

# CMSI Consultation Response

## Respondent Details

NAME

Luis Rodríguez-Piñero Royo

COUNTRY

Switzerland

PERMISSION

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

STAKEHOLDER

Intergovernmental / multi-lateral organisation

ORGANISATION

Office of the UN High Commissioner for Human Rights (OHCHR)

## 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: No Response

### 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: No Response

Document:  
Assurance

### QUESTION 1

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

Response: 4: Exceeds expectations

Document:  
Standard

## Overarching Glossary

### COMMENT:

*Suggest inclusion: "including through business relationships"*

*Please refer to the definition of "Affected stakeholders" in OHCHR, Access to Remedy in Cases of Business-Related Human Rights Abuse<sup>2</sup> (2024), p. 26.*

COMMENT:

*Business relationship do not only arise from commercial relationships, but may also arise a a result of share-holding. Suggested rephrasing: "An entity thart is relevant to the Facility's commercial activities."*

*See the entry "Business relationships" in OHCHR, Access to Remedy., cit. supra, p. 21.*

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COMMENT:

*'- ...parties subject [of] due diligence...*

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COMMENT:

*The definition is bit autological, as it uses the term that is being defined. Suggested rewriting: ..."responsibilities, undertaking or expectations"...*

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COMMENT:

*Suggested rephrasing:*

*"...with a view to creating or adding value and/or generating revenue..".*

*See entry on "Business enterprise" in OHCHR, Access to Remedy, cit. supra, p. 21.*

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COMMENT:

*Suggested rephrasing: "...,including human rights impacts,..."*

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COMMENT:

*The scope of these "independent reviews", as distinct to "independent audits" and "independent reviews of effectiveness" is not entirely clear.*

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COMMENT:

*Similarly, the difference with "internal audits" and "internal review of effectiveness" is not entirely clear.*

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COMMENT:

*This definition may be to restrictive. From a risk-based due diligence perspective, monitoring should aim to track the effectiveness of actions taken to prevent and mitigate actual risks as identified in prior risk-identification processes. See UNGPs, Principle 20 and its commentary.*

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COMMENT:

*(1) Suggested rephrasing: ..."identification and assessment of potential or actual impacts, includng through engaging with relevant stakeholders".*

*(29) Suggested rephrasing: "...taking to correct, redress and prevent further occurence of identified impacts".*

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COMMENT:

*This definition is a bit autological. Suggest redrafting. The notion of “salient risks” could be useful for these purposes.*

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COMMENT:

*A working definition for Indigenous Peoples - which will define the scope of application of performance area 17 - is lacking. While there is no universal agreed definition of “Indigenous Peoples”, the policies of several financial institutions incorporate working definitions. Attention is brought to the definition included in the World Bank Environmental and Sustainability Standard (ESS) No. 7, at para. 1.*

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COMMENT:

*The expression “In general terms” is confusing in this context, and we would recommend deleting it. It is unclear why Indigenous Peoples are included in this paragraph (see previous comment on this issue).*

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COMMENT:

*Suggestes rephrasing: “...internationally recognized human rights, as defined by the UN Guiding Principles on Business and Human Rights (UNGPs)”*

*Insert link to the UNGPs text.*

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## **Performance Area 01: Corporate Requirements**

SECTION: 1.1 Corporate Accountability

COMMENT:

*The notion of “corporate accountability” in modern sustainability discourse has come to focus more on accountability for adverse impact to the environment and, particularly, to people, rather than internal accountability.*

*For a discussion on the notion of “accountability” in the BHR context, see OHCHR, Access to remedy for business-related abuses: An Interpretative Guide (2024), p. 20.*

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SECTION: 1.4 Risk Assessment

COMMENT:

*It is unclear why Performance Area 1 only cover risk assessment and not sustainability due diligence more generally - irrespective on supply chain due diligence covered by Performance Area 3. It seems to reflect a false dichotomy between the risk management standards guiding the Factory’s operations and those applicable to its value chains. In OHCHR’s view, the standards on “Corporate requirements” should include the basic elements of corporate architecture for conducting due diligence, including human rights due diligence, as an integral part of the company’s risk management systems. The same applies to grievance mechanisms; although they are cover by a different Performance Area, they are also part of a company’s sustainability systems.*

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SECTION: Glossary and Interpretive Guidance

COMMENT:

*Other applicable references could include:*

- The UE Corporate Sustainability Due Diligence Directiva (20024/19760)
  - The OECD Due Diligence Guidance for Responsible Business Conduct
  - The OHCHR Interpretative Guide on the Corporate Responsibility to Respect Human Rights
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### **Performance Area 03: Responsible Supply Chains**

COMMENT:

*Please see general comment in relation to Performance Area 1 above.*

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### **Performance Area 04: New Projects, Expansions and Resettlement**

COMMENT:

*This standard seems to address very different sets of issues. On the one hand, ESIA's (for new projects and expansions) and resettlement, on the other.*

*As pointed out in other comments, the same due diligence approach that guides supply chain management (PA3) and human rights due diligence (PA5 and PA14).*

*From this perspective, ESIA's could be more naturally linked to community impacts and benefits (PA13). This would make more sense from the perspective of risk-based due diligence, which is an iterative process to identify and manage risks and impacts.*

*On the other hand, resettlement affects a specific set of material impacts, which are particularly significant in the mining and minerals sectors. Therefore, OHCHR would recommend a separate PA on resettlement.*

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

SECTION: 5.1 Human Rights, Good Practice, 1

COMMENT:

*See above comment on affected stakeholder/right holder*

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SECTION: 5.1 Human Rights, Good Practice, 2

COMMENT:

*Suggested redrafting: "Enhance the design and implementation of the grievance mechanism..."*

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SECTION: 5.1 Human Rights, Leading Practice, 2

COMMENT:

*See above comment on affected stakeholder/right holder*

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SECTION: 5.1 Human Rights, Towards Good Practice, 2

COMMENT:

See comment on general glossary regarding the expression “vulnerable...groups”

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SECTION: 5.1 Human Rights, Towards Good Practice, 3

COMMENT:

*According to the UNGPs, the objective of grievance mechanisms should be also to provide or contribute to provide effective remedy to affected stakeholders in those cases in which the company has caused or contributed to cause human rights harm.*

*See above comment on stakeholders/right holders. In this case, it would suffice to refer to “right holders” or to “[affected] stakeholders”.*

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SECTION: 5.1 Human Rights, Towards Good Practice, 4

COMMENT:

*Add “all leadership and employees, particularly” as training is needed for everybody in the facility. Suggested rephrasing: “[...] at defined intervals for all leadership and employees, particularly employees who are responsible [...]”*

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SECTION: Glossary and Interpretive Guidance

COMMENT:

*Definition of “human rights”:*

*Rephrase: “For the purposes of the corporate responsibility to respect human rights, internally human rights include, at a minimum...”*

*NOTE: The UNGPs refer to “internationally human rights” in the context of the responsibility that pertain to business to respect those rights, hence the emphasis on a minimum set of rights. But this does not necessarily apply to the general definition of “human rights”.*

*Reference could also be made to other international human rights instruments. In this regard, the commentaries to the UNGPs state the following:*

*“Depending on circumstances, business enterprises may need to consider additional standards. For instance, enterprises should respect the human rights of individuals belonging to specific groups or populations that require particular attention, where they may have adverse human rights impacts on them. In this connection, United Nations instruments have elaborated further on the rights of indigenous peoples; women; national or ethnic, religious and linguistic minorities; children; persons with disabilities; and migrant workers and their families.”*

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COMMENT:

*In terms of guidance materials, the same way the OECD Guidelines are being cited, maybe the OHCHR BHR resources should be cited, instead of the legal instruments (i.e. the UNGPs, the UDHR, the ICCPR, or the ICESCR). The same applies to the UNGC human rights principles*

*It is therefore to replace those by the following guidance materials:*

- OHCHR, Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (2011).*
- OHCHR, The corporate responsibility to respect human rights: An interpretative guide (2012).*
- OHCHR, UNGC and Monash University, Human Rights Translated 2.0 - A Business Reference Guide (2016).*

- UNGC, Human Rights Navigator (online platform: <https://bhr-navigator.unglobalcompact.org/>).

