

# CMSI Consultation Response

## Respondent Details

NAME

Caroline Avan

COUNTRY

France

PERMISSION

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

STAKEHOLDER

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

ORGANISATION

Business and Human Rights Resource Centre

## COMMENTS & QUESTIONS BY DOCUMENT

### QUESTION 1

**Overall does the revised version of the Consolidated Standard system (including Standard, Assurance Process, Governance Model\* and Claims Policy) meet your expectations for improvement relative to the original public consultation version?**

Response: 2: Below expectations

We acknowledge improvements between the original version and this second version and welcome them.

However - such improvements remain incompletely aligned with existing industry standards, commonly agreed instruments of Responsible Business Conduct and international law. Our comments across the different Performance Areas are not intended to be comprehensive. We suggest that the CMSI must further align relevant Performance Areas with the UNGPs, which language and approach have been used by companies for more than a decade.

We also want to note here that we regret the decision of the CMSI not to open the governance model for a second round of consultation. This limits participation and meaningful engagement of civil society and rights-holders. Having a robust and fit for purpose governance model is crucial to ensure accountability and that the initiative will be able to react and adapt to critiques and evolve as needed. It also is fundamental to provide legitimacy to voluntary responsible business conduct initiatives, generating public trust that they are accountable and responsive to rights-holders' views and evidence of material abuses. However - this is currently not the case for the CMSI. The current Board composition does not reflect the principles outlined by the Institute for Multi Stakeholder Initiative Integrity ([https://www.msi-integrity.org/wp-content/uploads/2017/11/Essential\\_Elements\\_2017.pdf](https://www.msi-integrity.org/wp-content/uploads/2017/11/Essential_Elements_2017.pdf)) in ensuring 'NGOs and affected populations to have equal authority to participate' - as the Mining Stakeholders category will have 4 Directors (out of 16) while the Value Chain stakeholders may have NGOs representation, among others - as the category remains ill defined. Second, stakeholder groups are not able to select their own members, and the fiduciary duties clearly state that board members' "primary fiduciary duty is to the Legal Entity as a whole and not to the stakeholder group on behalf of which that Director may have been appointed" . This means that Directors will not, in effect, represent constituencies - but rather bring 'perspectives'. The requirement that board members "speak with a unified voice when representing the Legal Entity to the community" will also limit their ability to engage openly about concerns raised about the standard. Therefore - we suggest that any reference to 'multi-stakeholder' is removed from the Initiative's documents.

## QUESTION 2

**From your perspective, does the updated Consolidated Standard system, including Standard, Assurance Process, Governance Model\* and Claims Policy meet expectations for driving performance improvement across the industry at a global scale?**

Response: **2: Below expectations**

In addition to our comments above, we think the Assurance Standard must contain additional detailed guidance on how to assess individual requirements, and that such assessments, evidence observed and how it was found to be meeting requirements and at which level, must be provided to enhance accountability and support building trust in the legitimacy of the Initiative.

## Document: Assurance

### 2. Roles and Responsibilities

SECTION: D. National Panels

COMMENT:

*The current governance model for the CMSI states that 'National Panels may be convened by national mining associations, Extractive Industries*

*Transparency Initiative (EITI) multi-stakeholder groups, etc".*

*We think that national panels can play a useful role in creating spaces for cross-constituency dialogues and solutions for improvement of minerals governance. Nevertheless, we are concerned that these could be convened by national mining associations - which are not sufficiently neutral, undermining the credibility of the standard at the national level.*

*Additionally we think it's key to build on existing governance structures instead of creating new ones. As such we highly recommend strengthening language on such national panels being convened by EITI MSG where they have been established.*

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### 4. Consolidated Standard External Assurance Process

SECTION: 4.1 Methodology

COMMENT:

*To be credible and provide robust, comparable and reliable information that accurately reflects the sustainability performance of mining sites - the Secretariat must develop detailed guidance on how to assess individual requirements - including, at a minimum, information on what would be considered admissible evidence and in which format, and what would not.*

