Aggregated Collective CSO Submission to the CMSI Public Consultation

Date of Submission: December 13, 2024

Preface to this Aggregated Submission Document

This is an aggregation of comments submitted in the first Public Consultation of the CMSI that are the fruit of a collective effort made by civil society organizations to analyze the draft standard, the assurance process, claims and reporting policy, and proposed governance model. To help distinguish between CMSI draft text - and comments, questions, and analysis provided by CSOs in this submission - all CMSI draft text is in red, while all CSO commentary is in black.

The following organizations provided input and contributions for this collective submission: the Business and Human Rights Resource Centre (BHRRC), the Centre for Research on Multinational Corporations (SOMO), Public Citizen, Earthworks, IndustriALL Global Union, Rainforest Foundation Norway, Mighty Earth, the Sunrise Project, and the Securing Indigenous Peoples' Rights in the Green Economy (SIRGE) Coalition, among others.

The CMSI Public Consultation Portal's system for submitting comments does not allow for the upload of a single document such as this, but rather requires the user to submit comments in text boxes which correspond to each section of the four draft documents under consultation. It does not appear that this format will produce a public-facing set of submissions that are easy to read and navigate. Thus the value of the present document, for interested parties to be able to easily read and navigate the entirety of this collective CSO submission.

Our collective analysis reveals several recurring, transversal gaps in the draft standard. Each of these cross-cutting issues, and many more, are explored in further detail in this submission:

1. The standard is too vague to provide meaningful guidance to companies and to enable effective auditing;
2. Non-conformance with fundamental international laws, principles, and guidance that protect the rights of Indigenous Peoples;
3. The lack of alignment with widely accepted international standards already used by industry;
4. Misalignment with government-backed international principles (the UN Guiding Principles on Business and Human Rights, or 'the UNGPs') and guidance that promote responsible business conduct in supply chains (the Organization for Economic Cooperation and Development Guidelines for Multinational Enterprises on Responsible Business Conduct, or the 'OECD Guidelines');
5. An assurance process that gives mining companies too much control, compromising its independence;
6. An assurance system that lacks guidance, adequate accreditation, and oversight, making independent, reliable audits improbable;
7. A governance model that gives mining companies too much control over processes that impact the standard's accountability measures; and
8. There are no incentives within the CMSI for companies to move beyond Good Practice for any Performance Area.

CMSI Draft Standard -
Overarching Comments on Indigenous Peoples Rights

1. **Overarching Points**
    a. **Stronger framework for Indigenous Peoples rights:** Indigenous Peoples' rights, which includes FPIC must be upheld across all stages of the mining lifecycle, as per UNDRIP.
    b. **Clear Linkages Across Performance Areas:** Integrate clearer pathways on how each performance area (e.g., Indigenous rights in Performance Area 14 and Cultural Heritage in Area 15) interrelates, especially where these intersect with Indigenous values.
    c. **Strengthen Foundational Level Requirements to Avoid Loopholes**: Need to ensure that Foundational Practices represent meaningful compliance rather than a minimal standard. A strong baseline is essential to avoid companies meeting only basic requirements without substantial action.
    d. **Clarify Distinctions between Good and Leading Practices**: There should be clear, measurable benchmarks between Good and Leading Practices to prevent exploitation. Without a clear framework, companies may claim "best practice/leading practice" while achieving only modest improvements over baseline norms rather than transformative advancements. Provide proof that Leading Practices genuinely exceed international standards, rather than modestly extending Good Practice.
    e. **Equivalency with other standards:**The lack of clarity on equivalency criteria raises concerns that weaker standards might be recognized, potentially compromising protections for Indigenous Peoples rights, including FPIC and cultural heritage safeguards. CMSI must ensure that equivalency assessments prioritize the protection of Indigenous Peoples' rights as non-negotiable, aligning with global frameworks such as UNDRIP and ILO 169. Transparent criteria and rigorous oversight are critical to prevent the use of less stringent certifications that fail to uphold these essential protections.

2. **Gaps and concerns**
    a. Missing Explicit Language on FPIC: The introduction mentions community consultation but lacks specific mention of FPIC as a baseline for Indigenous involvement. As FPIC is critical to international Indigenous Peoples rights, it should be a standard.
    b. Lack of Integration on Cross-Cutting Areas: While the introduction references linkages between areas, it doesn't clarify how Performance Areas like Cultural Heritage, Community Benefits, and Indigenous Rights will work together in practice
    c. Insufficient Emphasis on Transparency: The introduction speaks broadly about risk assessment but could require transparent data-sharing directly with affected Indigenous communities.

d. International Human Rights Norms: UNDRIP and ILO 169 require FPIC and respect for Indigenous governance in activities impacting their lands. CMSI's broad mention of "community engagement" lacks specificity to Indigenous Peoples rights.

3. **Recommendations**
    a. **Adopt FPIC Across All Performance Areas**: Clearly articulate FPIC as the standard for any consultation processes involving Indigenous Peoples lands, territories (which also includes waters, Indigenous natural resources, ecosystems, and other means of livelihood and communities).
    b. **Strengthen Foundational Requirements:** Redefine Foundational Practices to prevent low-standard compliance. This could include minimum criteria that guarantee substantial compliance in high-impact areas like environmental protection and Indigenous Peoples rights.
    c. **Establish Measurable Distinctions between Good and Leading Practices**: CMSI should define clear, measurable criteria that distinguish Good from Leading Practices. These distinctions should encompass Indigenous Peoples engagement, FPIC, transparency, and environmental safeguards to ensure that Leading Practice genuinely reflects leadership.

Strengthen Cross-Area Integration: Outline how performance areas interconnect, especially where Indigenous Peoples, cultural rights, community impacts and benefits, Closure and other areas overlap, so Indigenous Peoples communities can see comprehensive protections.

Performance Area 1: Corporate Requirements

"Foundational practice" in almost every table subsection of this Performance Area to be below the level of, and thus out of alignment with, the OECD Guidelines.

"Foundational practice" should be aligned with the OECD Guidelines. They reflect government expectations of business practice all over the world. “Good practice” could then go beyond the baseline of the OECD Guidelines and follow all of the relevant “practical actions” provided by the OECD Due Diligence Guidance for RBC.

1.1 Board and Executive Accountability, Policy and Decision-Making	
Foundational Practice	1. Identify an individual(s) from senior management to be responsible for corporate-wide sustainability practice and performances.

This is below the level of the OECD Guidelines. There should always be Board level responsibility assigned.

1.2 Sustainability Reporting	
Foundational Practice	1. Identify material *sustainability risks* and opportunities for inclusion in external company disclosure.

Stakeholders are missing. Correct practice on reporting is providing stakeholders with enough information to enable them to judge the adequacy of due diligence / sustainability actions.

Good Practice	1. *Publicly disclose* an annual corporate-wide sustainability or integrated report in line with an internationally recognised reporting standard, such as the OECD Due Diligence Guidance for RBC (step 5: Communicate), the Global Reporting Initiative (GRI), the International Financial Reporting Standards (IFRS) Sustainability Disclosure Standards and/or the European Sustainability Reporting Standards (ESRS).

Foundational practice or good practice should follow the OECD Due Diligence Guidance as per Section II, 5.1 of the OECD Guidance:

“Communicate externally relevant information on due diligence policies, processes, activities conducted to identify and address actual or potential adverse impacts, including the findings and outcomes of those activities.

PRACTICAL ACTIONS

a. Publicly report relevant information on due diligence processes, with due regard for commercial confidentiality and other competitive or security concerns, e.g. through the enterprise's annual, sustainability or corporate responsibility reports or other appropriate forms of disclosure. Include RBC policies, information on measures taken to embed RBC into policies and management systems, the enterprise's identified areas of significant risks, the significant adverse impacts or risks identified, prioritised and assessed, as well as the prioritisation criteria, the actions taken to prevent or mitigate those risks, including where possible estimated timelines and benchmarks for improvement and their outcomes, measures to track implementation and results and the enterprise's provision of or co-operation in any remediation.

b. Publish the above information in a way that is easily accessible and appropriate, e.g. on the enterprise's website, at the enterprise's premises and in local languages.

c. For human rights impacts that the enterprise causes or contributes to, be prepared to communicate with impacted or potentially impacted rightsholders in a timely, culturally sensitive and accessible manner, the information above that is specifically relevant to them, in particular when relevant concerns are raised by them or on their behalf."
https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf p. 33

Leading Practice	1. Integrate a double materiality approach into the corporate wide sustainability or integrated report.

Double materiality is not a "leading" practice, it is basic practice according to the OECD GLs (and thus an expectation from the OECD and adhering governments), therefore it should be at the foundational level.

1.3 Transparency of Mineral Revenues

- **Project-Level Payments to Governments Disclosure**

In not specifying that disclosures must be project level and allowing companies to comply with national regulations instead of the EITI Standard, the draft standard from the Consolidated Mining Initiative considerably lowers the bar for transparency of minerals revenues. It falls short of the ICMM's committment on payments-to-governments disclosures, which requires members to disclose "all material payments by country and by project at the appropriate levels of government," regardless of the country's status as an EITI-implementing country and the World Gold Council's Responsible Gold Mining Principles, which state that companies "will publish [their] tax, royalty and other payments to governments annually by country and project."

In classifying disclosures that don't meet the minimum project-level threshold in the ICMM commitment or other standards, such as that of the Extractive Industries Transparency Initiative (EITI), the Initiative for Responsible Mining Assurance (IRMA), the Global Reporting Initiative (GRI) Mining Sector Standard, or the IMF's Fiscal Transparency Initiative as "Foundational" or "Good" practice, the CMSI gives cover to companies that aren't meeting basic project-level payments-to-governments disclosure practices in all countries of operation.

Specifically, on payments to governments, the CMSI does not specify that that companies should report its payments to governments at the project level in non-EITI-implementing countries (as the EITI requires for its own Supporting Companies) and instead allows them to report in line with national regulations, which are often less rigorous. Reporting these payments at the aggregate level provides limited insight into project revenues and allows companies to obfuscate important information. Project-level disclosure is the global norm—the E.U, U.K., Canada, Norway, and the EITI have all required it for many years. Giving companies who are not meeting this basic requirement kudos for "good practice" under the CMSI would represent a major step backwards.

(Project-level disclosure is included in the EITI Standard, GRI, and IMF as well as in the laws of the countries listed above.) Further, CMSI does not include important information about what payments data should be disclosed, as IRMA and EITI, for example, do.

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

- **Contract Disclosure**

The CMSI's requirements on contract disclosure are unclear and include loopholes. Both the EITI Standard and ICMM's own commitment on contract disclosure require disclosure of contracts entered into after January 1, 2021, with the EITI Standard going a step further and requiring retroactive disclosure of the underlying contract for any contract amended after that date. The CMSI does not include contract disclosure under "foundational practice." Its "good practice" standard requires simply that "new" contracts are disclosed, which creates a gap between present day and the 2021 requirement. Its leading practice requirement potentially goes a significant step further by calling for the public disclosure of existing contracts, which would put it ahead of both the EITI and ICMM requirements. However, it caveats that these contracts should be disclosed "where applicable" and does not specify that all contracts should be disclosed.

Further, the CMSI includes an exemption to not disclose contracts if legally prohibited by the host government. Companies should instead be required to specify the legal text that they believe prohibits them from disclosing the contract to make sure that this has been correctly interpreted and to notify the government that it is not in line with the CMSI.