Please note the the UN Guiding Principles reporting framework is not a UN official document, but was produced by Shift.

On the other hand, the resources on security (DCAF, VPs) are already cited in the relevant PA and could be removed from this list.

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SECTION: Intent

COMMENT:

Whereas the note that this performance area overlaps with other related topics in the standards, the fact that human rights due diligence is presented as separate from the company's overall sustainability framework and risk management is problematic. The Standards underlines from the onset that sustainability issues include social, environmental and government issues, thus covering human rights. The same holds true when referring to adverse impacts (see Overarching Glossary).

As pointed out above, sustainability due diligence requirements, including in relation to actual or potential adverse human rights impacts, should be part of the company's sustainability governance (PA1) as well as of supply chain risk management (PA2), and human rights-related methodologies should permeate the way that due diligence is conducted in relation to material impacts more generally. Therefore, HRDD should not be seen as an add-on, but an intrinsic part of the company's risk-management function. This could lead to a reconsideration of whether human rights should be the focus of a specific standards or, on the contrary, whether human rights considerations should be mainstream throughout the Standard.

In terms of other related PA, reference could be made also to PA1 and to PA4.

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COMMENT:

In cases where human rights have been adversely impacted, the terms "rights holder" and "affected stakeholder" may be used interchangeably.

See entry "Right holders", OHCHR, Access to remedy in cases of business-related abuse (2024), p. 26.

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## **Performance Area 06: Child and Forced Labour**

SECTION: 6.1 Prevention of Child and Forced Labour, Good Practice, 1

COMMENT:

Add "prevent" and "account"

[...] to implement practices to prevent, mitigate and account risks associated with the ILO [...]

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SECTION: 6.1 Prevention of Child and Forced Labour, Leading Practice, 2

COMMENT:

to add "handle cases"

[...] and/or implement practices to prevent recurrences and to handle cases.

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SECTION: 6.1 Prevention of Child and Forced Labour, Towards Good Practice, 1

COMMENT:

Add “the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights” as these two instrument explicitly prohibit child and forced labour.

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SECTION: 6.1 Prevention of Child and Forced Labour, Towards Good Practice, 2

COMMENT:

Add reference to the “Convention on the Rights of Child”, which also prohibits child labour

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SECTION: 6.1 Prevention of Child and Forced Labour, Towards Good Practice, 6

COMMENT:

Add “development”:

[...] to protect their health, safety, morals, wellbeing and development.

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SECTION: 6.1 Prevention of Child and Forced Labour, Towards Good Practice, 8

COMMENT:

Add “development”

[...] to cease any immediate harm to life, safety or development [...]

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SECTION: Glossary and Interpretive Guidance

COMMENT:

*Definition of “Child labour”. This is actually the definition of the “worst forms of child labour”, not of “child labour” proper. An additional entry on “Worst forms of child labour” could be included. It is recommended to cite directly the ILO standards and/or ILO official guidance (currently an OECD publication is being cited).*

*Definition of “Forced Labour”. The definition of “force labour” propoer (and not the indicators), should be use here. It is suggested to use ILO standards (i.e. ILO C2, art. 2) or ILO official guidance.*

*List of references:*

*More specific guidance could be used here - See: <https://www.ilo.org/resource/other/ilo-helpdesk-tools-and-resources-business-forced-labour>*

*and*

*<https://www.ilo.org/resource/other/ilo-helpdesk-tools-and-resources-business-child-labour>*

