

CMSI Consultation Response

Respondent Details

NAME

Aubrey Menard

COUNTRY

United States

PERMISSION

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

STAKEHOLDER

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

ORGANISATION

Oxfam

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

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

Not including the Governance Model in the second consultation process has left it significantly weak. The current Governance Model falls short of creating a multi-stakeholder initiative, making this a far less impactful standard than the vision initially set out.

Document:
Assurance

4. Consolidated Standard External Assurance Process

SECTION: 4.3 Execution of Facility Assessment, 4.3.4 Performance Determinations

COMMENT:

The current framework does not specify whether corrective action plans identified by assurance providers will be publicly available. Publishing these plans, either as part of the Statement of Findings or alongside it, would give rights holders, investors, and value-chain partners visibility into what changes are required and how companies intend to address gaps. This transparency would also help external stakeholders monitor progress and hold companies to their commitments.

COMMENT:

Assurance providers should advise companies on the requirements they must meet in order to meet the next level (leading or good practice) as a standard part of the assurance process, rather than as an additional practice that companies may opt into. Publishing this guidance as part of, or together with, the Statement of Findings would further support companies in charting a path toward higher performance.

SECTION: 4.5 Reporting

COMMENT:

A credible assurance system depends on transparent reporting. Users of the CMSI—whether communities, civil society, investors, or downstream companies—need a clear explanation of how each site performed against the Standard and why certain requirements were deemed applicable or not. Without that detail, it is difficult to understand how judgments were made or whether the Standard is being applied evenly. Requiring the publication of a fuller, more granular Statement of Findings, including site-level assessments of each criterion, would strengthen confidence in the assurance process and improve overall accountability.

QUESTION 1

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

Response: 2: Below expectations

Document:
Standard

General comment on Performance Area

COMMENT:

We remain disappointed that the Governance Model was not put forward for a second consultation as we had expected and that it therefore falls short of the ISEAL Code of Good Practice for Sustainability Systems. Our reading of the Governance Model and conversations with advisory group members have led us to conclude that the CMSI does not follow a multi-stakeholder model. Specifically, stakeholder groups are not allowed to select their own members, and primacy of fiduciary duties of board members is to the CMSI rather than their own constituency or to the organizations that they represent. We therefore recommend that all references to multi-stakeholder participation or governance be removed from the standard. It should also be noted that as the CMSI falls short of multi-stakeholder governance requirements, it does not meet the verification scheme requirements of the EU Critical Raw Materials Act.

Although establishing National Panels that can offer country-level interpretations for implementers and assurance providers could meaningfully enhance how the CMSI is governed and applied – this approach carries significant risks. Without clear protections, these panels could be used to water down CMSI expectations in particular countries. Our concern is heightened by the idea that national mining associations might be responsible for convening these bodies. In many cases, such associations are too closely tied to industry interests to oversee a process requiring impartiality, potentially jeopardizing the standard’s legitimacy within those national contexts.

Performance Area 01: Corporate Requirements

SECTION: 1.1 Corporate Accountability, Leading Practice, 2

COMMENT:

BENEFICIAL OWNERSHIP

We are glad to see that the disclosure of beneficial ownership information has been added to the Standard but recommend that it is at the “good” rather than “leading” practice level as it already required for all companies under the EITI Standard.

SECTION: 1.1 Corporate Accountability

COMMENT:

CONTRACT TRANSPARENCY

- By requiring disclosure of “new” contracts and not setting a date, the CMSI creates significant ambiguity about what contracts are required to be disclosed. We recommend setting a date of January 1, 2021, in line with the ICMM commitment on contracts and the EITI requirement.

- We recommend that publication of post-2021 contracts is included at the “towards good practice” level as it is an established international norm.

- We recommend that disclosure of all contracts be included at the “good” practice level.

