

CMSI Consultation Response

Respondent Details

NAME

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COUNTRY

Canada

PERMISSION

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

STAKEHOLDER

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

ORGANISATION

Engineers Without Borders Canada

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: No Response

QUESTION 2

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

Response: unsure

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

Performance Area 1: Corporate Requirements

SECTION: 1.3 Transparency of Mineral Revenues, Good Practice

COMMENT:

Good Practice level should require contract disclosure of all contracts entered into after January 1, 2021, and the retroactive disclosure of the underlying contract for any contract amended after January 1, 2021 at the Good Practice Level.

SECTION: 1.3 Transparency of Mineral Revenues, Leading Practice

COMMENT:

At Leading Practice level it should require public disclosure of ALL contracts.

SECTION: 1.3 Transparency of Mineral Revenues

COMMENT:

Comments on Revenue and Contract Transparency

Project-Level Payments to Governments Disclosure

In not specifying that disclosures must be project level, and through allowing companies to comply with national regulations instead of the EITI Standard, the current draft effectively lowers the bar for transparency of minerals revenues. It falls short of the ICMM's commitment on payments-to-governments disclosures, which requires members to disclose "all material payments by country and by project at the appropriate levels of government," regardless of the country's status as an EITI-implementing country.

In classifying disclosures that do not meet the minimum project-level threshold in the ICMM commitment or other standards, such as that of the EITI, the GRI Mining Sector Standard, or the IMF's Fiscal Transparency Initiative as "Foundational" or "Good" practice, the draft standard permits a small minority of problematic companies to avoid project-level disclosure, increasing the risks of corruption across the entire sector.

Specifically, on payments to governments, the CMS does not specify that companies should report its payments to governments at the project level in non-EITI-implementing countries (as the EITI requires for its own Supporting Companies) and instead allows them to report in line with national regulations, which are often less rigorous. Reporting these payments at the aggregate level provides limited insight into project revenues and allows governments to avoid accountability at best and opens the door to corruption in many countries.

We therefore recommend that the final CMS does not tier this requirement and instead requires all members to disclose their project-level payments to governments in all countries of operation.

Contract Disclosure

The current draft's requirements on contract disclosure are unclear and include problematic ambiguities that can be abused by a small minority of problematic mine sites. 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 to go a step further and to require retroactive disclosure of the underlying contract for any contract amended after that date. The current draft does not include contract disclosure at the Foundational Practice, and the Good Practice level requires only that "new" contracts are disclosed, which creates a gap between present day and the 2021 requirement. The Leading Practice requirement potentially goes a significant step further by calling for the public disclosure of existing contracts, which would put it ahead of both the EITI and ICMM requirements. However, it caveats that these contracts should be disclosed "where applicable" and does not specify that all contracts should be disclosed.

We therefore recommend that the final CMS should require contract disclosure of all contracts entered into after January 1, 2021, as part of the Foundational Practice level.

Performance Area 13: Community Impacts and Benefits

SECTION: 13.2 Community Development and Benefits, Foundational Practice

COMMENT:

Below are specific suggested changes, and in some cases, additions to the provisions within Performance Area 13: Community Impacts and Benefits, along with commentary on provisions that we feel do not need changes:

Foundational Level Practice, Provision #4: "Provide local enterprises with access to procurement and contracting opportunities". There are no suggested changes. The broad nature of this statement is appropriate for the Foundational Level.

We suggest moving Provision #6 (from the Good Practice section): "Encourage the Facility's contractors and suppliers to increase local procurement and employment" to the Foundational Level. "Encourage" suggests no formal systems will be put in place to require or incentivise contractors and suppliers to carry out local procurement and hiring. Non-binding and verbal encouragement of suppliers and contractors should be considered a minimum level of practice, and not "Good," as our experience shows that non-formalised "encouragement" rarely results in meaningful actions.

SECTION: 13.2 Community Development and Benefits, Good Practice

COMMENT:

Good Practice Level, Provision #4: "Develop programmes that support increased levels of local procurement and employment". We would suggest this changes to "Develop policies, procedures, and programmes that support increased levels of local procurement and employment". For the reasons described in the "intent" comments, "Good" practice needs local procurement to be explicitly codified in policies and procedures. "Programmes" is too wide-ranging a term and could mean very small, ineffective efforts. The RGMPs and RRA Criteria Guide already explicitly include the need for a policy.