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## **Performance Area 07: Rights of Workers**

SECTION: 7.1 Rights of Workers, Good Practice, 2

COMMENT:

Add “disability-”

*Suggested rephrasing: [...] that reflect gender-, disability- and culturally informed approaches [...].*

*See above comment on the abuse of “vulnerable...groups”*

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SECTION: 7.1 Rights of Workers, Good Practice, 5

COMMENT:

§5-b -Add "when removed"

*Suggested rephrasing: [...] and how it will be safely stored and when removed to protect privacy.*

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SECTION: 7.1 Rights of Workers, Good Practice, 6

COMMENT:

'- Replace "a reasonable" with "an adequate"

- Add "rest"

- *Suggested rephrasing: "[...] maintain an adequate standard of safety, repair [...] appropriate for adequate sleep and rest, and consider [...]*

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SECTION: 7.1 Rights of Workers, Leading Practice, 5

COMMENT:

*The term, "social benefits" is confusing, combining social security benefits and leaves. Annual leaves are statutory in principle. Suggest clarifying this point.*

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SECTION: 7.1 Rights of Workers, Leading Practice, 9

COMMENT:

*Add "assess their implementation" at the end of the sentence.*

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SECTION: 7.1 Rights of Workers, Towards Good Practice, 3

COMMENT:

*Replace "other categories of vulnerable and marginalized groups" with "other status" as provided in both International human rights covenants.*

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SECTION: 7.2 Grievance Mechanism for Workers (Employees and Contractors), Towards Good Practice, 3

COMMENT:

*Add "available support for application.*

*Suggested rephrasing: "[...] which should outline clear process steps, timelines, available support for application, and milestones to assess [...]"*

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SECTION: 7.2 Grievance Mechanism for Workers (Employees and Contractors), Towards Good Practice, 5

COMMENT:

*Add " any policy reforms required to address systemic issues".*

*Suggested rephrasing: "[...] resolution and/or remediation of such issues, and any policy reforms required to address systemic issues, considering provisions [...]"*

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SECTION: Applicability

COMMENT:

*Paragraph 2 of the applicability section seems redundant (as there is already a list of related PAs) and could be deleted*

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SECTION: Glossary and Interpretive Guidance

COMMENT:

*Definition of "Discrimination":*

*Suggest considering the definition made by the UN Committee on Economic, Social and Cultural Rights (CESCR), through its general comment No. 20 on Non-Discrimination in Economic, Social and Cultural Rights.*

*"Discrimination constitutes any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination, including race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability, age, nationality, family and marital status, sexual orientation and gender identity, health status, place of residence, economic and social situations, or other status. Discrimination also includes incitement to discriminate and harassment. Discrimination is manifested in various forms.*

*(a) Formal discrimination: Eliminating formal discrimination requires ensuring that a State's constitution, laws and policy documents do not discriminate on prohibited grounds; for example, laws should not deny equal social security benefits to women on the basis of their marital status;*

*(b) Substantive discrimination: Merely addressing formal discrimination will not ensure substantive equality. Persons are often discriminated by whether a person is a member of a group characterized by the prohibited grounds of discrimination. Eliminating discrimination in practice requires paying sufficient attention to groups of individuals which suffer historical or persistent prejudice instead of merely comparing the formal treatment of individuals in similar situations.*

*(c) Direct discrimination occurs when an individual is treated less favourably than another person in a similar situation for a reason related to a prohibited ground; e.g. where employment in educational or cultural institutions or membership of a trade union is based on the political opinions of applicants or employees. Direct discrimination also includes detrimental acts or omissions on the basis of prohibited grounds where there is no comparable similar situation (e.g. the case of a woman who is pregnant);*

*(d) Indirect discrimination refers to laws, policies or practices which appear neutral at face value, but have a disproportionate impact on certain groups of persons as distinguished by prohibited grounds of discrimination. For instance, requiring a birth registration certificate for school enrolment may discriminate against ethnic minorities or non-nationals who do not possess, or have been denied, such certificates. »*

