

CMSI Consultation Response

Respondent Details

NAME

Gregory Berry

COUNTRY

United States

PERMISSION

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

STAKEHOLDER

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

ORGANISATION

Accountability Counsel

COMMENTS & QUESTIONS BY DOCUMENT

Document:
Assurance

6. Public Grievance Mechanism

SECTION: Public Grievance Mechanism

COMMENT:

Recommendations in support of an effective Public Grievance Mechanism articulated by the proposed CMSI Assurance Policy

Setting aside our fundamental concerns about the categorization of certain practices, we support the development of the proposed organizational-level public grievance mechanism, as it holds some promise as a governance tool to combat potential greenwashing under the assurance scheme. Rights-holders must have the opportunity to challenge the veracity of assurances, especially in the context of unremediated harm and human rights violations. Absent an accountability framework, the assurance scheme risks enabling environmental and social harm.

Just as we have asserted in our recommendations related to foundational grievance management practices, above, we urge CMSI to commit to public consultation when developing and periodically updating the policies and procedures of the public grievance mechanism.

Based on the cursory information provided in Section 6 of the Consolidated Standard Assurance Process consultation draft with regards to the mechanism, we appreciate that it is envisioned to not impose burdensome eligibility requirements that could disincentivize its use. What we expect to see articulated in the final procedures are clear and predictable timelines for reviewing, investigating, and issuing findings based on allegations made by complaints.

Acknowledging that rightsholders might not trust or feel safe using the grievance mechanisms offered by mining operators or facilities, the policy of the Public Grievance Mechanism must avoid requiring complainants to first attempt to resolve grievances directly with a facility prior to challenging ratings or claims made under the standards. In this way, the Public Grievance Mechanism must have a mandate to facilitate remedy for harm and help correct facility behavior that falls short of Foundational Practice.

Accordingly, along with the proposed actions that can be pursued in response to grievances, the Public Grievance Mechanism should be equipped to exercise its leverage, including potential consequences for facilities that refuse to cooperate with it, to facilitate remedy for harm. We encourage CMSI to consider how it might equip the public grievance mechanism with a dispute resolution function that can help facilitate remedy for harm and encourage company actions aligned with foundational, good, and leading practices. We refer you to the Remediation Step-by-Step guidance offered by Amfori's "Speak for Change" Supply Chain Grievance Mechanism Programme as a potential model to develop an approach to coordinating remediation

Document:
Standard

General comment on Performance Area

COMMENT:

In response to the first round of public consultations on the proposed Consolidated Mining Standards, Governance Model, Assurance Process and Claims Policy, Accountability Counsel writes to urge that serious attention be paid to fundamental concerns raised about the potential of the framework to undermine the rights of local communities and Indigenous People, and to offer recommendations to address that mistrust.

Networks of which we are a part have expressed serious concern about how certain standards read more as aspirational guidance that neither ensure a foundational-level respect for human rights, nor provide concrete approaches to actually stopping and reversing biodiversity loss. In addition to those fundamental concerns, we urge you to rethink how to ensure accountability for poor performance under the standards, principally by enhancing and recategorizing grievance management standards and by further developing the public grievance mechanism envisioned under the assurance policy.

COMMENT:

The rights of Indigenous Peoples should not be compromised by the standards.

Criteria under Performance Areas 14.1 (Managing Engagement, Impacts and Opportunities with Indigenous Peoples) and 4.2 (Land Acquisition and Resettlement) reinforce a dangerous idea that the rights of Indigenous Peoples serve more as a guidepost than a guardrail. Ostensibly under Performance Area 14, companies need only be "guided" by the "principles" of Free, Prior, and Informed Consent (FPIC) rather than fully respecting the right that is articulated clearly by the UN Declaration on the Rights of Indigenous Peoples. Accordingly, FPIC should not be considered merely "Good Practice" as is posited under Performance Areas 14.1 and 4.2 but, rather, foundational and sacrosanct to Indigenous Peoples' right to self determination. Because rights should never bend to convenience, FPIC criteria must be listed as a "Foundational Practice."

COMMENT:

Clarify that effective grievance mechanisms are indeed foundational to underpin human rights performance.

