

# CMSI Consultation Response

## Respondent Details

NAME

Alex Kopp

COUNTRY

United States

PERMISSION

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

STAKEHOLDER

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

ORGANISATION

Not Specified

## COMMENTS & QUESTIONS BY DOCUMENT

Document:  
Governance

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

COMMENT:

*Its governance model gives mining companies too much control over processes that impact the standard's accountability measures.*

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COMMENT:

*The four partners will select the Independent Chair and many Board members, meaning that the major bodies for oversight and decision making could be filled with industry allies that may not properly check industry's proposals and power.*

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Document:  
Assurance

### General comment

COMMENT:

*Its assurance process gives mining companies too much control, compromising its independence and the assurance system lacks guidance and adequate accreditation.*

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COMMENT:

*The assurance process needs to be considerably strengthened in order to be meaningful. The current proposal gives companies and their facilities too much control over the assurance process and the assurance system*

*also lacks guidance, adequate accreditation, and oversight. This means that it would likely not accurately capture human rights, environmental, and social impacts and puts its independence seriously in question.*

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## **2. Roles and Responsibilities**

COMMENT:

*We strongly recommend that:*

*The role of national panels for the assurance process should be further clarified.*

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

COMMENT:

*We strongly recommend that:*

*Not only individuals but also audit firms should be accredited as an accreditation against an international standard often means that firms must have procedures in place to address conflicts of interest across the firm and for the companies they are auditing.*

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

COMMENT:

*We strongly recommend that:*

*It should be the auditor, not the mine, who provides notice to stakeholders and rights holders about an upcoming audit. Otherwise it is likely that workers, communities, and Indigenous Peoples are discouraged from participating in the audit in low trust environments.*

*The auditor, not the mine should play the key role in identifying and particularly selecting stakeholders. Outreach to interviewees should be done by the auditor and not the mining company.*

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COMMENT:

*We strongly recommend that:*

*The mining company shouldn't select the auditor and should not pay them directly. The CSMI should provide a set-up that allows the financial separation of the audit company from the mining company.*

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COMMENT:

*We strongly recommend that:*

*Audit reports must provide more details. All criteria auditors are supposed to address should be discussed in the auditor's report separately instead of providing an answer in a single section, which risks leading to vague summaries.*

*Non-compliances and corrective actions should be mentioned in the assurance report even if corrective action has been taken.*

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COMMENT:

*We strongly recommend that:*

*Detailed guidance is needed how auditors are to assess each criteria.*

*Audits should be both at facility and at corporate level.*

*It is not clear how much time the auditor will spend at the mine and therefore if sufficient time is planned in for a thorough assessment.*

*The assurance process should include unannounced site visits.*

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Document:  
Standard

### General comment on Performance Area

SECTION: NA

COMMENT:

*Generally, the foundational level must not fall below broadly accepted international law, standards nor applicable law. Often “Foundational Practice” is below expectations outlined in the OECD Guidelines (PA1, PA2, PA3) which are government expectations of businesses, EITI requirements (PA1) or UN Guiding Principles on Business and Human Rights (PA5). PA2 does not even require compliance with applicable law at its foundational level.*

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COMMENT:

*The consolidated mining standard is too vague to provide meaningful guidance to companies and to enable effective auditing.*

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COMMENT:

*There are not enough incentives within the CMSI for companies to move beyond Good Practice.*

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COMMENT:

*FPIC should be required at foundational level (in PA3, PA4, PA13, PA14, PA15, PA19, PA24) as it is an internationally agreed concept. The current proposal is worrying as it falls short of the ICMM Position Statement on IP and Mining (even though that position statement itself does not meet international obligations either). The CMS should establish clear, robust, and actionable implementing guidelines for FPIC and consent and 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. 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 and it should require Cultural and Environmental Equivalency, i.e. 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. Under PA13, community agreements should be based on FPIC and community benefit agreements cannot substitute for obtaining FPIC regarding the project.*

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COMMENT:

*There should be a clear commitment to provide remedy including details on conditions under what circumstances this applies.*

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COMMENT:

*The language used is often ambiguous and/or vague (“where applicable”, “impractical”, “where feasible”, “intended to be implemented”) and often leaves unclear if action is required, by whom and how decisions are ultimately made. Furthermore, the standard contains contradicting statements which must be avoided (e.g. on consent). Instead, language from international frameworks should be used where it exists.*

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

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

COMMENT:

*The CMS does not include contract disclosure under “foundational practice” and significantly alters the definition of contract disclosure in its glossary by limiting disclosures to merely fiscal terms. However, the EITI Standard requires disclosure of the full text of all contracts and licenses with no redactions. Furthermore, the CMS should specify that disclosures must be on project level. The CMS should require companies at foundational level to publish an anti-corruption policy to disclose their ownership structure, including the full chain of legal entities leading to the beneficial owner in line with EITI requirements.*

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

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

COMMENT:

*It is not aligned with international law (e.g. UN Guiding Principles on Business and Human Rights, OECD Guidelines), widely accepted international standards (such as EITI requirements) and with fundamental international laws, principles, and guidance that protect the rights of Indigenous Peoples.*

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

SECTION: 3.1 Responsible Supply Chains (applicable to all facilities), Foundational Practice

COMMENT:

*The Foundational Practice level of Section 3.1 should require companies to undertake human rights due diligence.*

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

SECTION: 5.1 Human Rights, Foundational Practice

COMMENT:

*Foundational level of PA5 should be aligned with the UNGP*

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