*Definition of "workers": Suggest explicitly including self-employed workers in the definition.*

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COMMENT:

*References. Instead of a long list of ILO standards (to which UN human rights instruments could be added) an alternative could be to cite the ILO Tripartite Declaration on MNEs along with specific guidance produced by the ILO (.e.g see ILO-IOE, MNE Declaration - A self-assessment tool for enterprises (2022)).*

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SECTION: Intent

COMMENT:

*• To replace "workers' rights to fair and decent employment terms" with a correct human rights term "workers' rights to work and to just and favourable conditions of work".*

• To include “the right to strike”, which is explicitly mentioned in the HR instrument, notably the ICESCR (§8).

*Suggested rephrasing: “Intent: Respect workers’ rights to work and to just and favourable conditions of work and their rights to freedom of association and collective bargaining, including the right to strike, prohibit, prevent [...]”*

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## **Performance Area 08: Diversity, Equity, and Inclusion**

SECTION: Glossary and Interpretive Guidance

COMMENT:

*References.*

*We would recommend not to include a full list of international standards. If this is the preferred option, consider including other relevant UN Instruments, including ICERD, ICEDAW and CRPD.*

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## **Performance Area 09: Safe, Healthy and Respectful Workplaces**

SECTION: 9.1 Health and Safety Management, Good Practice, 4

COMMENT:

*Add “identify”*

*Suggested rephrasing: “[...] implement actions to monitor to identify and mitigate root causes [...]”*

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SECTION: 9.1 Health and Safety Management, Towards Good Practice, 7

COMMENT:

*Add “identify”.*

*Suggested rephrasing: “[...] implement actions to monitor to identify and mitigate root causes [...]”*

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SECTION: 9.4 Monitoring, Performance and Reporting, Towards Good Practice, 1

COMMENT:

*Add “indicators”*

*Suggestes rephrasing: “[...] objectives, targets and/or indicators for workers”*

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SECTION: 9.4 Monitoring, Performance and Reporting, Towards Good Practice, 2

COMMENT:

*Add “indicators”*

*Suggested rephrasing: “Communicate objectives, targets and/or indicators for workers [...]”*

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## **Performance Area 12: Engagement**

SECTION: 12.1 Engagement, Good Practice, 6

COMMENT:

*Definition of “vulnerable and underrepresented stakeholders and rights-holder”. Please refer to comments on “vulnerable...groups” under the Overarching Glossary. Note that the terminology is not consistent across the standards (“vulnerable and underrepresented stakeholders and rights-holders” vs. “vulnerable and marginalized groups”).*

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SECTION: 12.1 Engagement, Leading Practice, 1

COMMENT:

*“Local stakeholders” should be replaced by “potentially affected stakeholders”. Engagement is defined by potential impact, not by physical proximity. Moreover, the emphasis in “local” is at odds with the wide definition of “stakeholders”, which include not only local communities but also the individuals and organizations that represent them.”*

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SECTION: 12.1 Engagement, Towards Good Practice, 2

COMMENT:

*Definition of “vulnerable and underrepresented stakeholders and rights-holder”. Please refer to comments on “vulnerable...groups” under the Overarching Glossary. Note that the terminology is not consistent across the standards (“vulnerable and underrepresented stakeholders and rights-holders” vs. “vulnerable and marginalized groups”).*

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COMMENT:

*Engagement is defined by potential impact, not by physical proximity. Moreover, the emphasis in “local” is at odds with the wide definition of “stakeholders”, which include not only local communities but also the individuals and organizations that represent them.*

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SECTION: 12.1 Engagement, Towards Good Practice, 3

COMMENT:

*Definition of “vulnerable and underrepresented stakeholders and rights-holder”. Please refer to comments on “vulnerable...groups” under the Overarching Glossary. Note that the terminology is not consistent across the standards (“vulnerable and underrepresented stakeholders and rights-holders” vs. “vulnerable and marginalized groups”).*