*A useful example of detailed requirements - in assessing how companies' policies align with the UNGPs or not, can be found here : <https://www.worldbenchmarkingalliance.org/research/the-methodology-for-the-2026-corporate-human-rights-benchmark/>*

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SECTION: 4.2 Planning, 4.2.11 Interviewing Workers, Stakeholders and Rights

COMMENT:

*'However, the Assurance Provider must use their own discretion to determine whether and how to take this context into account and not let undue influence determine the selection of interviewees or the approach"*

*This is key and must stay in. We also suggest to add language on the Assurance Provider engaging with relevant stakeholders such as local or international civil society groups, independent from the audited site/company, to establish a relevant list of interviews to be conducted.*

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SECTION: 4.2 Planning, 4.2.13 External Stakeholder and Rights

COMMENT:

*Examples include but are not limited to:*

*- Add PA5 and PA17.*

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SECTION: 4.2 Planning, 4.2.6 Assurance Planning

COMMENT:

*'The Assurance Provider has the discretion on how the plan is finalised before it is submitted to the Secretariat". This is key to ensure independence of the audit process and must stay in.*

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SECTION: 4.2 Planning, 4.2.8 Determining Methodology and Risk

COMMENT:

*'It is the Assurance Provider's role to confirm the Facility's rationale for any Performance Areas deemed not applicable, based on evidence provided by (and discussions with) the Facility and interviews with employees, stakeholders and rights-holders during the Assurance Process, and publicly disclose this in the Assurance Report". This is key and must stay in.*

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SECTION: 4.5 Reporting

COMMENT:

*We are concerned the section on Statement of Findings is too limited to ensure public accountability and build trust in the Initiative's legitimacy.*

*The assurance report, which is publicly available, must contain detailed information on how individual requirements have been deemed as met by assurance providers and not only a 'brief commentary" and 'key elements'. This is essential not only for external stakeholders to critically examine evidence supporting performance claims and meaningfully engage with the company/the mining site; but also to ensure comparability of information provided by the assurance process across different sites. There is otherwise risk that performance levels will be too dependent on assurance providers' discretionary reviews.*

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SECTION: 4.6 Continual Improvement Plan

COMMENT:

*We suggest that facilities that are working towards achieving leading practice level publish their Improvement Plan.*

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QUESTION 1

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

Response: **2: Below expectations**

We note and welcome improvements in the Assurance Standard in ensuring independence of the Assurance process.

The biggest gap in the current proposed standard is that there are no precise and detailed guidance on how a company/facility can be assessed to have met, or not have met, individual requirements under each performance area. This is critical, as many requirements are vague and can be interpreted differently by different auditors, making it at best difficult to compare assessments, at worst, impossible to trust the audit results as giving a fair and accurate picture of the sustainability performance of the facility/company.

Such assessment of individual requirements and how they were assessed to be meeting expectations and at which level, must be included in the Assurance report.

## Document: Standard

### Introduction

#### COMMENT:

*This comment relates to 1) Overview of the CMSI.*

*We want to note that we regret the decision of the CMSI not to open the governance model for a second round of consultation. This limits participation and meaningful engagement of civil society and rights-holders.*

*Having a robust and fit for purpose governance model is crucial to ensure accountability and that the initiative will be able to react and adapt to critiques and evolve as needed. It also is fundamental to provide legitimacy to voluntary responsible business conduct initiatives, generating public trust that they are accountable and responsive to rights-holders' views and evidence of material abuses.*

*However - this is currently not the case for the CMSI. The current Board composition does not reflect the principles outlined by the Institute for Multi Stakeholder Initiative Integrity ([https://www.msi-integrity.org/wp-content/uploads/2017/11/Essential\\_Elements\\_2017.pdf](https://www.msi-integrity.org/wp-content/uploads/2017/11/Essential_Elements_2017.pdf)) in ensuring 'NGOs and affected populations to have equal authority to participate' - as the Mining Stakeholders category will have 4 Directors (out of 16) while the Value Chain stakeholders may have NGOs representation, among others - as the category remains ill defined.*