The CMSI significantly alters the definition of contract disclosure in its glossary by limiting disclosures to merely fiscal terms. The EITI Standard requires disclosure of the full text of all contracts and licenses with no redactions, as well as annexes, addenda, and riders which include documents such as site maps, accounting procedures, details of the project cycle,

takeover procedures, management procedures, guarantees and feasibility studies. This alteration also falls short of the ICMM's commitment on contract disclosure.

Recommendation:

We appreciate that the CMSI links to the EITI's Guidance Note on contract disclosure in the glossary and interpretive guidance and recommend that the document is referenced in the text of the requirement. For example, the text could say, "Publicly disclose new mineral development contracts (as defined in the EITI Guidance Note on contract disclosure) with host governments."

The CMSI should require contract disclosure of all contracts entered into after January 1, 2021 as "foundational practice." It should Require contract disclosure of all contracts entered into after January 1, 2021 and the retroactive disclosure of the underlying contract for any contract amended after January 1, 2021 as "good practice." It should require public disclosure of *all* contracts as "leading practice."

The CMSI should remove the loophole allowing companies to not disclose contracts where it's legally prohibited and instead require companies to detail the legal provision that prohibits them from disclosing and to inform the host government that they are not in line with CMSI.

Additionally, the CMSI should require its companies create a list that details which contracts and licenses are publicly available and which are not. The overview should include a reference or link to the location where the contract of license is published. If the contract or license is not published, the legal or practical barriers should be documented and explained. (This is required by the EITI Standard.) This is included in the EITI's Guidance Note on contract disclosure, which is included in the CMSI's glossary, but we recommend that the CMSI is explicit about creating this list.

Finally, we recommend the CMSI fixes its definition of contract disclosure to define contracts in line with the EITI's contract disclosure definition.

- **Country-by-Country Tax Reporting**

The CMSI doesn't include anything about country-by-country tax reporting, an important disclosure for identifying aggressive tax practices and comparing fiscal, legal, and contractual terms across countries. ICMM companies are committed to country-by-country tax reporting (ICMM's Social and Economic Reporting). It is included in GRI's Standard (on tax, which is cross-referenced in their mining standard) and OECD's Action 13 BEPS. Many mining companies, such as Rio Tinto, Anglo American, Newmont, BHP, and South 32 already report this information.

Recommendation: We recommend that the CMSI includes country-by-country tax reporting as "foundational practice" in line with the ICMM Social and Economic Reporting Framework and Guidance. There is no need to tier this requirement.

- **Responsible Tax**

The CMSI fails to incorporate the WGC's commitment on responsible tax and transfer pricing included in its Responsible Gold Mining Principles. It also lags behind global standards on responsible tax, such as the B Team's Responsible Tax Principles, OECD Guidelines for

Multinational Enterprises on Responsible Business Conduct, and the OECD's Guiding Principles for Durable Extractive Contracts.

Recommendation: We recommend that the CMSI builds a new requirement on responsible tax practices based off the B-Team Responsible Tax Practices.

- **Beneficial Ownership**

The CMSI has no requirements on beneficial ownership disclosure. The EITI requires that companies publish an anti-corruption policy setting out how the company manages corruption risk, including their use of beneficial ownership data and to engage in rigorous due diligence processes. It encourages companies to disclose their ownership structure, including the full chain of legal entities leading to the beneficial owner.

Recommendation: We recommend that the CMSI requires its companies 1) publish an anti-corruption policy setting out how the company manages corruption risk, including their use of beneficial ownership data and to engage in rigorous due diligence processes, and 2) to disclose their ownership structure, including the full chain of legal entities leading to the beneficial owner. These recommendations should both be included at the foundational level.

1.4 Risk Assessment

Leading Practice	1. Engage external *stakeholders* in the risk assessment process.

Under the CSDDD, meaningful engagement with stakeholders is an obligation in some steps of the due diligence process, including in risk assessment.

This obligation comprises identification, assessment and prioritisation of actual or potential adverse impacts as per CSDDD Art. 8 and 9; prevention and corrective measures pursuant to Art. 10(2) and (6), 11(3) and (7); bringing actual adverse impacts to an end or mitigating them as per Art. 10 (6) and 11(7); remediation as stated in Art. 12; and monitoring pursuant to Art. 15.

Performance Area 2: Business Integrity

LEVEL	REQUIREMENT
2.1 Legal Compliance	
Foundational Practice	2. Establish processes to comply with *applicable laws*.

Foundational practice must require compliance with applicable law. That is the bare minimum, to comply with the law, not "establish processes to comply."

Good Practice	2. *Publicly disclose significant fines* or *regulatory actions*.

The EU Batteries Regulation, REGULATION (EU) 2023/1542, goes further. It requires reporting on main findings of adverse impacts and how they have been addressed.

Art. 52.3 "review and make publicly available, including on the internet, a report on its battery due diligence policy. That report shall contain, in a manner that is easily comprehensible for end-users and clearly identifies the batteries concerned, the data and information on steps taken by that economic operator to comply with the requirements laid down in Articles 49 and 50, including findings of significant adverse impacts in the risk categories listed in point 2 of Annex X, and how they have been addressed."
https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2023:191:FULL

LEVEL	REQUIREMENT
2.2 Business Ethics and Accountability	
Foundational Practice	1. *Publicly disclose* a policy that includes ethical and integrity business practices.

Foundational practice should align with the OECD Guidelines.

Chapter VII of the OECD Guidelines calls for companies to: “Not engage in any act of corruption, including the offering, promising or giving of any undue pecuniary or other advantage to public officials or employees of persons or entities with which an enterprise has a business relationship or to their relatives or associates. Likewise, enterprises should not request, agree to or accept any undue pecuniary or other advantage from public officials or the employees of persons or entities with which an enterprise has a business relationship.” Guidelines for

Multinational Enterprises on Responsible Business Conduct | OECD p. 12

Good Practice	2. Establish and implement management systems to comply with the ethics and integrity policy and *Code of Conduct*.

This could be far more specific according to OECD Guidelines Ch. VII:

"Develop and adopt adequate internal controls, ethics and compliance programmes or measures for adequately preventing, detecting and addressing bribery and other forms of corruption, developed on the basis of a risk-based assessment, taking into account the individual circumstances of an enterprise". Guidelines for Multinational Enterprises on Responsible Business Conduct | OECD p. 12

3. Train workers on the ethical and integrity policy and *Code of Conduct* and maintain training records.

The OECD Guidelines recommend taking into account applicable language, cultural and technological barriers.

5. Implement a *Know Your Counterparty (KYC)* procedure and conduct due diligence commensurate with the risk of the counterparty.

OECD Guidelines call for an updated list of agents engaged in connection with transactions with public bodies and State-owned enterprises to be kept and made available to competent authorities.

6. Where political donations are permissible, establish guidance on their use and *publicly disclose* any donations.

Gap with the OECD Guidelines - which calls to prohibit or discourage, in internal company controls, ethics and compliance programmes or measures, the use of small facilitation payments, which are generally illegal in the countries where they are made, and, when such payments are made, accurately record these in books and financial records.

Leading Practice	1. Conduct an internal *audit* on compliance with the Code of Conduct and the policy on ethical business practices and integrity and implement corrective actions.

	2. *Publicly disclose* any material breaches of the ethical and integrity policy and the Code of Conduct while protecting the privacy of individuals involved.
	3. *Publicly disclose* the number and nature of any substantiated *whistle-blower* complaints and the type of associated remedies, while protecting the confidentiality of the complainants.

This is not a leading practice. Leading practice would be to actively fight corruption and bribery.

The EU Batteries Regulation requires this. See recital 87: “the battery due diligence policies should include information on how the economic operator has contributed to the prevention of human rights abuses and on the instruments in place within the operator’s business structure to fight corruption and bribery.”
https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2023:191:FULL

Missing: Do not make illegal contributions to candidates for public office or to political parties or to other organisations linked to political parties or political candidates - as reflected in the OECD Guidelines.

Performance Area 3: Responsible Supply Chains

Lack of FPIC in Performance Area 3 (Responsible Supply Chains): Respecting Indigenous Peoples rights to FPIC is crucial for obtaining and maintaining a social licence to operate, even in jurisdictions where FPIC may not be legally required. Facilities should seek FPIC before initiating any activities that take place on Indigenous Peoples' territories that would impact their land, livelihood, environment and communities. Beyond this, CSMI companies must ensure that respect for Indigenous Peoples' rights is upheld throughout the supply chain by embedding these principles into Supplier Codes of Conduct and due diligence processes. Supplier Codes should explicitly require suppliers to adhere to FPIC principles, conduct risk-based assessments for potential impacts on Indigenous Peoples' lands and resources, and implement mechanisms to mitigate risks. To complement these efforts, grievance mechanisms should be provided to address any concerns that arise during the implementation of sourcing activities, ensuring transparency and accountability. This approach aligns with UNDRIP and promotes responsible sourcing practices across all tiers of the supply chain, particularly in high-risk or extractive sectors

Currently, FPIC is not mentioned or addressed in the due diligence and policy requirements for supply chain management. CSMI should require facilities to incorporate Indigenous Peoples rights to FPIC, into their supplier code of conduct and supply chain due diligence processes. This means ensuring the suppliers respect Indigenous Peoples lands, resources and rights and that they proactively identify and mitigate potential impacts on Indigenous territories.

Furthermore, reporting on supply chain impacts should include disclosures about sourcing practices from Indigenous Peoples lands including FPIC agreements, benefit agreements and mitigation measures taken. This would promote transparency in sourcing decisions and encourage responsible supply chain management.

Finally, cultural heritage considerations should be integrated within supply chain policies, especially when sourcing activities take place near Indigenous cultural sites. This would ensure that supply chains respect cultural heritage as a foundational principle.

LEVEL	REQUIREMENT
3.1 Responsible Supply Chain (applicable to all facilities)	

Further detail is needed, and commitments could be strengthened to include continuous monitoring, including access to remedy at good practice instead of leading.

The Foundational Practice level of Section 3.1 does not require companies to undertake human rights due diligence at all. It loosely aligns with the initial steps of due diligence: establishing policies and management to embed responsible business conduct. However, it does not provide clear details or guidance on the minimum requirements of policies or effective management systems.

Good Practice under 3.1 is also not OECD-aligned. The requirement for access to grievance is not aligned with international norms either. The standard only requires access to file complaints or grievances to be made available to business relationships in the facility's supply chain; the UNGPs and the OECD Guidelines require access to complaints and remedy be provided to affected rights-holders or their legitimate representatives too. It also does not detail or require core elements of effective grievance mechanisms (Principle 31 of the UNGPs).

Exacerbating these gaps is the non-binding and qualifying language, such as 'impractical,' 'where feasible', 'intended to be implemented,' etc., used throughout the standard, weakening it further and leaving unclear if action is required and by whom and how that decision is ultimately made.

The draft standard claims alignment with the UNGP mitigation hierarchy principles. However, the overarching glossary defines unavoidable impacts as "significant impacts that will arise from the action and where mitigation is impractical" without giving a definition or criteria where action would be deemed impractical. This gives the industry a loophole to delay or avoid taking action on anything they perceive as impractical.

