

CMSI Consultation Response

Respondent Details

NAME

A total of 9 representatives of Indigenous Peoples and Indigenous Peoples organisations and a total of 3 representatives of CMSI partner organisations joined the meeting. A list of participants that attended the meeting is provided in Annex A. To enable a safe space, the meeting was conducted under Chatham House Rule and as such any comments or feedback have not been attributed to specific individuals or organisations.

COUNTRY

Switzerland

PERMISSION

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

STAKEHOLDER

NA

ORGANISATION

In-person meeting with representatives of Indigenous Peoples

The Consolidated Mining Standard Initiative (CMSI) hosted an in-person meeting with representatives of Indigenous Peoples as part of the CMSI's second and final public consultation. The meeting created space for CMSI to listen to representatives of Indigenous Peoples and Indigenous Peoples organisations on the second public consultation documents, including the revised draft consolidated standard and assurance process.

The below captures a summary of the key points of feedback on how the engagement process and the public consultation documents can be improved to better consider the views and perspectives of Indigenous Peoples.

COMMENTS & QUESTIONS BY DOCUMENT

Document:
Standard

General comment on Performance Area

COMMENT:

Purpose and Framing of the Meeting: Participants questioned the meeting objective and how CMSI will communicate this meeting. Participants noted that they do not represent all Indigenous Peoples groups globally and that there is a difference between engagement vs consultation. There was consensus from participants that this meeting should not be framed as a meaningful engagement or consultation as this would have required an in-depth process where CMSI would consult with Indigenous Peoples from the seven sociocultural regions to have robust input and greater involvement in the development of the final standard. Participants emphasised the role of

Indigenous Peoples as rights holders, not only as stakeholders. Participants noted their feedback should not be used to weaken previously established points in the first public consultation or any official submissions during the second public consultation.

COMMENT:

CMSI Partners Engagement: Participants noted the lack of representation from all four partners of the initiative and suggested robust engagement can only be achieved with all four partners present. CMSI partners described this as an opportunity to listen and to receive additional feedback on the submitted position statements during the second public consultation to build an in-depth understanding of their viewpoints.

COMMENT:

Overall Statement: Indigenous Peoples who participated in the meeting expressed that they cannot accept the current draft standard, as it is insufficient in ensuring respect for Indigenous Peoples' rights as presented in the points raised in the statements developed under the leadership of Tallgrass Institute and IPRI.

COMMENT:

Free, Prior & Informed Consent (FPIC): Participants emphasised FPIC is a right, not just a process, and must be respected at all stages of the mining lifecycle (exploration, operation and closure) and for the standard to be credible. Participants suggested the changes from the first public consultation were cosmetic and changes need to be implemented with explicit language in the standard to ensure states cannot override Indigenous Peoples consent, and that companies cannot rely solely on state decisions to override consent of Indigenous Peoples as a basis to proceed with projects. The need for binding procedures allowing Indigenous Peoples to withdraw consent at any time was highlighted as integral to ensure correction of power imbalances. Participants noted that the "opposition" definition currently enables companies to move forward if there is opposition. The standard needs to be clear that if there is any level of opposition and break in the community cohesion, there needs to be a halt in the process. Furthermore, participants noted that an agreement is not the same as consent, and the two are different. Participants made it clear that it

is consent that is required and non-negotiable.

COMMENT:

Unanimity and Consent: Participants noted that the standard currently notes that unanimity is not required as part of FPIC. They noted that companies use this as a loophole to bypass consent or seek consent from specific leaders/authority within Indigenous communities and that companies should be encouraged not to proceed at all with any level of opposition. Participants also noted this is where companies' due diligence and understanding of Indigenous Peoples, their representative governance structures and decisionmaking protocols is integral to understand how communities will provide consent and from whom.

COMMENT:

Alignment with leading frameworks and standards: Participants advocated for alignment with the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) as the minimum benchmark.

COMMENT:

Language and Definitions: Participants noted the draft language allows loopholes for companies to bypass consent. There was a call for clearer definitions and operational guidelines, particularly regarding what constitutes consent, opposition, and benefit-sharing agreements. Participants requested greater clarity for definitions in the glossary, specifically regarding benefit sharing, agreements and opposition, encouraging clarification in the glossary and standard to allow for company measurement of adherence. Participants linked the importance of alignment between PA14 and PA17 on grievance management, emphasising the need for a culturally sensitive grievance mechanism for Indigenous Peoples. Language regarding relocation was highlighted as misaligned from what is in UNDRIP and a serious concern

COMMENT:

Identification and Mapping of Indigenous Peoples and Territories: Participants raised concern about relying on states and/or companies for identification of affected Indigenous Peoples, as this often leads to exclusion of some groups who may not be legally recognised. The importance of robust independent verification with experts and involvement of Indigenous

communities in mapping Indigenous Peoples and their territories was stressed as critical to ensure appropriate people are contacted and companies understand from whom consent is required, including from groups who have ancestral ties to the land/territory. Safeguarding Indigenous Peoples in voluntary isolation and initial contact was highlighted as critical as Indigenous Peoples in voluntary isolation (PIACI) cannot be contacted at all, not even to solicit FPIC. The presumption in areas with PIACI should be that there is no consent for any development whatsoever, and no development should occur in and around those locations. Mining companies should refrain from attempting any contact with them.

COMMENT:

Future Engagement: Participants suggested continuous engagement with Indigenous Peoples on CMSI (including PA14 but across the entire standard, and other relevant documents) is essential to create a strong standard, suggesting regional consultations with Indigenous Peoples from the seven socio-cultural regions with time and resources built in to reviewing and draft documents beforehand, and suitable discussion time. Suggestions also included having mining companies, e.g. representatives from the CMSI Industry Advisory Group, involved in discussions to allow for alignment and understanding. CMSI representatives noted they cannot make any commitments around future engagement at the time of the meeting.

COMMENT:

Transition of Companies to CMSI: Participants inquired about the transition for member companies to the CMSI, specifically raising what would happen with the ICMM's Indigenous Peoples Position Statement. CMSI representatives emphasised that CMSI aims to streamline these standards into one, and the timeline for company transition is currently being confirmed by each CMSI partner organisation.

COMMENT:

CMSI Governance Model: Participants raised concern regarding the CMSI's governance model and over how the current model can ensure Indigenous Peoples participate at the highest level (within the envisioned Board structure) and the process for selecting Indigenous representation. Participants noted the CMSI should hold another consultation on the governance model before its

instituted with Indigenous Peoples positions taken into account and integrated, not just heard.

COMMENT:

Next Steps: CMSI representatives noted that the next steps on integrating feedback from the public consultation are under discussion among the CMSI partners. They clarified that The Copper Mark is in the process of evolving its Board of Directors and will own and manage the implementation of the Consolidated Mining Standard. The evolved Board of the Copper Mark will oversee the finalization of the Consolidated Mining Standard

Annex A: List of Participants

1. Alma Sinumlag (IPRI)
2. Eirik Larsen (Saami Council)
3. Yblin Roman (SIRGE)
4. Kate Finn (Tallgrass Institute)
5. Anonymous Participant
6. Anonymous Participant
7. Anonymous Participant
8. Anonymous Participant
9. Anonymous Participant

Representatives of the CMSI Partner Organisations that attended the in-person meeting

1. Michèle Brülhart (The Copper Mark)
2. Haajarah Ahmed (ICMM)
3. Elizabeth Gelder (ICMM)