*Second, stakeholder groups are not able to select their own members, and the fiduciary duties clearly state that board members' "primary fiduciary duty is to the Legal Entity as a whole and not to the stakeholder group on behalf of which that Director may have been appointed". This means that Directors will not, in effect, represent constituencies - but rather bring 'perspectives'. The requirement that board members "speak with a unified voice when representing the Legal Entity to the community" will also limit their ability to engage openly about concerns raised about the standard.*

*Therefore - we suggest that any reference to 'multi-stakeholder' is removed from the Initiative's documents, including here to 'multi-stakeholder participation'.*

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#### COMMENT:

##### 8) Key Terms and Guidance

*e. Policy commitments: For certain areas, and human rights in particular, policy commitments must be adopted at corporate level. A Facility-level only policy commitment to respecting human rights can only be considered a tokenistic approach. We suggest making it explicit. This needs to be the case to (i) align with the UNGPs (principle 15 and 16) and other Responsible Business Conduct instruments (ii) account for impacts that they happen outside of the Facility's perimeter (through supply chains) (iii) ensure that the Facility*

is resourced and supported by other departments and senior executive management of the Company in identifying, preventing, mitigating and account for impacts on human rights. This must be added to the definition in j. Corporate-Level requirements.

g. We welcome the note that the mitigation hierarchy will not apply to human rights impacts as it is inoperative. This must stay in.

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## Overarching Glossary

COMMENT:

' - The distinction between stakeholders and rights-holders is welcome and must stay in.

- Sustainability risks: We suggest adding to the definition that (i) mining projects may impact human rights, directly or indirectly (ii) according to the UNGPs, the responsibility of business enterprises to respect human rights refers to internationally recognized human rights - understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work.

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## Performance Area 01: Corporate Requirements

SECTION: 1.1 Corporate Accountability, Good Practice, 1

COMMENT:

Add "nominate board members or board committee, with appropriate expertise" instead of "establish board". Source: UNGPs, Worldbenchmarking Alliance (WBA) CHRB methodology.

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SECTION: 1.1 Corporate Accountability, Good Practice, 2

COMMENT:

This remains insufficient to ensure full operational integration of the requirements of the Standards. We suggest adding "ensuring policies, processes and due diligence, relating to performance areas, are duly embedded in the companies' internal processes, at all operational levels"

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SECTION: 1.1 Corporate Accountability, Leading Practice, 1

COMMENT:

This suggests that metrics to be used in GP3 will not be aligned with the GP/LP requirements of the Standard. Suggest moving to GP3 and consolidating.

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SECTION: 1.1 Corporate Accountability, Leading Practice, 2

COMMENT:

This cannot be considered leading practice and should be moved to Good Practice level (GP)

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SECTION: 1.1 Corporate Accountability, Towards Good Practice, 2

COMMENT:

*It is positive to see that the requirement to “Publicly disclose, at the corporate and/or Facility level, applicable policies or commitments covering the PA in this standard” has now been moved to the Towards Good Practice (TGP) level. However, certain performance areas cannot be covered by a Facility-level policy/commitment - PA5 on Human Rights is one of them.*

*We suggest removing “and/or Facility level”, or manage by exception only. The Human Rights policy should be approved at the most senior level of the company -this needs to be explicit in the Standard (either here or in PA5). See also comments in the Introduction section on key terms.*

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

COMMENT:

*This proposed language undermines the 1 January 2021 date established by the EITI requirement. For consistency across standards, we suggest to align with the EITI requirements.*

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SECTION: 1.4 Risk Assessment, Leading Practice, 1

COMMENT:

*Engaging with stakeholders and rights holders cannot be considered leading practice, it’s a fundamental requirement in assessing risks to human rights. See UNGPs P18 “In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should: (a) Draw on internal and/or independent external human rights expertise; (b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.”*