Performance Area 4: New Projects, Expansions

Lack of FPIC in Performance Area 4 (New Projects, Expansions, and Resettlement): FPIC should be mandatory here, especially given that new projects or expansions often lead to displacement or alteration of land use . UNDRIP Article 10 explicitly prohibits the forcible removal of Indigenous Peoples from their lands or territories and requires FPIC as a precondition for any relocation, along with fair compensation and, where possible, the option of return. IFC Performance Standard 5 on Land Acquisition and Resettlement recognizes the need for voluntary agreements and FPIC for Indigenous populations, making it critical to secure genuine consent as a precondition for any new development impacting Indigenous Peoples territories.

Prioritization of Land-for-Land Compensation to Address the Unique Cultural and Livelihood Value of Land for Indigenous Communities

For Indigenous communities, land is not merely an economic asset but a foundation of cultural identity, spirituality, and survival. ILO Convention 169 (Article 16) emphasizes that, where relocation is unavoidable, Indigenous Peoples should be provided with lands of equal quality and status. UNDRIP (Articles 10 and 26) similarly asserts the right of Indigenous communities to lands and resources, insisting that any displacement must prioritize land-for-land compensation to maintain continuity of cultural and livelihood practices. Monetary compensation alone fails to account for the intangible, irreplaceable values that land holds for Indigenous Peoples.

- When Indigenous land is replaced, the Standard does not mandate that the new land should reflect similar ecological or cultural characteristics. Without these requirements, relocated land may fail to meet Indigenous communities' needs for culturally compatible and resource-rich environments.
- The Standard currently lacks a mechanism for Indigenous communities to co-design compensation packages that reflect their cultural and economic preferences.

Recommendations:

- Make Land-for-Land Compensation the Default for Indigenous Communities: The Consolidated Standard should explicitly require land-for-land compensation as the first option for any Indigenous displacement or resettlement, in line with ILO 169 and UNDRIP. Only when equivalent land is unavailable should monetary compensation be considered, and this must be accompanied by additional supports for cultural continuity and livelihood restoration.
- Require Cultural and Environmental Equivalency: Any replacement of land should be of similar quality and ecological characteristics, ensuring that the new land supports the community's spiritual, cultural, and subsistence needs.
- Involve Indigenous Peoples Communities in Compensation Design: Indigenous Peoples representatives should actively participate in crafting compensation packages that meet their unique cultural and economic needs, including deciding the type, location, and use of replacement land.

Examples:

- **Performance Area 4 (New Projects, Expansions, and Resettlement)**: Land-for-land compensation should be a non-negotiable aspect of any displacement or resettlement for Indigenous communities. This continuity for Indigenous ways of life, cultural practices, and economic activities. Cash compensation should be reserved only for circumstances where equivalent land is unavailable.
- **Performance Area 14 (Indigenous Peoples)**: Embedding land-for-land compensation directly in the performance area sets a higher standard for engagements that impact Indigenous Peoples land, aligning with UNDRIP's emphasis on land rights and cultural preservation.

Performance Area 5: Human Rights

Generally, this is misaligned with WBA CHRB https://assets.worldbenchmarkingalliance.org/app/uploads/2024/10/2024CHRBmethodology_23Oct24.pdf (the reference assessment of companies' policies alignment with UNGPs and others).

One key thing to note is that this PA seems to apply at the facility level, but this does not make sense, as most required policies will need to be adopted at the corporate level.

Overarching comments

- Foundational is not useful given its fundamental misalignment with the UNGPs and other relevant norms.
- It is good that remedy features in Good Practice Requirement 5 - but there should be a clear commitment to provide remedy (again, this is at the policy level in any case).
- There is nothing 'leading' about leading practice here. All of the LP reqs are fundamental under the UNGPs and so should be foundational practice. Dividing/tiering the UNGPs further fragments the landscape, rather than building on it.
- FP1/ Wording on 'respecting HR consistent with the UNGP is ambiguous' - recommend changing to 'The company publicly commits to respect all internationally recognised human rights across its activities, and commits to respect the UNGPs, publicly disclosing related policies and management plans'
- Strength - the 3 pillars of principle 15 of the UNGPs are present at the GP level (policy, DD, remediation). However, all of these pillars should also be present at foundational level.
- GP 2: UNGPs say DD processes must 'identify, prevent and account'.
- GP2 - 'with the intention of avoiding infringing on the human rights of others…' is ambiguous language. Companies should commit to avoid causing or contributing to HR adverse impacts and seek to prevent / mitigate adverse HR impacts that are directly linked to their operations (UNGPs P13). It should recognise that DD processes may evolve over time and need to be informed by engagement with stakeholders and integration of findings from impact assessments
- GP1. This is also missing the important operationalisation recommendations of UNGPs P16 (policy is approved by Senior Mgt, informed by relevant internal/external expertise, etc - and is embedded at all levels of the company)
- Defenders: it's good to see language on defenders, recommend including the following requirements at foundational level:
    - Publicly available policy commitment not to tolerate nor contribute to attacks on HRDs: The company has a publicly available policy statement committing it to neither tolerate nor contribute to threats, intimidation and attacks (both physical and legal) against human rights defenders.
    - Expects business relationships to commit to zero tolerance of attacks against HRDs: The company expects its business relationships (suppliers, etc.) to make this commitment.

- Policy commitment to work with HRDs to create enabling environments: The company commits to working with human rights defenders to create safe and enabling environments for civic engagement and human rights at local, national or international levels.

At the GP level, companies should publish their operational guidance related to the protection of human rights defenders (in addition to policy commitments) and should also use their leverage and speak out in defense of human rights defenders and against legal reforms that are aimed at restricting civil society space. Companies must refrain from supporting strategic lawsuits against public participation (SLAPPs) or other legal strategies that diminish established legal protections for HRDs.

Foundational Practice does not fully align with fundamental requirements under the UNGPs, even though it references it. Minimum practice by companies should not only align with international laws, standards and norms, but seek to address the known and persistent implementation gaps so that the standard is designed to drive progress towards achieving international norms, not undermine them.

Guiding principle 15 states clearly that businesses must have in place policies and processes, including a policy commitment to meet their responsibility to respect human rights; a human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights; and processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.

Lacks sufficient detail to be meaningfully implemented by companies.

Specific gaps:
Foundational level does not require the company to implement human rights due diligence. This is extremely problematic, as evidence shows that while there is growing commitments by companies, these commitments are not met with robust management systems or human rights due diligence processes to implement them.

As noted in the 2021 the UNGP stocktaking (UGPS at 10+), while there are a growing number of corporate commitments to take up the Guiding Principles, nearly half (46.2%) of companies assessed in the 2020 Corporate Human Rights Benchmark failed to score any points under due diligence indicators.
(https://www.ohchr.org/sites/default/files/Documents/Issues/Business/UNGPs10/Stocktaking-reader-friendly.pdf, pg 14).

The most recent corporate benchmark (2023) demonstrated additional gaps in company failure to meaningfully consult and include rights-holders in their processes. More than half (55%) of HRDD processes assessed in the benchmark do not include any evidence of rightsholder consultation, while only 27% provided evidence. Rightsholder consultation is foundation for more ethical business practice and for management systems that are fully informed of and able

to prevent, address and remedy site-level risks. The Benchmark also shows that the top ten performing companies in the Benchmark all involve rightsholders in their HRDD processes, but only 20% of the other 100 companies do.
https://www.worldbenchmarkingalliance.org/publication/chrb/findings/most-companies-fail-to-include-rightsholders-in-their-human-rights-due-diligence-processes/

Good Practice	2. Establish and implement a due diligence process consistent with the UNGPs to identify and assess human rights risks and impacts caused or contributed to by the *Facility's* operations with the intention of avoiding infringing on the human rights of others (including *human rights defenders*) and addressing adverse human rights impacts.

Out of alignment with the known gaps in implementation of the UNGPs (per the UNGPs at 10 assessment by OHCHR). Specifically, there is the lack of inclusion of rights-holders in 'good practice.'

Items 2 and 3 on due diligence are foundational to the UNGPs, so again, they should be in the foundational practice level.

6. Where operations or operating contexts pose risks of *severe human rights impacts*, *publicly disclose* how impacts are being addressed and/or remedied in a manner that is: accessible to intended audiences, with sufficient information to evaluate the adequacy of the response, and that does not pose risks to *affected stakeholders and rights-holders*, personnel or commercial confidentiality.

Key gaps:
'severe human rights impacts' is not defined and there is no guidance given for how to define it. The UNGPs specify that businesses should prioritize risks according to severity (Severity of impacts will be judged by their scale, scope and irremediable character) and likelihood.

The impact itself, in detail, should be disclosed, not just the disclosure of how it is being addressed.

Noting, moreover, the language directly from the UNGPs (principle 21, pg 23) in reference to public disclosure and communication around human rights impacts: "Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them. In all instances, communications should: Be of a form and frequency that reflect an enterprise's human rights impacts and that are accessible to its intended audiences; Provide information that is sufficient to evaluate the adequacy of an enterprise's response to the particular human rights impact involved; In turn not pose risks to

affected stakeholders, personnel or to legitimate requirements of commercial confidentiality." "Formal reporting by enterprises is expected where risks of severe human rights impacts exist, whether this is due to the nature of the business operations or operating contexts. The reporting should cover topics and indicators concerning how enterprises identify and address adverse impacts on human rights. Independent verification of human rights reporting can strengthen its content and credibility. Sector-specific indicators can provide helpful additional detail."

Leading Practice	2. *Collaborate* with *stakeholders* and *rights-holders* to complete an *independent review of effectiveness* of the *Facility's* implementation of the UNGPs.

There is nothing 'leading' about leading practice. All of these are fundamental under the UNGPs and so should be foundational practice. Dividing/tiering the UNGPs further fragments the landscape, rather than building on it. This is particularly problematic considering one of the largest gaps identified by the UNGPs at 10 assessment found that HRDD implementation was inadequate, even as companies increased their uptake on UNGP-aligned policy commitments. Further fragmenting the UNGP requirements into different bands of practices, rather than as elemental to starting in the CMSI, will only worsen these implementation gaps.

Collaboration with rights holders in the due diligence process, is fundamental to the UNGPs, it should not be considered 'leading practice,' but foundational. This is also a foundational requirement for assessing a businesses effectiveness of due Diligence. Specifically, Principle 20, which defines how businesses should track the effectiveness of their response. The two effectiveness critieria for tracking are, 1) based on appropriate qualitative and quantitative indicators; and 2) draw on feedback from both internal and external sources, including affected stakeholders.

It's also worth noting that complexity of the situation and the resulting impacts to rights holders is what should to note that the UNGPs state, "The more complex the situation and its implications for human rights, the stronger is the case for the enterprise to draw on independent expert advice in deciding how to respond."

3. Actively engage with human rights defenders to inform human rights due diligence processes.

Again, this is foundational under the UNGPs. As it relates to businesses, principle 18 states: "To enable business enterprises to assess their human rights impacts accurately, they should seek to understand the concerns of potentially affected stakeholders by consulting them directly in a manner that takes into account language and other potential barriers to effective engagement. In situations where such consultation is not possible, business enterprises should consider reasonable alternatives such as consulting credible, independent expert resources, including human rights defenders and others from civil society.

Performance Area 7: Rights of Workers

Would be important to reference the ILO's 5 Fundamental Principles and Rights at Work.