COMMENT:

RESPONSIBLE TAX

Responsible tax is still completely missing from the document despite WGC’s commitment on responsible tax and transfer pricing. We therefore reiterate our previous recommendation: We recommend that the CMSI builds a new requirement on responsible tax practices based off the B-Team Responsible Tax Practices which cover compliance, business structure, relationships with tax authorities, seeking and accepting tax incentives, supporting effective tax systems, and transparency. We also recommend that the CMSI adopts the EITI’s tax disclosure requirements.

SECTION: 1.1 Corporate Accountability, Towards Good Practice

COMMENT:

PUBLIC COUNTRY-BY-COUNTRY FINANCIAL REPORTING

- PCBCR remains missing from the Standard. We recommend that the CMSI includes country-by-country tax reporting as “Towards Good Practice” in line with the ICMM Social and Economic Reporting Framework and Guidance. There is no need to tier this requirement.

SECTION: 1.3 Transparency of Mineral Revenues, Towards Good Practice, 2

COMMENT:

We appreciate the requirement for disclosure of project-level payments-to-governments in all countries of operation at all levels.

Performance Area 04: New Projects, Expansions and Resettlement

SECTION: 4.1 Environmental and Social Impact Assessments

COMMENT:

We appreciate the additional and important language on gender and inclusion added into the Standard. However, we notice that neither an ESIA disclosure nor the development of management plans to address risks identified in ESIA is required for "Towards Good Practice." All companies should be required to develop risk management plans in response to ESIA and to disclose both these plans and the full ESIA online and in a manner that is accessible to communities. Citizens and local communities should have easy access to this fundamental information related to project risks and risk mitigation.

The requirement under "Leading Practice" to provide support for stakeholder and rightsholder participation in ESIA and mitigation plan development is a positive one. However, this support should be required for "Good Practice", and more detail should be included regarding the nature of the support. Communities should be provided support at least, to:

- Conduct mapping and baseline studies of their land, resources and assets, including descriptions of their uses, value and tenure arrangements, with the help of cartographers and other specialists;*
- Engage effectively with the project developer on participatory impact assessments of project design options, including with the support of independent technical specialists, including mining engineers, and environmental and social specialists; and*
- Design a benefits package they wish to attain from the project, with the support of development specialists.*

SECTION: 4.2 Land Acquisition and Resettlement

COMMENT:

We appreciate the important requirement that companies avoid involuntary displacement wherever possible and only consider this after alternative project designs have been offered. The CMSI should add that involuntary displacement should only be carried out in the most exceptional circumstances, in strict accordance with international human rights law principles. Any invocation by governments of "public interest" or a "public purpose" to justify expropriation and override community objections must be subject to a rigorous human rights assessment, including an assessment of necessity and proportionality. International law sets a high bar and requires due process, access to legal remedies and other safeguards to uphold human rights. Even in the rare cases where governments seek to exercise legitimate human rights-compliant expropriation, project developers should seek good-faith agreements with communities to avoid adverse impacts and provide meaningful benefits. In such cases, the minimum necessary land and resources should be affected, and communities should retain the right to designate certain areas—such as those with cultural or spiritual significance or of high value to their livelihoods—as "no-go zones."

The CMSI should require all companies to develop Resettlement Action Plans and livelihood restoration plans, in consultation with local stakeholders, in "Towards Good Practice." It is encouraging to see this requirement in "Good Practice," but it should apply to all companies engaging with the CMSI. A RAP details the procedures that companies will follow and the actions they will take to mitigate adverse impacts, compensate losses, and provide benefits to affected communities. It is vital that companies develop and publish detailed commitments on these issues in order to mitigate risk and promote accountability. Further, the Standard should state explicitly that RAPs and livelihood restoration plans will ensure fair and equitable compensation and the improvement of livelihoods and wellbeing of affected communities. Communities should be supported in assessing options for replacement cost compensation, income restoration and other measures that will not only offset losses but provide benefits that will put communities in a better position, as determined by them and aligned with their own development goals.

We appreciate the requirement for projects to implement the provisions of IFC Performance Standard 7 on Indigenous Rights. The CMSI should also require implementation of all of IFC Performance Standard 5 within "Towards Good Practice" and not only as pertains to the development of RAPs. The CMSI should also go beyond PS5 and require a negotiated agreement with independent support for affected communities in line with IRMA. Agreements should be reached through a mutually accepted agreement-making process.