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SECTION: Applicability

COMMENT:

*See comments in section 1.1 and in the introduction section on human rights policies: such policies cannot be adopted at Facility-level.*

*We also think that with regards to section 1.3, such language is ambiguous: contracts and payments to governments disclosures are project-level information and must be disclosed as such, but they must proceed from corporate-level policies - effectively implemented at Facility-level. This nuance must be added for clarification purposes.*

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## **Performance Area 05: Human Rights**

SECTION: 5.1 Human Rights, Good Practice, 1

COMMENT:

*While language for this section has now improved -it still falls short of expectations for companies as outlined in the UNGPs.*

*- First, human rights due diligence processes must cover not only adverse impacts that the business enterprise may cause or contribute to through its own activities, but also to which the Facility may be directly linked to its operations, products or services by its business relationships. The current requirement only mentions the Facility’s suppliers and business partners -stopping at Tier 1, whereas the UNGPs (principle 17) explicitly state that due diligence requirements must extend beyond that level and include those caused by business relationships.*

- Second, due diligence processes must be “ongoing” which is critically missing from GP1.
- It’s not clear why ‘consultation with rights-holders’ is being used in GP1 and “collaborate” in LP2 and 3.

*Collaborating -understood as “meaningfully engaging” with stakeholders and rights-holders / human rights defenders in identifying impacts is not leading practice. It is a clear expectation of companies as the UNGPs and related guidance, and an essential component of due diligence. We suggest removing language on ‘consultation’ and replacing by ‘meaningful engagement’.*

- The reference to HRDs is welcome but this remains insufficient to ensure those raising concerns about projects are not subjected to attacks. As per our database of attacks against Human Rights Defenders (HRDs) (see <https://www.business-humanrights.org/en/from-us/human-rights-defenders-database/>), the mining sector has consistently been the most dangerous sector for the past 15 years. Companies should be requested to have in place (i) a publicly available policy commitment not to tolerate or contribute to attacks against HRDs (ii) Expecting business relationships to do the same (iii) having a policy commitment to work with HRDs to create safe and enabling environments.

*As the UN Working Group’s Guidance on HRDs (submitted to the Human Rights Council in July 2021) clearly states, “pursuant to the UN Guiding Principles, business enterprises have a responsibility to avoid infringing the human rights of those who defend them. This entails business enterprises adapting their procedures to anticipate risks to rights holders including human rights defenders. Concretely, it means that business enterprises need to ensure, as a minimum, that their activities, actions and omissions, do not lead to retaliation, violence, death, legal harassment or any other form of silencing or stigmatisation of human rights defenders, and they need to address adverse impacts on human rights defenders with which they are involved, either through their own activities or as a result of their business relationships. Managing and addressing these risks is a policy, governance and operational issue for the Board of each business enterprise”. Moreover, adequate and effective due diligence in relation to these risks needs to be further defined.*

*As the Guidance states, three over-arching elements key to adequate due diligence on risks to HRDs are:*

*(a) Understanding context-specific risks and take adequate action: Where risks to defenders are identified, effective follow up should involve tailored responses by consulting with defenders about the risks they face when defending human rights, such as reprisals, arrest, lawsuits, and threats to physical safety, among others.*

*Businesses should also develop stronger relationships with organisations that work with rights holders and human right defenders. They should also consult databases that collect data on attacks and risks to defenders. All of this will help businesses to better understand the contextual risks faced by defenders and how to address them. After identifying risks, business enterprises need to construct plans for how to prevent or mitigate such impacts;*

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

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

*(For reference, see our HRDs policy tracker, based on CHRB methodology): <https://www.business-humanrights.org/en/from-us/humanrights-defenders-policy-tracker/>, our recommendations in our latest annual report on business & HRDs, and [https://www.ohchr.org/sites/default/files/2022-02/Formatted-version-of-the-guidance-EN\\_0.pdf](https://www.ohchr.org/sites/default/files/2022-02/Formatted-version-of-the-guidance-EN_0.pdf))*

- Finally, language in this section also does not include requirements that match expectations of P19 of the UNGPs on effective integration of findings from due diligence processes/impacts across relevant functions and processes -lacking the sort of dynamic and ongoing nature that due diligence processes must possess to be meaningful. As such -it remains unclear how assessment against the requirements of the Standard will

effectively demonstrate that the Company has relevant processes in place to operationalise commitments to respecting human rights.