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SECTION: Applicability

COMMENT:

*Depending on the context, “stakeholders” and “rights holders” may be functional equivalents. According to OHCHR:*

*Stakeholder, in relation to a business enterprise, is any individual or community who may affect or be affected by that business enterprise’s operations, products or services, including through business relationships. The term may also refer to others involved in representing the interests of such individuals or communities, such as human rights defenders, trade unions or civil society organizations. “Affected stakeholders” refers specifically to stakeholders whose human rights have been adversely impacted by a business enterprise’s operations, products or services, including through business relationships. The term “potentially affected stakeholders”*

*refers to those who may be at risk of having their human rights adversely impacted. There is substantial overlap between the concept of “affected stakeholders” and the concepts of “rights holder” and “victim” (and also between the terms “potentially affected stakeholder” and “rights holder”)*

*See OHCHR, Access to remedy in case of business-related abuse: Interpretative guide (2024), p. 26.*

*For the purpose of this PA, OJCHR would recommend substituting “stakeholders and right holders” y “stakeholders” (or, depending on the context, “potentially affected stakeholder”).*

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SECTION: Glossary and Interpretive Guidance

COMMENT:

*Definition of “vulnerable and underrepresented stakeholders and rights-holder”. Please refer to comments on “vulnerable...groups” under the Overarching Glossary. Note that the terminology is not consisnet accross the standards (“vulnerable and underrepresented stakeholders and rights-holders” vs. “vulnerable and marginalized groups”).*

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

SECTION: 13.1 Community Impact Management, Good Practice, 2

COMMENT:

*See comments on “vulnerable..groups” under “Overarching Glossary”.*

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SECTION: 13.1 Community Impact Management

COMMENT:

*Depending on the context, “stakeholders” and “rights holders” may be functional equivalents. According to OHCHR:*

*Stakeholder, in relation to a business enterprise, is any individual or community who may affect or be affected by that business enterprise’s operations, products or services, including through business relationships. The term may also refer to others involved in representing the interests of such individuals or communities, such as human rights defenders, trade unions or civil society organizations. “Affected stakeholders” refers specifically to stakeholders whose human rights have been adversely impacted by a business enterprise’s operations, products or services, including through business relationships. The term “potentially affected stakeholders” refers to those who may be at risk of having their human rights adversely impacted. There is substantial overlap between the concept of “affected stakeholders” and the concepts of “rights holder” and “victim” (and also between the terms “potentially affected stakeholder” and “rights holder”)*

*See OHCHR, Access to remedy in case of business-related abuse: Interpretative guide (2024), p. 26.*

*For the purpose of this PA, OHCHR would recommend substituting “stakeholders and right holders” by “stakeholders” (or, depending on the context, “potentially affected stakeholder”).*

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SECTION: Glossary and Interpretive Guidance

COMMENT:

*Defined “local” by the “area of influence” of the project.*

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COMMENT:

*Definition of “vulnerable and underrepresented stakeholders and rights-holder”. Please refer to comments on “vulnerable...groups” under the Overarching Glossary. Note that the terminology is not consistent across the standards (“vulnerable and underrepresented stakeholders and rights-holders” vs. “vulnerable and marginalized groups”).*

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COMMENT:

*As pointed out in other comments, the same due diligence approach that guides supply chain management (PA3) and human rights due diligence (PA5 and PA14).*

*From this perspective, community impacts could be more naturally linked to ESIA (PA4). This would make more sense from the perspective of risk-based due diligence, which is an iterative process to identify and manage risks and impacts.*

*Community benefits, while often conceived as “positive impacts”, fall beyond the scope of risk management and sustainability due diligence, as these focus on potential or actual adverse impact.*

*From a due diligence perspective, adverse impacts cannot be offset with community benefits, but need to be accounted for through remedial processes.*