Performance Area 05: Human Rights

SECTION: 5.1 Human Rights

COMMENT:

We appreciate the very important requirement in 5.1.1 to publicly disclose a human rights policy in line with the UNGPs. This is a fundamental step for companies. CMSI should build on this requirement, making it explicit that the policy should be corporate-wide and should account not only for adverse impacts that the company causes or contributes to directly, but also impacts linked to its operations, products or services by its business operations, in line with principle 17 of the UNGPs. In "Towards Good Practice," CMSI should also make clear that human rights due diligence is required for all projects and must be ongoing throughout the life of the project (not just limited to human rights risk assessment at the outset of the project).

On human rights defenders, we welcome the useful additional references in this version of the CMSI but ask for an explicit requirement that companies have a publicly available policy on the protection of human rights defenders which includes a commitment to not tolerate or contribute to attacks on human rights defenders and ensure that their business relationships do the same. Also, at least for "Good Practice," companies should have a policy commitment to work with human rights defenders to create a safe and enabling environment for civic engagement and human rights. "Good Practice" should also require that companies refrain from supporting strategic lawsuits against public participation (SLAPPs) or other legal strategies that diminish established legal protections for human rights defenders and should use their leverage (publicly or privately) to defend human rights defenders under threat.

Performance Area 07: Rights of Workers

SECTION: 7.1 Rights of Workers, Towards Good Practice

COMMENT:

While we are happy to see that requirement 4 on remuneration review has been expanded, we recommend that it include a public disclosure requirement rather than internal review. We appreciate that publicly reporting ratios of entry level wage by gender has been added, we recommend that this is taken up at a "Towards Good Practice" rather than "Leading Practice" level.

Additionally, we notice that the ICMM's Social and Economic Reporting commitments have still not been added to the Standard. We reiterate our previous recommendations to add these important provisions to enhance gender provisions throughout the Standard:

- Include ICMM's guidance on training as Foundational Practice in the CMSI. Specifically, "Companies to provide an overview of the training provided to their direct employees including: a) Average hours of training per person that the organization's employees have undertaken during the reporting period, by gender and employee category (total number of hours of training provided to employees divided by the number of employees). b) Average training expenditure per full-time employee (total cost of training provided to employees divided by the number of employees). c) Percentage of employees that received training (split per employee category and where relevant equality categories). This indicator should also be disaggregated per gender and, if appropriate, ethnicity to the extent practicable based on the local operating context and what is legally permissible."

- Include ICMM's guidance on education and skills reporting in the CMSI. Specifically, "Companies to provide details on the range of education and skills programs that they deploy outside of their workforce, including: a) Number of education and skills programs supported with a proposed initial classification to cover support for early childhood development, bursaries and scholarships provided across all education levels, provision of primary/secondary/ tertiary education support (including after school programs or online support) and

adult learning programs; b) Total investment on education and skills program(s) (outside of workforce) split by program area; and c) Total number of beneficiaries of education and skills programs (disaggregated per gender and ethnicity).”

- Include ICMM’s guidance on capacity and institutional support reporting in the CMSI. Specifically, “Companies to provide details on the range of capacity and institution programs that they support, including: a) Number of capacity and institution programs supported with a proposed initial classification to cover training programs specifically focused on local government or community leadership development, funding for civic organizations and, where relevant, other programs such as staff secondments or leadership development programs external to the workforce. (Programs reported under this core indicator should be distinct to the programs reported in relation to education and skills to avoid duplication of reporting.) b) Total investment on capacity and institution programs split by program area. c) Total number of beneficiaries of capacity and institution programs (disaggregated per gender and ethnicity to the extent practicable based on their local operating context and what is legally permissible).”