Important to also include workers in companies' supply chains. According to the UNGPs, companies' responsibilities extend throughout their supply chains. See also: https://www.industriall-union.org/sites/default/files/uploads/documents/supply_chains.pdf

It should also be noted that ICMM's commitments under their Social and Economic Reporting Framework and Guidance on Pay Equity, Training, Education and Skills, and Capacity and Institutional Support are all missing from the CMSI and should be included.

7.1 Workers' Rights Risk, Mitigation and Operational Performance	
Foundational Practice	1. Publicly commit to respect *workers*' rights, including to fair and decent employment terms, *freedom of association* and *collective bargaining*, protection against *discrimination* and *harassment* and unfair disciplinary practices and apply *responsible recruitment* practices.

Include ILO's Fundamental Principles.

Good Practice	13. Inform *workers* of their right to form, join and organise trade union(s) of their choice and to bargain collectively on their behalf with the employer.

Commit to non-interference, including a commitment to neutrality and no retaliation.

Performance Area 9: Safe, Healthy and Respectful Workplaces

LEVEL	REQUIREMENT
9.1 Health and Safety Management	
Good Practice	1. Demonstrate that management and worker accountabilities and responsibilities are *under and the rights of workers are understood at all levels* within the *Facility*.

Recommend replacing: *"are under"* with *"and the rights of workers are under".*

Good practice should also recognize the rights of workers under ILO OHS conventions and these must be explicitly mentioned in the OHS management system.

	2. Implement and maintain (a) health and safety management system(s) to prevent and mitigate health and safety risks that incorporate(s): a. Hazard identification, risk assessment and control processes in line with the health and safety controls hierarchy. b. Critical controls. c. An *industrial hygiene* programme, including ergonomics, with risks and controls reviewed by a *qualified hygienist*. d. Workplace inspections. e. Incident reporting, investigation with root cause analysis and follow up. f. Improvement plan developed and implemented for critical controls found to have a marginal or weak level of effectiveness. g. Maintenance of health and safety records.

Joint health and safety committees should be at the center of good practice OHS management systems.

Performance Area 10: Emergency Preparedness and Response

Companies should make a commitment that trained professional support will be provided during an emergency and will reach all affected populations in a timely manner.

Foundational Practice	1. Identify credible potential emergency scenarios and their potential to escalate into a crisis. These could include but are not limited to operational disruptions and failures, natural hazards, conflict and civil disturbance, and public health crises.

Worker training, co-development of Emergency Response plans with potentially affected communities, mine workers, agricultural producers and businesses downstream of the flow of a potential failure, and in collaboration with first responders and relevant government agencies, and establishing communication mechanisms for emergency response should all be Foundational.

Worst-case scenarios should be the baseline for emergency planning. For ERMPs for tailing facilities, worst-case scenarios must model the complete loss of stored tailings and water.

2. Conduct an emergency response capability assessment of both internal and external resources, on a defined interval and based on identified scenarios, to address any identified gaps, including resources and equipment.

This should be updated yearly or whenever there is a change of material consequence in surrounding conditions, not on a "defined interval".

Good Practice	2. Test notification mechanisms that activate emergency and crisis response teams at least twice per year.

Emergency and evacuation drills should be held on an annual basis, and their planning and execution must include participation from affected communities, workers, local authorities, and emergency management.

Emergency and evacuation drills can be traumatizing for communities. Special care must be given during planning so that communities are able to access the information they need for their safety, while ensuring they are not negatively impacted by the process.

Recommend adding: “Create policies, sign agreements with rights holders and stakeholders, and publicly commit that in the case of an emergency, the operating company is responsible for taking all steps necessary to save lives and provide appropriate

humanitarian aid. This includes all needed resources and support to local and national governments and first responders during and after a failure. The operating company commits to assume the entirety of the costs of indemnification, remediation, and reclamation for any emergency causing harm beyond the mine site, including any additional damages incurred during remediation and reclamation efforts."

Recommend adding: "Publish Emergency Response Plans in all local languages that include worst-case scenario modeling."

6. Based on identified potential emergency scenarios, identify and *engage with potentially affected communities* to determine whether and how they want to *collaborate* on community-focused aspects of the *EPRP* and then *collaborate* with them based on the outcomes of that engagement.

Emergency Response planning should be co-developed with potentially affected communities, mine workers, agricultural producers and businesses downstream, as well as local governments and emergency responders.

7. Establish mechanisms that maintain effective and up-to-date communications with workers, communities and key *stakeholders* that could public sector agencies, local first responder agencies, local authorities and media during an emergency.

Recommend replacing: *"could"* with *"should include"*

Recommend adding: *"all relevant public sector agencies"*

8. Test notification mechanism to alert workers to an emergency at least once per year.

Emergency and evacuation drills should be held on an annual basis, and their planning and execution must include participation from affected communities, workers, local authorities, and emergency management.

11. Conduct an *internal review and update emergency and crisis plans*:
a. when there is a change of personnel of those associated with implementation of the plan to update contact details,
b. after either plan has been activated, as part of a post-incident impact assessment,
c. when there is a material change to the identified emergency or crisis scenarios, and/or,
d. at least every two years.

This should be done annually.

Leading Practice	1. Conduct a full crisis simulation exercise every two years.

Recommend replacing: *"two years"* with *"annually"*

Performance Area 12: Stakeholder Engagement

Welcome recognition of the need to provide materials that are accessible, understandable and culturally appropriate. This should be further clarified to stipulate that materials should be available in multiple formats, such as online, by mail, in person, etc. In addition, all information and engagement must be provided in relevant local languages.

Co-design with impacted rights holders should be integrated as foundational practice.

Performance Area 13: Community Impacts and Benefits

Lack of FPIC in Performance Area 13 (Community Impacts and Benefits): As part of delivering benefits to communities, community agreements should be based on FPIC. Community benefit agreements cannot substitute for obtaining FPIC regarding the project. Furthermore, this guarantees that Indigenous Peoples communities are not just passive beneficiaries but active decision-makers in benefit-sharing processes.

Furthermore, reporting should explicitly show how Indigenous Peoples communities benefit from projects, including disaggregated data on economic, social, and cultural impacts.

It is also important to note that ICMM's commitments on local procurement in its Social and Economic Reporting Framework and Guidance are missing from the CMSI and should be included.

Performance Area 14: Indigenous Peoples

General comments and questions

1. Meaningful Free Prior Informed consent must be in the foundational practice.

How can the fundamental rights of Indigenous Peoples to sovereignty and self-determination be tiered - as they are in Performance Area 14? They are either fully recognized and respected or they are not - and if they are not - then no such practice can be considered foundational, good or otherwise.

Furthermore, how can the CMSI claim to require respect for FPIC as in Good Practice requirement 6 - defined in the glossary as encompassing *the right to withhold consent* - and then state in Good Practice requirement 7 that a company may go ahead with its intended activities, despite not obtaining full consent, as long as it publishes a mitigation plan?

Finally, given that FPIC is an ongoing right, meaning that any agreement is iterative - why does the CMSI fail to account for the ongoing impacts of past decisions made without the FPIC of affected Indigenous Peoples. Especially given that countless mines around the world entered into operation in clear violation of the rights of affected Indigenous Peoples - why allow companies to evade their duty to respect Indigenous Rights for having violated the rights of Indigenous Peoples in the past - again, especially given that FPIC is understood to be a continuous, ongoing right?

2. We understand that the CMSI's position is that the requirement in Foundational Practice for a facility to commit to the principles of UNDRIP includes FPIC - but given that is there no explicit mention of FPIC in the Foundational Practice requirements of Performance Area 14 on Indigenous Rights, and yet there is in the Good Practice level - how is this inconsistency to be interpreted?

3. Why did the CMSI, after the publication of the ICMM Position Statement on Indigenous Peoples and Mining on August 8th, 2024, choose to publish requirements in Performance Area 14 - which even when read in their entirety - fall short of the ICMM's Position Statement? Especially given that the ICMM has received substantial criticism on the loopholes and weaknesses contained in its Position Statement since its publication over 3 months ago - how was that feedback and ICMM's consultation with Indigenous Peoples not accounted for in the drafting of Performance Area 14?

Free, prior and Informed Consent as a Fundamental Standard Across All Relevant Performance Areas

The current Consolidated Mining Standard Initiative (CSMI) lacks comprehensive, actionable guidance on the implementation of FPIC, which is essential for upholding Indigenous Peoples right to self determination. Terms like "consent", "demonstrating consent" "agreement" are

inconsistently defined or referenced, which leads to ambiguity in applications across different performance areas. This gap could lead to superficial consultations rather than meaningful consent, contrary to the United Declaration on the Rights of Indigenous Peoples (UNDRIP) and Indigenous and Tribal Peoples Convention, (Convention No. 169 or ILO 169), which view FPIC as essential to Indigenous Peoples rights regarding their land, resources, territories, environment and communities. Without a robust, standardized FPIC process, there is a risk that facilities may proceed with projects based on limited or non-binding engagements with Indigenous Peoples communities, undermining the integrity of the consent process.

FPIC is foundational in recognizing and respecting Indigenous Peoples self-determination and their right to control activities on their lands and territories. Rather than isolating FPIC requirements within just Performance Area 14, FPIC should be a baseline principle across all performance areas where there may be impacts on Indigenous Peoples. Aligning with UNDRIP, ILO169 and IFC Performance Standard 7(IFC PS7) on Indigenous Peoples right to FPIC, would ensure that consent is obtained in a culturally respectful and non-coercive manner.

Although this area focuses directly on Indigenous Peoples rights, FPIC should be reinforced as a minimum standard for any engagement, decision, or activity impacting Indigenous territories.

Recommendations

- **Establish a clear, robust, and actionable implementing guidelines for FPIC and consent:** This definition should emphasize that FPIC involves informed, voluntary decision-making by Indigenous Peoples, free from any form of coercion or manipulation and includes the right to withhold consent. Clarifying FPIC as a requirement that applies from project inception to post-closure will strengthen the CSMI as to Indigenous Peoples rights.
- **Mandate FPIC as a non-negotiable standard** in all relevant performance areas where Indigenous Peoples lands and communities are impacted, particularly in supply chain, land use, environmental impact, and mine closure contexts. This would align with both UNDRIP and IFC frameworks and ensure Indigenous communities have equity in both participatory and decision-making in all relevant project phases.

Transparent and Comprehensive Reporting on Impacts to Indigenous Peoples, FPIC Processes, and Mitigation Actions Across All Relevant Areas

Transparent reporting is essential for accountability and provides Indigenous Peoples communities and stakeholders with insights into how well their rights and interests are being safeguarded. ILO Convention 169 (Article 7) mandates Indigenous participation in decision-making affecting their lands, and UNDRIP (Article 29) calls for states and corporations to disclose any activity impacting Indigenous Peoples lands, territories and resources. Comprehensive reporting on FPIC processes, Indigenous-specific impacts, and mitigation actions ensures that companies and facilities adhere to high standards of transparency and respect for Indigenous Peoples self-determination.