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SECTION: 5.1 Human Rights, Leading Practice, 2

COMMENT:

*Tracking effectiveness must draw on feedback from affected stakeholders -which is now considered LP. This needs to be expected at GP level.*

*This is as per UNGPs P20 :*

*“In order to verify whether adverse human rights impacts are being addressed, business enterprises should track the effectiveness of their response. Tracking should:*

*(a) Be based on appropriate qualitative and quantitative indicators;*

*(b) Draw on feedback from both internal and external sources, including affected stakeholders.”*

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SECTION: 5.1 Human Rights, Leading Practice, 3

COMMENT:

*It's not clear why 'consultation with rights-holders' is being used in GP1 and "collaborate" in LP2 and 3.*

*Collaborating -understood as "meaningfully engaging" with stakeholders and rights-holders / human rights defenders in identifying impacts is not leading practice. It is a clear expectation of companies as the UNGPs and related guidance, and an essential component of due diligence. The UN Working Group's guidance ([https://www.ohchr.org/sites/default/files/2022-02/Formatted-version-of-the-guidanceEN\\_0.pdf](https://www.ohchr.org/sites/default/files/2022-02/Formatted-version-of-the-guidanceEN_0.pdf)) stated unequivocally that "Human rights defenders should be consulted in the process of identifying and assessing the real and potential impacts of a business' proposed activities, as an essential component of human rights due diligence", and that "due diligence should not be based solely on the work of external consultants and desk-based assessments, but on the assessment and findings of rights holders and communities on the ground", and that "potential intimidation and reprisals against, or harm to, human rights defenders should be included as a potential impact to be evaluated as part of human rights due diligence and impact assessments under the Guiding Principles, and this is a risk that needs to be monitored over time".*

*We suggest removing language on 'consultation" and replacing by 'meaningful engagement".*

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SECTION: 5.1 Human Rights

COMMENT:

*While language in PA5 on human rights has improved since the first draft -starting with a clear recognition of the fundamental need for mining companies to have a policy committing them to respect human rights and aligned with the UN Guiding Principles on Business and Human Rights; the current proposed draft only partially addresses risks of human rights abuses -which can have significant operational and legal consequences.*

*- First we are concerned that without making it a clear requirement that such policy is adopted at the corporate level and backed by internal resources and board oversight, such an approach may amount to window dressing and will fail to ensure robust and credible implementation of human rights due diligence processes. Second, while the reference to human rights defenders is welcome -more is needed to ensure that mining companies credibly address the risk of being associated with retaliation, threats and attacks against them. These are not theoretical risks as the mining sector is the most dangerous for defenders. It is also telling that the proposed draft considers that "collaborating" with rights-holders is "leading practice" whereas meaningfully engaging is a fundamental aspect of the UNGPs (Involve meaningful consultation with potentially affected groups and*

other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation. P18)

- Without an integrated approach that combines a clear policy on zero tolerance for attacks, extending such expectation to partners and committing to engage with defenders to create safe and enabling environments -the 3 key criteria for a robust HRDs policy -risks of conflicts and associated delays and operational losses will only heighten.