Preliminarily, we note potential contradiction within the standards, particularly between Performance Areas 5 (Human Rights) and 17 (Grievance Management). Performance Area 5.1 (Human Rights) categorizes as "Good," but not "Foundational" practice, the need to "establish and implement a grievance mechanism in line with the effectiveness criteria of the UNGPs, section 31." The "Foundational Practice" instead merely requires "establish[ing] and implement[ing] mechanisms to receive, track and respond to human rights grievances raised by stakeholders and rights-holders", without reference to any concrete measurable criteria that ensures a baseline level of functionality and efficacy. This seems to contradict the intent of Performance Area 17 (Grievance Management) -to "[e]nable local communities, including stakeholders and rights-holders to raise

issues or concerns and have them resolved by implementing a grievance mechanism in line with the eight effectiveness criteria of the UN Guiding Principles on Business and Human Rights (Principle 31).” Fulfilling the intent of Performance Area 17 should require, as a baseline, an effective grievance mechanism aligned with the UNGPs. Anything less risks the grievance mechanism existing only in name as a tickbox exercise.

Trust is crucial to ensuring that grievance mechanisms are used by rights-holders and are effective in delivering positive outcomes. UNGP Principle 31 provides core criteria to ensure trustability; we therefore urge that requirements for UNGP-aligned grievance mechanisms be categorized as a “Foundational Practice” under Performance Areas 5.1 (Human Rights) and 17.1 (Grievance Management).

COMMENT:

Conclusion

Thank you for this opportunity to provide initial comments. We urge you to take seriously the fundamental concerns articulated by civil society, and we recommend shoring up grievance mechanism requirements that exist to hold companies to account for assurances made under the standards.

We would be glad to connect and offer our resources as you develop the policies and procedures of the envisioned public grievance mechanism.

Performance Area 1: Corporate Requirements

SECTION: 1.4 Risk Assessment

COMMENT:

Stakeholder engagement is a foundational international convention.

Performance Area 1.4 (Risk Assessments) presently categorizes engagement with external stakeholders during the risk assessment process as a “Leading Practice,” that is to say, “a level of practice which goes above and beyond responsible industry Good Practice and demonstrates leadership or best practice.” Categorizing early stakeholder engagement as rare or even optional runs against international convention, especially with respect to the right of Indigenous Peoples to Free, Prior, and Informed Consent (emphasis added), and articulated across accepted normative instruments like Standards 1.2.1-1.2.4 of the Initiative for Responsible Mining Assurance (IRMA), Performance Standard 1 of the International Finance Corporation’s Sustainability Framework, and the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct. The “Leading Practice” categorization also prompts confusion when encountering other proposed CMSI standards that would have the environmental and social impact assessments of new projects “consider how different stakeholder groups, including women, vulnerable and underrepresented groups, are

differentially impacted” as a “Foundational Practice” (see Performance Area 4.1 Risk and Impact Assessments of New Projects and Expansions), let alone the intent of Performance Area 12 (Stakeholder Engagement) to “enable early . . . participation of Facility-level stakeholders and rights-holders in decisions that affect them.” To align with international consensus and avoid confusion, we urge categorising stakeholder engagement as a “Foundational Practice” to inform sustainability risk assessments.

Performance Area 12: Stakeholder Engagement

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

COMMENT:

Harmonize stakeholder engagement and grievance management requirements

We agree with the decision to categorize “publicly commit[ting] to meaningful and transparent engagement with local stakeholders and rights-holders and communicat[ing] this commitment locally” as a Foundational Practice under Performance Area 12.1 (Stakeholder Engagement). Nonetheless, the requirement should take care to recognize that stakeholder engagement and grievance

management are complimentary to each other. Companies cannot be effective in one if they fall short in the other. For example, grievance redress platforms underpin stakeholder engagement commitments by ensuring continually open channels of communication with project-affected communities and helping to provide redress when disclosure or consultation is at issue. Stakeholder input should inform the design of grievance mechanisms, and outcomes of grievance mechanisms should be communicated through stakeholder engagement to build trust with intended users. We therefore encourage the following edits to that Foundational Practice:

Publicly commit to meaningful and transparent engagement with local stakeholders and rights-holders, including with respect to designing safe and effective grievance redress processes, and communicate this commitment locally.