Gaps:

- **Absence of Required Disclosures on Indigenous Peoples' Impacts in Performance Area Reporting**: The CMSI does not mandate specific reporting on Indigenous Peoples' impacts in key areas such as Performance Area 3 (Responsible Supply Chains), Performance Area 13 (Community Impacts and Benefits), and Performance Area 19 (Biodiversity, Ecosystem Services, and Nature). Without such reporting, stakeholders lack visibility into operational impacts on Indigenous lands, cultural practices, or livelihoods, undermining the standard's stated intent to promote accountability and responsible business conduct.
- **Inadequate Detail and Transparency on FPIC Process and Outcomes in Performance Areas 4, 14, and 24**: Reporting on FPIC is insufficient across areas involving land use and project phases. Performance Area 4 (New Projects, Expansions, and Resettlement) and Performance Area 24 (Closure), which involve direct changes to land access, do not currently require detailed disclosures on FPIC processes and outcomes, such as how Indigenous Peoples consent was obtained, and how it will be maintained, and respected throughout the project lifecycle. Performance Area 14 (Indigenous Peoples) does include FPIC as a concept but fails to specify in-depth reporting on each stage of the consent process, leaving questions about the integrity and authenticity of any FPIC process. The CMSI Claims and Reporting Policy does not appear to emphasize FPIC as a key element of reporting, creating a critical gap.
- **Limited Information on Indigenous-Specific Mitigation and Remediation Actions**: While the standard requires general mitigation and remediation disclosures, it does not mandate disclosures specific to actions taken in response to Indigenous Peoples concerns in Performance Area 17 (Grievance Management) or Performance Area 15 (Cultural Heritage). This gap in Indigenous-focused reporting limits accountability for resolving Indigenous Peoples grievances related to cultural heritage, land, or environmental impacts, as stakeholders cannot evaluate the effectiveness of mitigation efforts specific to Indigenous issues.

Recommendations

- **Mandate Indigenous-Specific Disclosures Across Relevant Performance Areas**: The Consolidated Standard should publicly require regular, detailed reporting on Indigenous Peoples impacts, FPIC processes (including how consent was obtained, respected, and maintained), and mitigation outcomes. These disclosures should be accessible to Indigenous Peoples.
- **Include FPIC as a Central Element in Reporting**: FPIC reporting should cover the entire consent process, from initial engagement to final outcomes, ensuring it reflects a rigorous and culturally respectful approach.
- **Detail Indigenous-Focused Mitigation and Remediation**: Disclosures should specify any mitigation measures and remedial actions tailored to Indigenous Peoples to ensure accountability and transparency as to how issues are resolved.

Furthermore, cultural heritage should be defined broadly to include intangible aspects, such as

Indigenous knowledge, languages, and practices. Requirements should specify that Indigenous Peoples have control over how their cultural heritage is managed.

Foundational Practice	1. Publicly commit to respect *Indigenous Peoples*' rights, ***Recommend adding: "including their right to give or withhold their Free, Prior and Informed Consent (FPIC) regarding whether and how projects move forward, including their right to define the process by which FPIC is achieved and to withhold consent through FPIC protocols, regardless of an opposing claim by the government,"*** where the *Facility's* activities impact assets or traditional land, territories and resources, in line with the principles set out in the UN Declaration on the Rights of *Indigenous Peoples* (UNDRIP). Communicate this *commitment* to *Indigenous Peoples* and to other *stakeholders* and *rights-holders.* ***Recommend adding: "and publish a written policy commitment and implementing guidelines on the company website."***

A public commitment is of little use without a means of implementing and enforcing it.
"In line with principles of UNDRIP" would require FPIC - so why is FPIC broken out and only mentioned in the GP Level? How is a company and assurance provider to interpret this?

3. Establish and document engagement and consultation processes with potentially affected *Indigenous Peoples* that support an informed understanding of the risks, potential impacts and benefits of the *Facility's* activities and enable the meaningful participation of *Indigenous Peoples* in decisions that could impact them.

Should be publicly accessible, and it should also follow affected-IP protocols.

LEVEL	REQUIREMENT
14.1 Managing Engagement, Impacts and Opportunities with Indigenous Peoples	
Good Practice	1. Define appropriate engagement and decision-making processes with potentially affected Indigenous Peoples and appropriate State authorities (as relevant) to enable *Indigenous Peoples' meaningful engagement* in human rights due diligence processes and in good faith negotiations of agreements. Engagement processes should be

	culturally appropriate, inclusive, and carried out through existing procedures, protocols, and governance structures of potentially affected *Indigenous Peoples*. Engagement processes should also recognise the unique risks and impacts on people in vulnerable situations, including women and girls, elders, *Indigenous Peoples* in voluntary isolation or initial contact, Mobile Indigenous Peoples and others in vulnerable situations. Engagement should be inclusive and enable the equitable participation of Indigenous women and people in vulnerable situations and fully consider impacts on them such that further vulnerabilities are not caused or exacerbated by projects.

This should not be defined by companies, but rather consulted. Companies should respect traditional decision making processes.

2. Carry out due diligence to identify, prevent, mitigate and account for possible *adverse impacts* on *Indigenous Peoples'* rights. The process should respect *Indigenous Peoples'* right to participate in decision-making on matters that affect them and be guided by the principles of FPIC. Due diligence should be ongoing recognising that the risks to *Indigenous Peoples'* rights could change over time as a *Facility's* operations and/or operating context changes.

The right to FPIC and to modify/withdraw consent is ongoing.
Also, due diligence should be considered foundational practice, not good practice.

3. Implement mitigation measures in line with the UNGPs to prevent or address potential *adverse impacts* on *Indigenous Peoples*' rights, including how their access to traditional land, territories and resources can be maintained. Where applicable, pursue feasible options to avoid the relocation of *Indigenous Peoples* from their lands or territories, or significant impacts to their *critical cultural heritage*.

Remediation for ongoing and past harms must also be a Foundational requirement.

4. Seek Indigenous knowledge, voices and perspectives from local *Indigenous Peoples* and respectfully apply it to inform decisions and practices, where appropriate. Obtain permission if collecting, storing, accessing, using and/or reusing cultural and intellectual information and knowledge.

This is foundational also, and would be a violation of human rights if not implemented.

> 5. Support *Indigenous Peoples'* capacity for good faith negotiation where necessary through the provision of reasonable financial or other agreed upon assistance. This can include supporting Indigenous Peoples' capacity to engage in decision-making and agreement-making, for example by providing access to independent expert advice where appropriate, capacity building, facilitation and mediation, or involving external observers.

Again - this is a requirement for FPIC to be "Free" and "Informed" - and this paragraph contains so many conditional statements that it is rendered largely meaningless. The "good faith" qualifier here is wholly inappropriate.

> 6. In accordance with the principles of FPIC and established engagement processes, obtain *agreement* with affected *Indigenous Peoples demonstrating consent* to anticipated impacts to their land or other rights and setting out the terms by which impacts could occur and be managed.

And respect the lack of agreement/withholding of consent - this must be a Foundational requirement.

> 7. Recognising that there could be circumstances *where full agreement is not obtained* with all affected Indigenous Peoples despite concerted efforts, develop, implement and publicly disclose appropriate steps the facility will take to manage anticipated impacts to *Indigenous Peoples* land or other rights holders in line with the UNGPs.

This completely undermines and renders void any possibility of a genuine FPIC requirement in requirement 6 above. In this instance, it should be clear that the project should not move forward.

> 9. Maintain and monitor the implementation of the terms of the *agreement* and *commitments* with *Indigenous Peoples*.

Agreements should be publicly disclosed and companies report regularly on progress towards delivering on commitments.

Leading Practice	1. *Collaborate* with directly affected *Indigenous Peoples* to develop and/or support existing decision-making processes, including processes for: a. Determining how the *Facility* and directly affected *Indigenous Peoples* will seek agreement; b. Determining how traditional decision-making processes are incorporated, where they exist; and c. Effectively resolving disputes.

So many of the Leading Practice requirements read as repeats, with minor changes, of Good Practice requirements.

Everything articulated in Good and Leading Practice are fundamental requirements for the respect of FPIC, by way of example here is old OHCHR Guidance from 11 years ago saying the same:
https://www.ohchr.org/sites/default/files/Documents/Issues/IPeoples/FreePriorandInformedConsent.pdf

Guidance on FPIC abounds - here is another example of a document that is now 5 years old and established much clearer practices for companies to meet their duty to respect Indigenous Peoples' right:
https://accountability-framework.org/fileadmin/uploads/afi/Documents/Operational_Guidance/OG_FPIC-2020-5.pdf
Or an even older UN report on the Study of the Expert Mechanism on the Rights of Indigenous Peoples: https://documents.un.org/doc/undoc/gen/g18/245/94/pdf/g1824594.pdf

3. Establish mutually agreed-upon objectives for identified opportunities and benefit sharing in *collaboration* with directly affected *Indigenous Peoples* and progress implementation plans towards meeting those objectives.

Should not be contingent on company agreement.

4. Conduct an *internal review of effectiveness* of processes for engagement, and impact and benefit identification/management with *Indigenous Peoples* at mutually agreed intervals.

Required to be published? can be disputed?

Shouldn't the affected IPs be who is best placed to determine said effectiveness?

"Agreement(s): Agreement is the act of approving or accepting something, often arrived at after a process of engagement and negotiation. *Agreements* between companies and *Indigenous Peoples* are the products of such a process. They can take many forms (e.g., relationship agreements, impact benefit agreements, collaboration agreements). *Agreements* can be a means by which *Indigenous Peoples* manifest their consent to impacts on their rights anticipated from mining and mining-related projects, and by which equitable terms for those impacts and for mutually beneficial relations are established. *Agreements* can reflect consent and/or be a means to demonstrate consent."

Should specify that Indigenous peoples are under no obligation to reach agreement and may withhold their consent.

"Critical Cultural Heritage: This includes *cultural heritage* that is essential to the identity and/or cultural, ceremonial, or spiritual impacts of affected *Indigenous Peoples'* lives. It includes natural areas with significant cultural and/or spiritual value such as sacred groves, sacred bodies of water and waterways, sacred trees and sacred rocks. It is defined as either (i) the internationally recognised heritage of communities who use or have used within living memory the *cultural heritage* for long-
standing cultural purposes; or (ii) legally protected cultural heritage areas, including those proposed by host governments for such designation. Co-identifying these areas of *critical cultural heritage* on a project-by-project basis and in consultation with affected *Indigenous Peoples* is an integral step in understanding their spiritual, cultural or historical significance and value."

This implies that sacred sites need to be externally validated in order to be recognized by companies. There may be sites of significant cultural value that have not yet been recognized by national law or internationally, yet are still relevant to communities. Should be clear the communities should be consulted to identify cultural heritage sites and these sites should be respected.

"Free, Prior and Informed Consent (FPIC): FPIC comprises a process, and an outcome (for a point in time). Through this process *Indigenous Peoples* are: (i) able to freely make decisions without coercion, intimidation, or manipulation; (ii) given sufficient time to be involved in decision-making before key decisions are made and impacts occur; and (iii) fully informed about proposed activities and their potential impacts and benefits. The outcome is that *Indigenous Peoples* can collectively grant or withhold their consent for a specified activity as part of a given decision-making process. These decision-making processes for proposed activities should be based on *good faith* negotiation, while striving to be consistent with *Indigenous Peoples*' traditional decision-making processes and respecting internationally recognised human rights."

Should not be striving to be consistent with Indigenous Peoples' traditional decision-making processes - it must be consistent with Indigenous Peoples' traditional decision-making processes and international human rights standards. UNDRIP Article 34 says so. Companies may otherwise use traditional decision-making as a grudge to justify other unethical practices

like not including voices of women, youth, etc., or only consulting certain leadership groups in non-transparent ways.