*On the other hand, community benefits could be conceptually linked to stakeholder engagement and social license to operate (SLO).*

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

SECTION: 14.1 Indigenous Peoples, Good Practice, 4

COMMENT:

*Suggest removing the word “local” and saying instead “the Indigenous Peoples involved” or “the relevant Indigenous Peoples”.*

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SECTION: 14.1 Indigenous Peoples, Leading Practice, 1

COMMENT:

*More than making this training available, it should be mandatory for any workers that might interact with Indigenous Peoples.*

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SECTION: 14.1 Indigenous Peoples, Leading Practice, 3

COMMENT:

*Indigenous Peoples often find themselves in a weak negotiating position when it comes to benefit sharing. Might there be some scope to address this in the guidelines?*

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SECTION: 14.1 Indigenous Peoples, Leading Practice, 4

COMMENT:

*Ditto*

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SECTION: 14.1 Indigenous Peoples, Towards Good Practice, 5

COMMENT:

*This approach assumes that agreement will be obtained -FPIC is portrayed as a pro-forma requirement to tick a box rather than as a genuine vehicle for Indigenous Peoples to oppose themselves to a project or to particular elements of a project that may affect them.*

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SECTION: Applicability

COMMENT:

*It is unclear why human rights due diligence is singled out in PA14, as it should apply to all material topics, and be part of the wider sustainability due diligence efforts performed by the Factory across its own operations and its business relationships.*

*It is important to note normative foundations of FPIC is to stakeholder engagement under the UNGPs, but indigenous peoples' right to self-determination. Suggested rephrasing: Under the UNDRIP and other international standards regarding indigenous peoples' rights, and consistent with the UNDP's expectation of meaningful stakeholder engagement...*

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SECTION: Glossary and Interpretive Guidance

COMMENT:

*We would suggest merging the two entries of FPIC ("Demonstrating free, prior and informed consent" and "free prior and informed consent".*

*The second paragraph "Indigenous Peoples must be free to define consent is problematic, etc..." is problematic. From an international legal standpoint, consent and agreement are identical notions (see ILO Convention 169, art. 6.2; A/HRC/24/41, paras. 40ff). The fact that agreement or consent should be documented does not stem from indigenous peoples' decision-making processes, but rather from the need to respect those processes. All agreements should be documented, and all agreement will typically involved aspects of risk management, participation, and benefit-sharing. The fact that communities engage into negotiations while withholding agreement or consent is only logical, as agreement is the outcome of negotiations, not a precondition. Given these conceptual issues, we would suggest deleting this paragraph.*

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COMMENT:

*We would suggest merging the two entries of FPIC ("Demonstrating free, prior and informed consent" and "free prior and informed consent".*

*The second paragraph "Indigenous Peoples must be free to define consent is problematic, etc..." is problematic. From an international legal standpoint, consent and agreement are identical notions (see ILO Convention 169, art. 6.2; A/HRC/24/41, paras. 40ff). The fact that agreement or consent should be documented does not stem from indigenous peoples' decision-making processes, but rather from the need to respect those processes. All agreements should be documented, and all agreement will typically involved aspects of risk management, participation, and benefit-sharing. The fact that communities engage into negotiations while withholding agreement or consent is only logical, as agreement is the outcome of negotiations, not a precondition. Given these conceptual issues, we would suggest deleting this paragraph.*

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SECTION: Intent

COMMENT:

*Framing the PA's intent under UNDRIP and the UNGP sends a strong signal.*

*However, while PA14 acknowledges free, prior and informed consent (FPIC), the language refers to obtaining "agreement with affected Indigenous Peoples through a process demonstrating free, prior and informed*

consent (FPIC) to anticipated impacts on their lands, territories or other rights". This approach risks viewing the process of seeking FPIC as evidence of consent in itself. This falls short of fully embedding FPIC, where obtaining consent is a fundamental requirement (see United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), Art. 32.2- including the right to withhold consent).