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SECTION: 5.1 Human Rights, Towards Good Practice, 1

COMMENT:

*This language is welcome and is progress from the previous draft but such human rights policy needs to be established at corporate level. This requirement must be made in the introduction section (see comments) or here.*

*For certain areas, and human rights in particular, policy commitments need to be adopted at corporate level. A Facility-level only policy commitment to respecting human rights can only be considered a tokenistic approach. We suggest making it explicit. This needs to be the case to (i) align with the UNGPs (principle 15 and 16) and other RBC instruments (ii) account for impacts that they happen outside of the Facility's perimeter (through supply chains) (iii) ensure that the Facility is resourced and supported by other departments and senior executive management of the Company in identifying, preventing, mitigating and account for impacts on human rights. This must be added to the definition in j. Corporate-Level requirements.*

*This policy must be approved by the Board (see comment on PA1 too).*

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SECTION: 5.1 Human Rights, Towards Good Practice, 3

COMMENT:

*This is missing a commitment to provide or cooperate in remediation mechanisms ('commitment to remedy'). This has been included at good practice level but cannot be disassociated from the commitment to respecting human rights which is now at TGP level.*

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## **Performance Area 12: Engagement**

SECTION: 12.1 Engagement, Good Practice, 1

COMMENT:

*The engagement plan must not only consider what is appropriate for certain groups, but needs to be inclusive and ensure diversity of representation and engagement.*

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SECTION: 12.1 Engagement, Leading Practice, 1

COMMENT:

*Co-design and joint decision-making should be considered good practice and moved at this level. Inclusive governance models offer better pathways for sustainability of projects.*

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SECTION: 12.1 Engagement, Leading Practice, 3

COMMENT:

*See comments on tracking effectiveness in PA5.*

UNGPs Principle 20 : tracking effectiveness must draw on feedback from affected stakeholders -which is now considered leading practice. This needs to be expected at good practice level (merged here with GP7)

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SECTION: 12.1 Engagement, Towards Good Practice, 1

COMMENT:

*This commitment must be adopted through a corporate-level policy - this must be added to key terms in the introduction section.*

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SECTION: 12.1 Engagement, Towards Good Practice, 3

COMMENT:

*Holding separate engagement with women, vulnerable and/or underrepresented groups may be appropriate in certain cases. But what is critical is to ensure that their views are represented in the dialogue -this is missing from the language here.*

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SECTION: Intent

COMMENT:

*One key missing consideration is on when to engage -which must happen before decision to mine is taken, for rights-holders to be able to bear on outcomes. Ensuring feedback shared by communities is duly considered in the final decision and following policy and practice is also key to build long-term trust.*

*See: <https://www.business-humanrights.org/en/from-us/briefings/stop-and-listen-pathways-to-meaningful-engagement-with-rights-holders-in-the-global-rush-to-mine-for-transition-minerals/>*

*This is derived from:*

*- In the UK, the Gunning Principles (<https://www.local.gov.uk/sites/default/files/documents/The%20Gunning%20Principles.pdf>), have evolved out of case law to apply to public consultation, setting out four tenets for consultation to be considered legitimate: that proposals are still at a formative stage; that sufficient information is provided to give "intelligent consideration"; that adequate time is given for consideration and response; and that consultation responses were properly considered in the final decision. - The Aarhus convention explicitly states that effective*

*public participation shall happen when "all options are still open" -i.e., before the decision to mine is granted.*

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## **Performance Area 13: Community Impacts and Benefits**

SECTION: 13.1 Community Impact Management, Towards Good Practice, 2

COMMENT:

*Add after 'mitigation hierarchy', 'where appropriate', since the mitigation hierarchy is not applicable for human rights impacts.*

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SECTION: 13.2 Community Development and Benefits, Leading Practice, 1

COMMENT:

*Collaborating with community representatives, cannot be considered leading practice. For community development plans to result in positive outcomes for mining-affected stakeholders, these must be developed in*

*collaboration with their representatives. It is not clear why ‘collaborate’ here is used and ‘consult’ at the TGP level and ‘engage’ at the GP level.*

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SECTION: 13.2 Community Development and Benefits, Towards Good Practice, 4

COMMENT:

*We suggest to clarify that the provision of employment opportunities should be “dignified”. This means creating jobs that provide a fair income, and ensure fair treatment, respect, and security for all employees.*

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SECTION: Glossary and Interpretive Guidance