Also should apply to ongoing activities and harms generated by past activities. The lack of an ongoing application of an FPIC requirement is a fundamental, and unacceptable, flaw.

"Indigenous Peoples: Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present nondominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system."

In the African context, the definition of Indigenous Peoples does not generally reference pre-colonial societies or aboriginality. Rather, the African Commission on Human and Peoples' Rights (ACHPR) has identified the following characteristics that embody the concept of indigenous peoples: self-identification; a special attachment to and use of traditional land; and a state of subjugation or marginalization resulting from ways of life or modes of production different from the national hegemonic and dominant model.[1] The standard's definition of Indigenous Peoples should mention this regional distinction and cite to the ACHPR.

"Where agreement is not obtained: In such circumstances, steps can include renewed or expanded efforts for dialogue with affected *Indigenous Peoples* and relevant parties to resolve differences of opinion. Companies could decide they should reconsider the scope of an activity given its potential for *adverse impacts*, or decide whether they ought to remain involved with a project and consider the decision to responsibly disengage."

Inconsistent with international law - if they do not have consent companies should withdraw.

[1]"Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities", African Commission on Human and Peoples Rights https://www.iwgia.org/images/publications//African_Commission_book.pdf (pp. 92-93)

Performance Area 15: Cultural Heritage

Unified Cultural Heritage Protections Across Performance Areas Impacting Indigenous Peoples' Rights and Interests

Indigenous cultural heritage is not limited to physical artifacts or sites but extends to landscapes, ecosystems, and Indigenous knowledge that hold cultural and spiritual significance. Cultural heritage protections must encompass both tangible and intangible elements in a consistent and cohesive way across all performance areas where Indigenous Peoples rights and interests are engaged. ILO Convention 169 (Article 5) emphasizes the right of Indigenous Peoples to maintain and protect their social, cultural, religious, and spiritual values and practices, while UNDRIP (Article 11) affirms the right of Indigenous Peoples to preserve and control their cultural heritage, which includes knowledge systems, languages, and spiritual traditions tied to the natural environment.

Gaps:

- **Fragmented Cultural Heritage Protections Across Performance Areas**: Although Performance Area 15 (Cultural Heritage) contains specific protections, other areas like Performance Area 3 (Responsible Supply Chains) and Performance Area 19 (Biodiversity, Ecosystem Services, and Nature) do not consistently incorporate protections for cultural heritage, especially concerning intangible elements. This gap risks leaving critical aspects of Indigenous cultural heritage—such as culturally significant landscapes and biodiversity—unprotected because they are not directly addressed.
- **Lack of Mandated Indigenous-Led Cultural Assessments**: The Consolidated Standard does not explicitly require Indigenous-led assessments to identify and define cultural heritage elements in areas impacted by projects. Without Indigenous leadership in cultural heritage assessments, companies may overlook or inadequately address elements that are less tangible, such as Indigenous knowledge or spiritual values.
- **Inadequate Protection for Intangible Cultural Heritage**: Although physical cultural sites may receive some level of protection, intangible elements like oral histories, languages, and Indigenous practices tied to land and nature often lack specific safeguarding measures. This omission contradicts UNDRIP's holistic view of Indigenous cultural heritage and fails to protect the full scope of Indigenous values.

Recommendations:

- **Incorporate Cultural Heritage Protections in Relevant Non-Cultural Performance Areas**:
    - Require that cultural heritage considerations are embedded within non-cultural areas like Performance Area 3 (Responsible Supply Chains) and Performance Area 19 (Biodiversity). This means incorporating protocols for protecting landscapes, sacred natural sites, and resources essential to Indigenous culture wherever supply chains or biodiversity efforts intersect with Indigenous Peoples

lands.

- **Mandate Indigenous-Led Cultural Heritage Assessments**:
    - To ensure that all elements of cultural heritage are fully recognized and respected, the Standard should mandate Indigenous-led cultural heritage assessments. This aligns with the ILO 169 and UNDRIP standards and ensures that Indigenous communities directly contribute to identifying and safeguarding cultural values that may be affected.
- **Strengthen Protections for Intangible Cultural Heritage**:
    - Include specific requirements to protect intangible heritage, such as oral traditions, ecological knowledge, and spiritual practices, within Performance Area 15 and extend these protections to other relevant areas, ensuring that intangible heritage is safeguarded across all stages of project planning and operations.

Furthermore, this area should require consultation with Indigenous Peoples communities on the management of cultural sites, ensuring that protections are not only respectful but also led by Indigenous Peoples communities input.

Performance Area 17: Grievance Management

Culturally Appropriate Grievance Mechanisms Across All Areas with Potential Impacts to Indigenous Peoples

Indigenous Peoples communities require grievance mechanisms that respect their cultural protocols, languages, and governance systems to ensure accessibility and trust in the process. The UN Guiding Principles on Business and Human Rights (UNGPs) emphasize that effective grievance mechanisms must be legitimate, accessible, predictable, and rights-compatible. Indigenous communities face unique barriers to using general grievance systems, which often lack accommodations for cultural values or may not involve Indigenous representatives in the resolution process. ILO Convention 169 (Article 12) calls for grievance processes that are accessible and understandable to Indigenous peoples, while UNDRIP emphasizes Indigenous rights to justice and culturally appropriate procedures (Articles 40 and 27).

Gaps:

- **Lack of Specific Indigenous Grievance Channels**: While the Consolidated Standard includes general grievance requirements, it does not mandate Indigenous-specific channels that would allow Indigenous Peoples to file and resolve grievances in a culturally sensitive way. This omission risks alienating Indigenous Peoples communities, limiting their recourse when impacted by a facility's activities.
- **Absence of Indigenous Leadership in Grievance Resolution**: Indigenous representatives are not specifically included in the development of the grievance process, which is crucial for legitimacy in the eyes of the community. Indigenous representatives should be actively involved in the grievance process by serving as mediators, advisors, or monitors, ensuring that the process respects cultural norms and reflects community perspectives. This involvement could include participating in grievance review committees, co-designing reporting mechanisms, or overseeing the implementation of resolution outcomes. Without Indigenous participation, grievances may not be resolved in a manner that aligns with the community's needs and values, limiting the effectiveness of resolutions.
- **Inadequate Transparency in Grievance Outcomes**: Current standards do not require detailed reporting on grievances from Indigenous communities, limiting accountability. Transparent disclosure of grievances, outcomes, and timelines is essential for building trust with Indigenous communities.

Recommendations:

- **Create Indigenous-Specific Grievance Mechanisms**: The Consolidated Standard should require grievance mechanisms tailored to Indigenous communities, ensuring accessibility in local languages, cultural considerations in communication, and location options for in-person reporting. This mechanism should include anonymous reporting options to encourage openness without fear of retaliation.
- **Mandate Indigenous Leadership in Grievance Processes**: To increase trust and

legitimacy, grievance mechanisms should include Indigenous representatives or leaders in mediating and resolving complaints, particularly those involving land, culture, or livelihoods. This aligns with ILO 169 and UNDRIP's emphasis on Indigenous self-determination.

- **Require Detailed Reporting on Indigenous Grievances**: Regular, transparent reporting on grievances specific to Indigenous communities, including issue type, resolution status, and resolution timeline, should be mandatory. This accountability would signal genuine commitment to Indigenous Peoples rights and cultural respect.

Examples:

- **Performance Area 3 (Responsible Supply Chains)**: Adding Indigenous-specific grievance mechanisms for supply chain-related impacts would provide Indigenous communities with a direct and accessible way to voice concerns over sourcing activities. This aligns with UNGPs and ensures that facilities and their supply chain partners are accountable for any adverse impacts.
- **Performance Area 17 (Grievance Management)**: As this area governs grievance processes, it should establish specific requirements for Indigenous grievance systems, incorporating Indigenous languages, respect for community governance, and accessible channels that empower Indigenous representatives to lead or mediate grievances. Following IFC Performance Standard 1, such a mechanism should also ensure that grievances are tracked, addressed, and disclosed transparently.
- **Performance Area 19 (Biodiversity, Ecosystem Services, and Nature)**: Biodiversity impacts are often particularly significant for Indigenous communities due to their direct ties to the land. Adding an Indigenous-specific grievance channel here ensures that biodiversity impacts on Indigenous lands, including loss of flora, fauna, or ecosystem services essential to cultural practices, are formally addressed.
- **Performance Area 15 (Cultural Heritage)**: The grievance mechanism here should enable Indigenous communities to report and resolve issues related to cultural heritage, particularly the destruction or alteration of sacred sites. A culturally relevant grievance mechanism that includes Indigenous leaders or representatives would ensure that community values are upheld.

Furthermore, disclosure should include details of Indigenous-specific grievances, the resolutions achieved, and the timeframes for responses. This would support transparency and highlight responsiveness to Indigenous Peoples concerns.

LEVEL	REQUIREMENT
17.1 Grievance Mechanism for *Stakeholders* and Rights-Holders	

Foundational Practice	1. Establish and implement a *grievance mechanism* to receive, track and respond to issues and concerns raised by *stakeholders* and *rights-holders* at the *Facility* in a manner that protects their identities to protect against discrimination or reprisals, including an option for confidentiality and anonymity, if requested. ***Recommending Adding: "including an option for confidentiality and anonymity, if requested."*** **Grievance mechanisms must be functionally independent from the project's operating company, for example, it may be run by a third-party trusted by the rights holders for whom it is intended. This section should include details around appropriate remedy: Remedy for complaints must be adequate, effective, and prompt, and may include one or more of the following: an apology, guarantees of non-repetition, restitution, rehabilitation, financial or non-financial compensation, and punitive sanctions.**
	3. Communicate the availability of the *grievance mechanism* and make it accessible to *stakeholders* and *rights-holders* at the *Facility* level. **This should specify that the system for reporting and filing grievances must be available in multiple formats, such as online, by mail, in person, etc. Also, that all pertinent information and documentation related to the grievance procedure must be culturally appropriate and provided in relevant local languages.**
	4. Provide training to workers with accountabilities and responsibilities for grievance management on the *grievance mechanism*(s), and to those who engage with communities.
	Recommend Adding: "Publicly commit through statements and policies that stakeholders and rights holders who use the grievance mechanisms will not face discrimination, reprisals, harassment, threats or intimidation from the company." ***Recommend Adding: "Develop whistleblower protections based on international best practices that apply to all workers as well as vendors, contractors and auditors. Protections should stipulate that mine workers have the right to refuse unsafe work, and must be allowed to stop their tasks at any time if they identify imminent risk to health and safety without suffering any punishment."***

Good Practice	1. Establish and implement an operational-level *grievance mechanism* that meets the eight *UNGPs' effectiveness criteria* for such mechanisms. These emphasise legitimacy accessibility, etc. (see glossary for full details), and protection against discrimination or reprisals for those raising grievances, supported by *confidentiality* to protect their identity.
	2. Consult with potentially *affected stakeholders* and *rights-holders* on the design of the *grievance mechanisms* in a manner that responds to their needs, which should outline clear process steps, timelines and milestones to assess and address grievances in an impartial manner.

These should both be foundational.

Recommend Adding: "Policy that commits the company will not use non-disclosure agreements to prevent individuals from openly filing and/or pursuing a complaint."