Performance Area 17: Grievance Management

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

COMMENT:

Communicate the availability of the grievance mechanism, and disclose all relevant policies and procedures to make it accessible to stakeholders and rights-holders at the Facility level. (Foundational Practice no.3 in the consultation draft)

SECTION: 17.1 Grievance Mechanism for Stakeholders and Rights, Holders

COMMENT:

Accordingly, we also encourage recategorizing the following language as Foundational Practice under Performance Area 17.1 (Grievance Management)

Engage stakeholders and rights-holders who have filed grievances on their resolution, provide updates on the status of a grievance and/or remedy where relevant, and communicate outcomes and close out of grievances in accordance with agreed timelines.

Internally review and update the grievance mechanism policies and procedures periodically, part of which should involve engaging stakeholders and rights-holders on their experience using the mechanism(s) and suggestions for improvement.

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

COMMENT:

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. (Good Practice no.1 in the consultation draft)

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

COMMENT:

At a minimum, grievance management requirements should be expected to facilitate remedy for harm.

By categorizing the provision of remedy as merely a “Good Practice,” Performance Area 17.1 suggests that grievance mechanisms need not actually respond to grievances in good faith. This would defeat the intent of the Performance Area, as rights-holders would have no incentive to file grievances without some hope or expectation of remedial action. While it is true that in practice, grievance mechanisms on the whole need to improve upon the delivery of remedy, their purpose in facilitating remedy cannot be considered anything other than foundational to their overall use. We therefore recommend recategorizing the following language as Foundational Practice:

Facilitate or directly provide remedy for adverse human rights impacts that the Facility has caused or contributed to through the grievance mechanism or cooperate in their remediation through other legitimate processes. (Good Practice no.4 in the consultation draft)

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

COMMENT:

Report to management and the CMS Secretariat on the number and types of issues and concerns raised through the grievance mechanism and types of actions taken in response, resolution and/or remediation of such issues, considering provisions for confidentiality and protection of complainants. (Good Practice no.6 in the consultation draft)

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

COMMENT:

Maintain a public registry and Publicly disclose the number and types of issues and concerns raised through the grievance mechanism and types of actions taken in response, resolution and/or remediation of such issues, considering provisions for confidentiality and protection of complainants. (Leading Practice no.3 in the consultation draft)

SECTION: 17.1 Grievance Mechanism for Stakeholders and Rights

COMMENT:

Improve standards to support verification of assurances that grievance mechanisms are indeed genuine and effective.

In our advocacy, we have encountered many grievance mechanisms that fail to meet the baseline criteria of UNGP Principle 31, making it impossible to assess whether they are actually a legitimate tool for ensuring good environmental and social performance. There must be transparency of the underlying policies and procedures so potential users have access to a predictable process and trust the mechanism with handling sensitive and serious concerns implicating their rights and safety. There also should be transparency regarding the actual processing of complaints, vis-a-vis a complaints registry, to ensure users of the mechanism that complaints are duly considered and acted upon. We therefore recommend that the existing “Foundational Practice” of grievance management be amended and/or supplemented with language currently categorised as “Good” or “Leading” Practices [see other comments for comments ERM]

Performance Area 19: Biodiversity, Ecosystem Services and Nature

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

COMMENT:

For the sake of clear expectations, we recommend the following language as Foundational Practice under 19.1: Equip grievance and remediation mechanisms to readily receive and respond to complaints regarding adverse biodiversity impacts.

SECTION: 19.1 Biodiversity and Ecosystem Services and Nature

COMMENT:

Standards reflecting accountability for biodiversity impacts are too vague to be meaningful.

While we agree that a core objective of Performance Area 19.1 (Biodiversity and Ecosystem Services and Nature) should be to establish responsibility and accountability for biodiversity management, more must be said as to how this should be accomplished. The proposed Foundational Practice for companies to “[e]stablish senior management responsibility and accountability for biodiversity management to achieve stated biodiversity outcomes” does not articulate what “accountability” for biodiversity impacts entails, at the risk of supporting hollow greenwashing exercises.

Actual accountability for biodiversity impacts would require companies to establish channels that allow external stakeholders to relay adverse biodiversity impacts for the purpose of investigating and remediating adverse impacts. Failing to establish such processes for responding to and remediating adverse biodiversity impacts should reflect negatively on a company’s adherence to Foundational Practices.