COMMENT:

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

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SECTION: Intent

COMMENT:

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

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

COMMENT:

*The second draft does not address the profound concerns expressed by Indigenous Peoples with regards to Free, Prior and Informed Consent (FPIC), and regards it as procedural rather than binding.*

*- Current language limits FPIC to state-led or relocation contexts, disregarding treaty body jurisprudence and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), which set the minimum standards for implementation.*

*- The standard should ensure Indigenous Peoples’ full and effective participation and consent at every stage of the mining life cycle.*

*- FPIC must be recognized as a binding right that includes the ability to give, withhold, or withdraw consent at any time, with binding procedures to pause or halt activities when consent is not granted.*

*- Loopholes that permit companies to declare FPIC “not relevant” and leaves to their discretion to proceed with a project when there is no consent, must be removed from the PA.*

*- Assurance providers must demonstrate Indigenous-rights expertise, and FPIC verification reports, grievances, and remedies must be publicly disclosed.*

*- The CMSI must require grievance and remedy mechanisms that are culturally appropriate, gender-sensitive, and co-designed with Indigenous Peoples. These mechanisms should guarantee confidentiality, non-retaliation, and effective remedy for Indigenous HRDs.*

*- Standards on land, cultural heritage, and environmental stewardship must prioritize prevention of harm. Mitigation or compensation cannot substitute for demonstrated avoidance of impacts.*

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## Performance Area 17: Grievance Management

SECTION: 17.1 Grievance Mechanism for Stakeholders and Rights

COMMENT:

*This PA should include language on grievance mechanisms being independently managed in cases of serious issues, to ensure fairness, accountability, and access to justice. While an internal team might handle minor issues, independent oversight is critical to prevent conflicts of interest and build trust with those who have raised a complaint.*

*This is in line with OHCHR comments on P31 of the UNGPs : <https://www.ohchr.org/sites/default/files/Documents/Issues/Business/and-Remedy/GRAM-presentation-effectiveness-criteria.pdf> and <https://www.ohchr.org/sites/default/files/2022-01/arp-note-meeting-effectiveness-criteria.pdf>*

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QUESTION 1

**Does the scope, content, and narrative style of the consolidated standard meet your individual expectations for responsible production practices?**

Response: **2: Below expectations**

While we acknowledge progress across several performance areas (and PA5 in particular), language still remains misaligned with international human rights law and current responsible business conduct instruments.

The consolidated standard states the good practice level “is a level of practice in line with industry standards and international norms, frameworks and guidelines” . But the standard does not say specifically which international norms, frameworks and guidelines have been incorporated / how performance areas align and where. This leads to minimal or absent public accountability on any equivalency claim to be meeting other international norms, frameworks and guidelines.

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**

See our comments on the Assurance standard. Many of the requirements - and this is particularly true for PA5, rely on language that must be further specified and detailed to be effectively auditable and produce comparable and reliable information accurately reflecting the site/company's performance.

QUESTION 3

**From your perspective, does the three-level performance structure (Towards Good Practice, Good Practice, Leading Practice) 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**

Many of the requirements at the leading practice level, actually correspond to reasonable expectations of responsible business conduct which must be included at the GP level.

### 3. Claims

SECTION: 3.1 Types of Claims, 3.1.3 Performance Claim

COMMENT:

*We suggest the Performance Claim - and related publication on the CMSI website or otherwise, to include details on scores in each of the 48 sub-sections - and not only at an aggregate level.*

*This is important to ensure greater accountability and legitimacy of the standards and of claims made by Facilities - avoiding weaker performance areas to be masked.*

*This could also increase visibility on performance areas that have been assessed as meeting 'leading practice' levels.*

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QUESTION 1

**Does the level of transparency provided by the Claims Policy (i.e. through disclosing scores for each Performance Area, aggregated scores to indicate overall progress towards Good Practice, and Performance Claims) meet your expectations to incentivise continuous performance improvement?**

Response: 2: Below expectations

See our comment in the document