Performance Area 12: Engagement

SECTION: 12.1 Engagement

COMMENT:

While the references to meaningful engagement with stakeholders and rights holders in this performance area are important, this performance area does not go far enough toward ensuring that communities affected by mining projects have a real say in decisions regarding the project. Project-affected communities are not just any stakeholders. They risk facing direct impacts to the lands and resources on which they depend for their lives and livelihoods. CMSI should require that company dialogue with local communities is supported by independent experts, selected by the communities themselves, with independent moderation for the dialogue and the aim of achieving negotiated agreements on impacts and benefits when communities wish to negotiate. Project-affected communities should have the option of a no-go decision on the project in light of the potential severity of the impacts, and projects should not move forward without ensuring broad community support. The CMSI should also require companies apply IFC Performance Standard 1, which includes specific guidance on the implementation of inclusive consultation processes.

Performance Area 13: Community Impacts and Benefits

SECTION: 13.2 Community Development and Benefits

COMMENT:

We reiterate our recommendation that the “Good Practice” level includes reporting statistics on local procurement spending so that is in alignment with the ICMM’s reporting guidance and the RRA, and include use of either the ICMM’s guidance on local procurement reporting or the Mining Local Procurement Reporting Mechanism (LPRM), at the “Leading Practice” level. This should also state that this data should be disaggregated by gender to match the recommendation in the ICMM’s guidance.

Performance Area 14: Indigenous Peoples

SECTION: Glossary and Interpretive Guidance

COMMENT:

We appreciate the improvements to this performance area since the first draft, including for example the requirement for companies to obtain FPIC at the “Towards Good Practice” level and the new protections for communities living in voluntary isolation. However, we remain very concerned about the reference in the Glossary to the alleged prerogative of States to override Indigenous Peoples’ decisions. The CMSI must be very clear that companies have the obligation to respect the outcomes of negotiations with Indigenous Peoples, and that governments do not have the right to override these outcomes.

Unfortunately, language under “Opposition” in the glossary muddies the water on a government’s obligation to respect negotiation outcomes. It refers to “exceptional circumstances” where agreement has not been obtained and where “the State has lawfully limited Indigenous Peoples’ rights through a process that is necessary, proportionate, and directed towards a legitimate public interest objective...” This language should be deleted from the Standard as it implies that projects may move forward even in the absence of Indigenous Peoples’ consent, which is inconsistent with international law. The Standard should state clearly that projects should not move forward unless Indigenous Peoples FPIC is secured. The Interamerican Court and Commission on Human Rights have been clear regarding the obligation of states to uphold the right to FPIC for large-scale projects impacting Indigenous peoples (see *Saramaka v. Suriname* and recent Report No. 8/24 CASE 13.083 for specific cases). Similarly, the African Commission on Human and Peoples’ Rights Resolution 224 affirms the right to FPIC for decision-making related to natural resource governance.

States cannot trump Indigenous rights in the name of economic development. Special Rapporteur James Anaya made this point evident in his report on extractive industries and Indigenous Peoples: “...a valid public purpose is not found in mere commercial interests or revenue-raising objectives, and certainly not when benefits from the extractive activities are primarily for private gain” (A/HRC/24/41, para. 35). The CMSI needs to make very clear that companies must respect the outcome of negotiations with Indigenous Peoples and that governments do not have the right to override these decisions. Guidance on FPIC implementation in existing standards such as the IFC Performance Standard 7, IRMA, RSPO, and the UN Global Compact Business Reference Guide to UNDRIP do not include this problematic provision to override Indigenous decisions in “exceptional circumstances,” and CMSI should follow their lead and avoid creating an unnecessary, unclear, and dangerous loophole with the use of this language. There should also be explicit language that no relocation or eviction of affected Indigenous Peoples shall take place without their FPIC. Further, there should be language affirming that Indigenous Peoples have the right to fair and equitable compensation and comprehensive rehabilitation of mined-out areas.

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

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

Many of these requirements lack sufficient detail for implementation and performance improvement.

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

There is still not a incentive structure for companies to move from Good to Leading practice. Further, the assurance process should provide public feedback about how to make these improvements.

Document:
Claims

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