For the Good Practice Level, Provision #6 says: "Encourage the Facility's contractors and suppliers to increase local procurement and employment". However, we would suggest that the wording be changed to "Incentivise and/or require the Facility's contractors and suppliers to prioritise local procurement and employment through bidding criteria and contract language when appropriate". This is because without formal incentives or requirements, mining companies do not have the ability to meaningfully influence suppliers and contractors. As such, the idea of using bidding criteria and contract language ensures action "when appropriate" is added to ensure companies do not have to do this when local procurement or hiring is simply impossible by a Tier 1 supplier."

For the Good Practice Level, Provision #7: "Establish objectives and/or targets related to community development, local employment and local procurement, and review progress at defined intervals". There are no suggested changes from our end and we would like to acknowledge that it's positive to see inclusion of clear objectives or targets regarding local procurement.

For Good Practice Level, Provision #8: "Monitor and demonstrate progress at defined intervals against objectives and/or targets". There are no suggested changes to this wording, however, the idea of monitoring is positive but needs to be complimented by the explicit inclusion of statistics (see provision 9.)

Good Practice Level, Provision #9: "Publicly disclose relevant information related to community development contribution, local procurement and local employment at the Facility level". We would suggest that this wording change to "publicly disclose relevant information related to community development contribution, local procurement and local employment at the Facility level, including statistics across clear categories of suppliers and employees (e.g. location of supplier, supplier ownership by underrepresented groups, other variables)". What is measured is managed. Good practice for local procurement specifically requires companies to measure their procurement spending across different kinds of suppliers, and so the disclosure of statistics to provide a benchmark against progress need to be explicitly mentioned here. Most companies within the four organisations already report statistics on local procurement, and the Global Reporting Initiative (GRI) already includes GRI 204 which asks for data on local procurement spending.

For the Good Practice Level we would also suggest adding an additional provision to "Provide a clear website section for procurement with practical information on how to supply to each site". Without a website to provide practical information and contacts, suppliers have to rely on personal relationships for information,

undermining trust, and opening the door to allegations of favouritism or corruption. A lack of public information also disproportionately hurts underrepresented suppliers, such as women-owned businesses. Most ICMM members already have website sections so it should be considered “Good Practice” at this stage.

SECTION: 13.2 Community Development and Benefits, Leading Practice

COMMENT:

Leading Practice Level, Provision #1: “Engage community representatives in decision-making processes related to the Facility’s contributions to community development, local procurement and local employment programmes”. There are no suggested changes for this provision. In general, it is very positive to see a recognition of the role that multi-stakeholder approaches play in maximising local procurement and hiring for that matter.

Leading Practice, Provision #2: “Provide capacity-building and technical assistance to local community institutions and engage local businesses to improve their capabilities to participate in local economic opportunities, if required”. We suggest that this wording be changed to “Provide capacity-building and technical assistance to local community institutions and engage local businesses and their representing bodies to improve their capabilities to participate in local economic opportunities, if required”. Leading practice is not just to support suppliers directly, but also to support the wider business ecosystem, including chambers of commerce and other bodies that build-capacity for and support businesses. “Teach the teacher” efforts significantly improve the sustainability of supplier development.

We also suggest that the following provision be added to Leading Practice Level: “Share information at the site-level on local procurement in accordance with the GRI Mining Sector Standard and the Mining Local Procurement Reporting Mechanism (LPRM)”. Good practice should be to provide the statistics and basic information on procurement, but leading practice would be to disclose information in accordance with the LPRM, which has already been used by fourteen companies to date, including multiple member companies of the four CMSI organisations, as well as the GRI Mining Sector Standard.

The LPRM is already included as a suggested resource in the documents from the ICMM, RRA, and GRI, as well as multiple other industry, civil society and international government documents from the EITI, Canadian Institute of Mining, Metallurgy and Petroleum (CIM), Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF), and PWYP.

The GRI is already a membership requirement for the ICMM companies.

SECTION: Glossary and Interpretive Guidance

COMMENT:

Both the GRI Mining Sector Standard and the Mining Local Procurement Reporting Mechanism (LPRM) should be included in the references, above all else because both require companies to lay out quantitative data on procurement spending, and to define categories of suppliers.

For the GRI, the ICMM membership already uses this framework, and for the Mining LPRM, it is already included in standards and guidance documents as a resource in the Copper Mark RRA Criteria Guide and the ICMM Economic and Social Impacts Reporting Guidance, as well as multiple other widely used frameworks and guidance from the GRI, EITI, IGF, and CIM.