Recommend Adding: "Implement a system where complainants are provided the funds necessary to access independent forms of support (e.g. legal, technical or medical) in all phases of engagement with the procedure, including during the initial filing of the complaint."

In addition to access to information, the company must provide access to advice and expertise.

	4. Provide *remedy* for adverse human rights impacts that the *Facility* has caused or contributed to through the *grievance mechanism* or cooperate in their remediation through other legitimate processes. **This should be foundational. What is the point of a grievance mechanism system if there is no remedy? Why would stakeholders and rights holders participate if they will not access remedy.**
Leading Practice	2. Conduct an *internal third party internal review of effectiveness* of the *grievance mechanism* with affected people based on the eight *UNGPs' effectiveness criteria at defined intervals.* ***Recommend replacing: "internal" with "external third party"***
	3. *Publicly disclose* the number and types of issues and concerns raised through the *grievance mechanism* and types of actions taken in response, resolution and/or remediation of such issues, considering provisions for *confidentiality* and protection of complainants.

	This should be foundational or good, not leading.
	4. Internally review issues and concerns raised through the *grievance mechanism at defined intervals* for patterns with *stakeholders* and rights holders, assess underlying causes and develop preventive actions that address underlying causes. Communicate decisions made based on this review publicly. ***Recommend Adding: "Communicate decisions made based on this review publicly."***
	5. Direct those who raise issues that are not resolved by the operational-level *grievance mechanism* to other legitimate avenues of redress for unresolved issues and concerns.

The intent section says "Provide or enable access" that is not the same as directing. This language should be strengthened to match the intent.

Performance Area 18: Water Stewardship

Positive to see public disclosure of facility-level water data, independent audits of public reporting on water and publicly available results as leading practice. However, these are critical requirements when it comes to water stewardship, and should be included as foundational or good practice.

In addition, ICMM Water Reporting: Good Practice Guide and MCA Water Accounting Framework are leading practices. These should be the minimum requirements, as is the case under ICMM.

We welcome the focus on Collaborative Watershed Management. This section could be strengthened to include identification of future uses of water in collaboration with relevant stakeholders.

Water monitoring programme for both water quality and water quantity should include participation of stakeholders from affected communities.
Whilst there is a commitment to identify water quality and quantity requirements for the Facility over its operating life cycle, this should be strengthened by including a commitment to ensure waters affected by the mining project are maintained at a quality that enables safe use for current purposes and for the potential future uses identified in collaboration with relevant stakeholders.

Whilst mention of need to identify opportunities to improve the efficiency of process water use and to seek to reduce process water use, this could be strengthened to include a specific commitment on recovery and recycling, referencing the use of water recovery and recycling technologies, closed loop water systems and tailings dewatering techniques as well as adopting Zero Liquid Discharge approaches.

Performance Area 19: Biodiversity, Ecosystem Services and Nature

Summary of overarching group comments/positions on the statement:

Many Indigenous cultures are intertwined with their natural environments. Requiring that biodiversity efforts consider cultural implications, such as species or landscapes of significance, aligns with both environmental stewardship and cultural preservation.

There is no mention of land cover change/deforestation or degradation in this Performance Area.

There is no mention of high-carbon stock areas, intact forest landscapes and primary forest.

Recommendations:

- To have specific deforestation and degradation indicator, at least on foundational practice
- In leading practice: to have no-go zone areas, ie. small islands, primary forest, high carbon stock areas, key biodiversity areas
- To have documents on deforestation and biodiversity policy in place.
- Need to include forests/land use change/natural habitat in avoidance; In addition to world heritage sites → HCS, KBAs, primary forest
- Reconsider language of “net loss” or have more rigid pathway to establish baseline
- On no go zones, we welcome commitment to prohibit exploring or operating within World Heritage Sites, and to comply with restrictions established for Key Biodiversity Areas, Ramsar Sites (wetlands of international importance), legally designated protected areas and their buffer zones (where restrictions are defined) at the foundational level. This could be strengthened to further name specific areas, including International Union for Conservation of Nature (IUCN) protected areas (I-IV)and Buffer zones and core areas of UNESCO biosphere reserves.
- Development and implementation of a biodiversity management plan to achieve no net biodiversity loss by 2030 should be foundational or good practice not leading. Aiming for a net gain in important biodiversity values should be leading.
- While there are some references to rehabilitation and/or restoration, this must be further strengthened to include the requirement to implement habitat restoration and reforestation programs throughout the life cycle of the mine.
- Positive to see monitoring of progress with implementing management actions and progress towards no net loss or net gain at defined intervals. However, this should be strengthened to specify detailed and frequent monitoring of key biodiversity indicators (as to be agreed under the CBD framework).

LEVEL	REQUIREMENT
19.1 Biodiversity and Ecosystem Services and Nature	

Foundational Practice	2. Comply with restrictions established for Key Biodiversity Areas, Ramsar Sites (wetlands of international importance), legally *designated protected areas* and their *buffer zones* (where restrictions are defined). Where mining or associated infrastructure is allowed within such areas, confirm that any new operations or changes to existing operations are compatible with the value for which they were designated. **Key Biodiversity Areas are not defined in the Glossary.** **This requirement only applies to changes/new infrastructure - no retroactive application - a flaw throughout the CMSI.** **It also implies that industrial-scale mining can somehow be compatible with "the value" of Key Biodiversity Areas, Ramsar Sites, and legally designated protected areas - worse yet, the determination of this supposed compatibility is to be made by the company itself.**
	5. Establish a *biodiversity baseline* in the *area of influence* and identify significant *biodiversity values* as early as practicable to support the 'avoidance' initial stage of the mitigation hierarchy, incorporating local knowledge where available.

This should be done before starting any activity.

Leading Practice	1. Develop and implement a *biodiversity management plan* to achieve *net gain* of *biodiversity* by closure, against a defined baseline, and monitor progress *at defined intervals.*

There should be no-go zone areas defined here as leading practice. Better to have a specific timeline, ie. 3 months - rather than the current language of "defined intervals."

Performance Area 20: Climate Action

Positive to see some focus on minimising climate change impacts from mine sites through increased energy efficiency, reduced energy consumption and reduced emissions of greenhouse gases.

Welcome commitment to adoption of widely recognized methods for measuring and reporting greenhouse gas emissions, such as the GHG Protocol Corporate Standard as a foundational requirement.

At facility level, strong focus on scope 1 and 2 however setting of targets should be foundational and clearer wording needed to specify targets are aimed at reduction of emissions. Language on scope 3 can be much stronger and should be included as foundational or good practice, rather than leading.

It is positive to see some alignment of business planning and decision-making for existing activities and new projects with the goals of the Paris Agreement. However, this should be strengthened to include specific reference to aligning with science-based targets consistent with global climate goals, such as the Paris Agreement, to limit temperature increases to **1.5°C** above pre-industrial levels.

Performance area could be further strengthened with inclusion of time-bound commitments to phase out fossil fuel use in operations.

Performance Area 21: Tailings Management

Current industry standards, including the Global Industry Standard on Tailings Management, do not go far enough to adequately protect communities and ecosystems from failures. In 2020 and 2022, an international group of scientists, community groups, and human rights and environmental organizations published a set of guidelines for the safer storage of mine waste. Safety First: Guidelines for Responsible Mine Tailings Management that aim to protect communities and workers from the risks posed by mine waste storage facilities.

Safety First is available here: https://earthworks.org/resources/safety-first/

Comparisons between the GISTM and Safety First have shown multiple gaps in the GISTM that the CMSI should address and remedy.

Some of those gaps have been identified here:
https://earthworks.org/wp-content/uploads/2021/09/Global-Tailings-Scorecard-Final.pdf

Specifically, the CMSI should go beyond the GISTM to require:

1. A commitment to zero harm to people and the environment.
2. No aqueous tailings disposal under any circumstances.
3. Based on the goal of zero harm to people, companies must ensure that trained professional support will be provided during an emergency and will reach all affected populations in a timely manner.
    - New tailings facilities must not be constructed if the operating company cannot ensure the safe and timely assisted evacuation of any population that lives in the zone of a possible failure path.
    - Operating companies must not build infrastructure in which workers are likely to be present—offices, cafeterias, warehouses—in the zone of a possible failure path.
    - The location and safety of a tailings facility must not only contemplate the impact to human lives in the case of a failure, but the environmental and economic impacts as well.
    - Tailings facilities must not be constructed in a location where a failure would materially impact public water supplies or critical habitats, or near protected ecological resources
    - Tailings facilities must not be constructed where there are facilities that present considerable evacuation challenges in the zone of influence, including, but not limited to, jails or prisons, hospitals, and assisted-living or elder care facilities. Even if operating companies carry out training and emergency drills, certain social groups (the elderly, small children, people with disabilities, etc.) require special assistance.
4. Affected communities must be able to define no-go zones, or zones where a tailings facility is not permitted due to environmental, cultural or economic factors.

5. All new mines that create tailings carry out an analysis of the best available technology (BAT) for tailings disposal and implement decisions for BAT based on the analysis. Companies must reduce the water content in a tailings facility and reduce the amount of tailings stored above ground as much as possible. Filtered tailings can be compacted in the tailings facility, which reduces the likelihood of liquefaction.
6. If an operating company, regulatory agency, or independent third-party identifies any potential loss of life as a result of a tailings dam failure, the dam must be designed to withstand the Probable Maximum Flood (PMF), which is the largest flood that is theoretically possible at a given location, and the Maximum Credible Earthquake (MCE), which is the largest earthquake that is theoretically possible at a given location. All modeling and design for floods must take climate change into account — this applies for both closed and operating facilities.
7. All information relevant to safety and the stability of tailings facilities must be publicly available. Safety practices must be considered “non-competitive”.
8. Require companies stop building new upstream tailing dam facilities. The CMSI should also require the expansion of existing upstream tailings facilities cease, and these facilities must be safely closed as soon as possible. This includes dams where companies have been approved for permits that have not begun or are just beginning construction. The deadline for safe closure must depend on engineering and the safety of affected communities, rather than economic considerations.
9. There must be an independent evaluation of all aspects of the design, construction, operation, and maintenance—including during closure and rehabilitation—of tailings and other mine waste facilities, regardless of the projected consequences of failure of the mine waste facility, by a group of competent, objective, third-party reviewers (e.g., an Independent Tailings Review Board). The operating company must not be able to influence decisions made by the ITRB, and its members must not be dismissed or terminated during a review in an attempt to influence the outcomes or as an intimidation tactic. Any fees paid to the ITRB must be independent of the conclusions reached during the review. ITRB members, as individuals or as representatives of organizations, must not have a financial conflict with the mine being reviewed. Financial conflicts include but are not limited to direct financial interest (employment, contracts, stock, etc.), and personal or family connections to the mine or operating company that could incur any kind of benefits.

Additionally, the CSMI should specify that the structural zone of a filtered tailings facility is an engineered structure that should be treated as a tailings dam under the standard.

