practice requirements to make a performance claim.

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}Much of the CMSI's credibility will rest on how easy it is for companies to say that they meet the performance requirements of the CMSI. While we recognize that there is a danger in setting this threshold so high that it acts as a deterrent to uptake and implementation, we believe that there is greater risk that the threshold be set so low that CMSI claims do not convey meaningful information about company practice. We believe that the policy should require facilities to meet all of the good practice requirements to make a performance claim. Anything less than 100% presents the issue that not all performance claims are equal, leaving uncertainty as to whether specific performance areas have been met (e.g. child labour or human rights), and ultimately making the performance claim less meaningful. One alternative might be to identify core good practice requirements that must be met as part of a performance claim. However, we would advise against this approach, given that it would add further complexity to the standard, and that it may not be possible to reach consensus about which requirements should be excluded. The best option is to require facilities to meet all of the good practice requirements to make a performance claim.\end{quote}