COMMENT:

The draft standard’s current inclusion of local procurement represents a strong improvement in the state of play for the global mining sector. Because the Mining Association of Canada’s (MAC) Towards Sustainable Mining (TSM) system currently does not cover local procurement in a meaningful way, and the International Council on Mining and Metals (ICMM) Performance Expectations provide relatively high-level language, the elements for local procurement that are included in this draft represent an improvement in expectations of

member companies of both organisations. For the World Gold Council's Responsible Gold Mining Principles (RGMPs) and the Risk Readiness Assessment (RRA) used by the Copper Mark, the level of inclusion in the draft is generally in alignment. In broad terms, for the issue of local procurement, this draft represents well the idea of drawing the strong elements from the four different standards together.

A few points should be applauded:

- The explicit inclusion of local procurement by contractors and suppliers as an issue. Procurement by Tier 1 suppliers and further upstream represent a large portion of total spending during mining activity, and to date most standards and guidance pieces have ignored this crucial component.
- The explicit inclusion of the public disclosure of relevant information regarding local procurement in the Good Practice level, as transparency and providing practical information to suppliers both drives company performance and supports businesses and their supporting institutions to target supplying opportunities.
- The idea of working with other stakeholders on local procurement at the Leading Practice level. Through our twelve years of working to promote local procurement in mining, we have documented that sustainable shifts in procurement spending only happen in a multi-stakeholder fashion.

Having said this, we believe there is a need for strengthening the standard regarding the level of detail for local procurement in the provisions across Performance Area 13: Community Impacts and Benefits, and how the different provisions regarding local procurement are distributed among the Foundational Practice, Good Practice and Leading Practice section.

First, the lack of detail across the provisions at times leaves the door open to underperformance, which is contrary to the spirit of the CMS and its provisions, and prevents effective auditing. We have seen that when it comes to policies, standards, and guidance, that specifics matter greatly and that time-stretched company representatives will do less than they ideally should if there are not clear requirements. This is not a knock on these company representatives, but rather this is based on the understanding of limited time and resources amidst competing priorities. As such, to ensure the spirit of the actions contained in this draft standard for local procurement is followed, further specifics are required in some cases.

For example, while creating "programmes" for increased levels of local procurement is a strong addition at the Good Practice level, because the definition of a "programme" is broad, it can refer to too wide a range of activity. For example, short term, ad-hoc efforts to train suppliers without proper information, consultation, or resources, could be considered a "programme" and so this lack of detail is not sufficient for the Good Practice level. There needs to be an explicit inclusion of local procurement codified in policies and procedures at the Good Practice level, to ensure actual systems and accountability are in place, rather than the type of ad hoc efforts that are more suitable for the Foundational Practice level. The RGMPs already require a publicly available supply chain policy, and their language goes beyond the idea of programmes. Likewise, the RRA also explicitly includes the idea of "policies and procedures." As such, to leave it at "programmes" alone represent a downgrade for users of both the RRA and RGMPs. This does not mean that every site must have a distinct local procurement policy, as in some cases it may make more sense for local procurement to be included in a wider supply chain policy, or social performance policy. However, Good Practice requires there be at a minimum, inclusion of the issue in policy and procedures to create accountability.

Likewise, while it is commendable to include the public disclosure of information regarding local procurement as part of the standard, the lack of specificity will result in many mine sites disclosing minimal information while still being able to meet practice level requirements. Above all else, there needs to be at least some explicit requirement of local procurement statistics to be truly "good" practice, and to match the level of performance already included in ICMM and RRA requirements.

Second, the positioning of the provisions across the three levels currently does not match the current state of play for the industry, and in general some of the ideas at the Good Practice level really should be at the Foundational Practice level. For example, the inclusion of Tier 1 suppliers in the framing of local procurement is a strong addition to this draft standard, but currently the encouragement of suppliers and contractors to engage in their own local procurement and hiring is positioned at the Good Practice level. Loose language such as "encouraging" suppliers to carry out actions generally does not result in meaningful action, and as such, it is more appropriate that this encouragement is put at the Foundational Practice level, and Good Practice

should incorporate more meaningful actions, such as including incentives and requirements to procure and hire locally in bidding criteria and contractual language (where appropriate).

Performance Area 14: Indigenous Peoples

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

COMMENT:

For Foundation Level we suggest adding an additional provision: "If desired by Indigenous communities, provide enterprises from those communities with access to procurement and contracting opportunities." This matches the corresponding level in Good Practice level, Performance Area 13.