The glossary definition does acknowledge the fact that Indigenous Peoples can collectively withhold their consent. However, the guidelines do not address the question of what happens when they do so.

In addition We would suggest adding the following to the list of "other relevant performance areas":

- o 8. Diversity, equity and Inclusion
- o 16. Artisanal and small-scale mining
- o 18. Water stewardship

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## Performance Area 17: Grievance Management

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

COMMENT:

See comment on the use of the term "vulnerable...groups" under the section "Overarching Glossary".

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SECTION: 17.1 Grievance Mechanism for Stakeholders and Rights

COMMENT:

Substitute "Stakeholders and Rights-Holders" by "Affected Stakeholders"

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COMMENT:

The criteria for defining "Good practice" and "Leading practice" could ne further enhanced by incorporating some of the suggested action included in the document OHCHR Accountability and Remedy Project: Meeting the UNGPs' Effectiveness Criteria (2021), available at: <https://www.ohchr.org/sites/default/files/2022-01/arp-note-meeting-effectiveness-criteria.pdf>

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SECTION: Glossary and Interpretive Guidance

COMMENT:

Definition of "Vulnerable and marginalized groups": please see See comment on the use of the term "vulnerable...groups" under the section "Overarching Glossary".

References. The folloiwng sources could also be included:

OHCHR, Access to remedy in cases of business-related abuse: An interpretative guide (2024)

OHCHR, Acces to remedy in cases of business-related abuse: Practical guidance for non-State-based grievance mechanisms (2024).

OHCHR, Accountability and Remedy Project: Meeting the UNGPs' Effectiveness Criteria (2021)

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SECTION: Intent

COMMENT:

Access to grievance mechanisms should not be limited to “local communities”, but to all “affected stakeholder” (please note that “affected stakeholder” and “rights holders” are equivalent, so no need to repeat the terms). Cfr. the commentary to UNGP 29, which states that “[o]perational-level grievance mechanisms are accessible directly to individuals and communities who may be adversely impacted by a business enterprise.” This broad definition is consistent with PA7, which states that workers’ grievance mechanism can be either separate mechanisms or be part of an overarching grievance mechanism.

Under the UNGPs, companies have a responsibility to provide remedy when harm has occurred, not to “facilitate access to remedy” (which corresponds to the State).

This responsibility does not extend to harm that has not been directly caused by the companies, but to which it may be directly linked through its business relationships. According to the commentaries to the UNGPs, “[w]here adverse impacts have occurred that the business enterprise has not caused or contributed to, but which are directly linked to its operations, products or services by a business relationship, the responsibility to respect human rights does not require that the enterprise itself provide for remediation, though it may take a role in doing so”.

Please consider rephrasing the paragraph on intent in light of the above considerations.

As pointed out above, grievance mechanism are directly related to corporate sustainability functions in PA1.

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## Performance Area 24: Closure

SECTION: Glossary and Interpretive Guidance

COMMENT:

Consider adding the following references:

IFC-CAO, *Responsible Exit: Discussion and Practice in Development Finance Institutions and Beyond* (2023), available at:

<https://www.cao-ombudsman.org/ResponsibleExit>

OHCHR, *Business and Human Rights in Challenging Contexts: Considerations for Remaining and Exiting* (2023)

UNP-Finance Initiative, *Responsible exit considerations* (2024), available at: <https://www.unepfi.org/humanrightstoolkit/wp-content/uploads/2024/12/C3.-Taking-action-Responsible-exit-considerations.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: 3: Meets 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 (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: 4: Exceeds expectations

### 3. Claims

SECTION: 3.3 Standard Revisions and Claims

COMMENT:

*The document correyly incorporates a process of revision of claims where “instances of misuse are identified”, relying on the secretariat as the main . However, the process of revision does not open to door to potential communications from affected stakeholder that could present evidence of lack of compliance of the Standard by an assured Facility.*

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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: 4: Exceeds expectations