"If desired" has been added here and at the other two levels because it is reasonable that some Indigenous communities will not want to take part in procurement opportunities.

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

COMMENT:

Good Practice Level, Provision #8 currently says: "Agreement at a minimum should include mitigation measures developed through the human rights due diligence process, benefits sharing (for example business procurement opportunities), monitoring and review mechanisms, a redress mechanism for potential infringements of the agreement or of Indigenous Peoples' rights and consideration of life of mine operational changes and closure".

We have no suggested changes for this but if the framing of FPIC remains the same in the next draft, the issue of business opportunities should be removed from this point.

As covered in the overarching comments for this section, it is positive to see procurement explicitly mentioned as an example of benefits sharing, however, there is concern that the wording of this provision is associated solely with FPIC rather than included as an additional agreement after consent is provided.

An example of a resource that can be used to support companies in supporting Indigenous Procurement can be found here: <https://www.minescanada.ca/en/strategic-directions/advancing-participation-indigenous-peoples/local-procurement-checklist>

Also at Good Practice level, we suggest adding an additional provision "If desired by Indigenous communities, carry out preferential procurement practices.

This matches the corresponding level in Good Practice level, Performance Area 13".

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

COMMENT:

For Leading Practice Level we suggest adding the provision "If desired by Indigenous communities, carry out preferential procurement practices from the Leading Practice level of Performance Area 13.

This also matches the corresponding level in Good Practice level of Performance Area 13".

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

COMMENT:

Comments on Local Procurement within 14.1 Managing Engagement, Impacts and Opportunities with Indigenous Peoples

While we do not consider ourselves experts on the issue of free, prior and informed consent (FPIC) and generally defer to other organisations such as Oxfam’s views on the matter, we do have one comment specifically on how local procurement is positioned within this issue of “agreements” with Indigenous communities. As of now, providing business opportunities to Indigenous-owned businesses is framed only within the context of this FPIC issue. The draft currently says when full agreement (FPIC) is not achieved, that “[a]greement at a minimum should include mitigation measures developed through the human rights due diligence process, benefits sharing (for example business procurement opportunities), monitoring and review mechanisms, a redress mechanism for potential infringements of the agreement or of Indigenous Peoples’ rights and consideration of life of mine operational changes and closure.”

While providing supplying opportunities to the businesses of Indigenous rights holders affected by a proposed mine is one of the most important means of creating a partnership where an affected community desires to allow mining (e.g. for example, as codified in Canadian Impact Benefit Agreements that typically are accepted as a means to demonstrate FPIC has been achieved), it is problematic to position providing business opportunities the way it is in the draft. It inadvertently suggests that a mining company can substitute the achievement of FPIC by carrying out effective local procurement from businesses in the affected community, and this is highly problematic.

How to fairly incorporate the concerns of Indigenous rights holders and civil society regarding FPIC is a larger, highly sensitive topic, that we do not want to focus on in this submission. At a minimum however, we strongly believe that providing local procurement (and hiring for that matter) opportunities to Indigenous People should be a stand-alone provision, separate from this concept of “agreement,” so that companies using this standard are not inadvertently guided to engage in problematic practices.

Performance Area 20: Climate Action

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

COMMENT:

Comments on Procurement within 20.2. Climate Change Management (Facility Level)

The CMS would be improved by ensuring that the emissions of suppliers of goods and services -which make up the Scope 3 emissions of mining projects and operations -are addressed in away that also provides support to suppliers, at least at the Leading Practice level. Mining companies like Barrick are already making leading efforts to measure their Scope 3 emissions, while supporting their suppliers to reduce these emissions. Because the management of Scope 3 emissions is still a relatively new focus across the global mining sector, including this at the Leading Practice level for now adds this important topic to the CMS without being unrealistic.

COMMENT:

We suggest adding the following provision to the section Climate Change Management “Develop approaches to engage suppliers in reducing facility-level contributions to corporate Scope 3 emissions and addressing other environmental goals, without compromising local procurement objectives”.

“Without compromising local procurement objectives or targets” has been added as there is a risk that attempts to lower Scope 3 emissions may result in mining companies hastily shifting procurement spending away from local suppliers to international ones with leading environmental practices. It is important that mining companies recognise this tension between emissions and local procurement.

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: 2: Below expectations

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

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

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