Companies are increasingly exploring the option to use materials contained in operating, closed or abandoned mine sites via remining. Remining is not specifically referenced in the GISTM. At a minimum, remining facilities should be required to adhere to all relevant mining regulations, and mining regulations and best practices should be updated to reflect the unique circumstances surrounding remining, including the CMSI. Where not already required by law, proposed remining operations should undergo a rigorous environmental and social impact assessment to provide frontline communities, governments, and regulatory agencies with

information about the full range of potential benefits and impacts of the remining project. The assessment process must include the opportunity for public comment and appropriate remedies. Additionally, the waste streams that remain after remining, which can be significant, will require careful disposal, monitoring, and maintenance in perpetuity to avoid additional adverse environmental effects and possible ecological disasters. Remining waste should not be exempt from hazardous waste regulations.

Non-Conventional Tailings Management Solutions

IFC Environmental, Health and Safety Guidelines on Mining related to riverine (river, lakes, and lagoons) and deep sea tailings placement (DSTP) is more rigorous than the CMSI, while still falling short of measure to adequately protect ecosystems and communities, particularly given increasing pressures and threats due to climate change.

The IFC states that riverine or shallow marine tailings disposal is not considered good international industry practice and that deep sea tailings placement should be “considered only in the absence of environmental and socially sound land-based alternatives and should be based on an independent scientific impact assessment.”

While the IFC guidance, drafted in 2007, is stronger than the CMSI draft of 2024, it ignores growing evidence of the long-term harms of submarine tailings disposal and the growing momentum, particularly from the financial sector and downstream purchasing companies and government, against the practice.

Submarine tailings disposal is an outdated practice that is only being proposed in new mining projects in Norway and Papua New Guinea. Inclusion in the CMSI as ‘good practice’ would be a massive step backwards.

Relevant sources:
https://earthworks.org/releases/norwegian-asset-manager-divests-from-operator-of-controversial-ramu-mine/

https://www.responsible-investor.com/the-world-s-oceans-are-under-pressure-but-investors-still-have-time-to-help-solve-the-challenge/

Could strengthen GISTM further by including:

New mines must adopt Best Available Technologies (BAT) and Best Available Practices (BAP), such as dewatering and filtering tailings, as well as using dry stacking and backfilling techniques.

No new tailings facilities where inhabited areas are in the path of a tailings dam failure, and no new upstream dams.

Continuous monitoring systems in place to identify, disclose and mitigate risks, with regular independent inspections.

"*Non-conventional tailings management solutions*: This would include lake, riverine and deep-sea tailings disposal, or other tailings disposal options that don't involve the construction of a dam. In reviewing and implementing applicable requirements of the GISTM or Tailings Protocol of MAC, facilities should demonstrate that they: identify potential and actual risks and impacts from tailings; respect the rights of *affected stakeholders* and meaningfully engage them at all phases of the tailings system lifecycle, including closure; implement a system to manage tailings; conduct monitoring and review; and *publicly disclose* relevant information."

Parties to the London Convention-London Protocol have not so far agreed to adapt their regime to look at regulating land-based discharges such as these, though legal advice provided by IMO confirmed that there is no legal impediment to them doing so if the political will was there. They have, however, looked at the issue from a technical standpoint a number of times, seeking to work cooperatively with other bodies. A technical report on the issue was published under the LC-LP around 10 years ago. We have managed to resist repeated calls from some quarters to develop 'best practice guidance' that could end up facilitating DSTP rather than restricting it.

The UN expert group GESAMP has a working group that has been preparing a technical document on DSTP for many years, led by someone who has also worked in an advisory capacity for a number of mining companies in the past. This work still seems to have been in its final draft phase for several years now. We submitted yet more comments earlier this year as it was still far too open to the idea of setting guidelines for DSTP rather than identifying it as an altogether bad idea. Understanding is that it will be finalised and published late 2024/early 2025.

Relevant sources:
https://wwwcdn.imo.org/localresources/en/OurWork/Environment/Documents/Mine%20Tailings%20Marine%20and%20Riverine%20Disposal%20Final%20for%20Web.pdf

http://www.gesamp.org/work/groups/42

https://www.hi.no/en/hi/news/2024/august/scientists-trace-pollutants-from-the-brown-crab-back-to-the-source

Performance Area 22: Pollution Prevention

Welcome compliance with the International Cyanide Management Code (The Cyanide Code).

Welcome commitment to manage and minimise non tailings waste in line with the waste mitigation hierarchy.

Welcome commitment to manage waste containing mercury in line with the Minamata Convention, as well as requirement to quantify and publicly disclose material point source mercury air emissions from operations in line with internationally recognised reporting standards (as good practice).

The section on noise pollution could be further strengthened to include commitments to ensure mining-related noise does not exceed clearly set levels

If noise or vibration from blasting activities is found in monitoring to impact human receptors, clear conditions should be set for conducting blasting e.g. only on normal working days.

Noise data and information should be made available to stakeholders.

Performance Area 23: Circular Economy

Positive to see a dedicated chapter on circular economy with commitment to apply the principles of circular economy in the Facility's operations through increased resource efficiency, reprocessing, reuse, recovery and recycling as foundational practice. When it comes to requirements for smelters, we welcome the requirement to identify opportunities to promote collection, reuse and recycling of postconsumer products at their end-of-life.

LEVEL	REQUIREMENT
23.1 Circular Economy Management at all facilities	
Foundational Practice	1. Publicly commit to apply the *principles of circular economy* in the *Facility*'s operations through increased resource efficiency, reprocessing, reuse, recovery and recycling. **This means little without effective enforcement mechanisms.**
Good Practice	2. Identify opportunities to minimise the production of *tailings*.

Good, but must be combined with proper tailings storage/management - which as seen in PA21 is lacking.

Leading Practice	1. Establish, monitor and *publicly disclose* progress towards objectives and/or targets for *circular economy* at the corporate level *at defined intervals.*

Again this is largely meaningless without enforcement mechanisms.

LEVEL	REQUIREMENT
23.2 Additional Requirements for Smelters	
Good Practice	3. Measure recycled content using recognised methodologies or industry guidelines where available. **What kinds of recycling methods are considered acceptable here? If it's pyrometallurgy it shouldn't be called recycling.**
	4. Conduct risk-based due diligence on *scrap*, considering the type and country of origin of *scrap* materials.

	If facilities can track/monitor scrap they should also be doing so for other mineral inputs.
Leading Practice	1. Provide information on *recycled content* to commercial partners on request including the methodology and system boundaries applied to determine the recycled content. **Should be publicly disclosed - not only on request.**
	2. Identify and assess human rights and environmental risks in the *scrap* supply chain and prioritise these based on their severity and likelihood (see Performance Area 3: Responsible Supply Chains). **This should be the approach to all minerals a smelter facility uses, not just scrap.**
	4. Increase the recovery, reuse, and recycling of materials against a baseline and as a percentage of material intake, ensuring that in doing so, environmental and economic viability and safety, technical and legal considerations are prioritised. **Also needs to prioritize worker safety.**

"Circular economy: Within a *circular economy*, material producers and product manufacturers work with end users, communities, retailers, service providers and waste management facilities to "close loops" by reusing, performing maintenance on, repairing, refurbishing and recycling products and materials. In the mining sector, *circular economy* encompasses 'process circularity', which refers to the application of circular principles to the mining process, and 'product circularity', which focuses on ensuring that metals and minerals are kept in circulation through recovery, reprocessing and reuse.

Principles of circular economy: The *circular economy* is based on three principles, driven by product and process design: eliminate waste and pollution; circulate products and materials (at their highest value); regenerate nature."

The non-inclusion of demand reduction strategies in these definitions greatly limits their potential positive impact.

"Recycled Content: Recycled material refers to minerals or metals that have been previously processed, such as end-user, post-consumer, scrap and waste minerals or metals arising during minerals or metals processing and product manufacturing, which is returned to a minerals or metals processor or other downstream intermediate processor to begin a new life cycle."

There needs to be a recycling definition in the glossary.

Performance Area 24: Closure

It is positive to see commitment to undertake monitoring, maintenance and management of closure and rehabilitation activities during closure and post-closure (whilst only as good practice). However, it is necessary to include clear timelines for monitoring and liability post closure. The foundational level of 'public commitment to responsible closure' is too vague.

Financial assistance must be independently guaranteed. In addition, financial assistance is currently only included as good practice, and only in cases in which a financial assurance is required under national law.

LEVEL	REQUIREMENT
24.1 Closure Management	
Foundational Practice	1. Publicly commit to responsible *closure* that integrates environmental and social considerations and achieves physically and chemically stable post closure conditions that do not pose ongoing material risks to people or the environment. **"Responsible" is too vague and subjective.**
	2. Develop a *closure* plan in line with regulatory requirements, informed by engagement with potentially *affected stakeholders* and *rights-holders* that integrates environmental and social aspects and estimated *closure* costs. **Closure plans should be co-designed with stakeholders and rights holders, not informed by.**
	Recommend Adding: "Companies must declare bankruptcy or sell to junior companies to avoid closure monitoring and liability. **Companies must present documentation showing they have successfully eliminated all credible failure modes in order to close a tailing storage facility."**
Good Practice	1. Identify risks and impacts related to *closure* and *rehabilitation* in consultation with stakeholders and *rights-holders,* including but not limited to those related to land, biodiversity, water bodies, water sources, workers, communities, infrastructure, and post-closure liabilities. **There should be a publicly available plan to mitigate any risks identified in the assessment.**

	2. *Collaborate* with *affected stakeholders* and *rights-holders* to identify opportunities for post-mining communities, including workers and local suppliers, delivered through *closure,* as closure approaches. **Co-design.**
	3. *Collaborate* with *affected stakeholders* and *rights-holders* and local or regional government planning authorities as part of the *closure* planning process on *closure* measures and success criteria to prevent *adverse impacts* and realise opportunities, including but not limited to the *rehabilitation* of land, beneficial future land uses, protection of biodiversity and water sources, and avoidance of *acid rock drainage* and metal leaching. **Co-design.**

	5. Implement and monitor *closure* measures during the operating life of the *Facility*, in line with a *progressive closure* approach and in accordance with the *closure* plan. **There should be a requirement for reclamation and closure of tailings facilities to be a factor in their initial design and siting.**
	6. Undertake monitoring, maintenance and management of *closure* and *rehabilitation* activities during *closure* and post-*closure*. **Recommend adding: "and fund the monitoring"**
	7. Estimate the costs to implement the *closure* and *rehabilitation* plan, update them *at defined intervals*, and make adequate *financial provisions* to meet these costs that are publicly disclosed through corporate-level reporting at least annually. **Financial assurance must be independently guaranteed, reliable, and readily liquid to ensure that funds will be available in the event of bankruptcy by the operating company. There must be no limitations on the use of funds for mine-related cleanup activities. Financial assurance must undergo review by third-party analysts, using accepted accounting methods, at least every three years or whenever there is a material change either to the tailings facility or to the social, environmental, and local economic context. Unless the financial assurance is updated annually, the cost for inflation until the next financial review must also be included in the financial**

	assurance calculation.
	8. Establish *financial assurance* for *closure* through guarantees, bonds, or other financial instruments (which in some instances are legally prescribed). Financial assurance may include self-funding where legally permissible. **This should be foundational.**
Leading Practice	1. *Publicly disclose* how *closure* costs are estimated, and the costs and associated *financial provisions* for all facilities at least annually. **This should be foundational.**

"Closure: A process of planning and managing the decommissioning of a *Facility*, smelter and associated infrastructure and facilities, mitigating impacts, and undertaking *rehabilitation* to achieve post-closure environmental and social objectives.[119]"

Recommend specifying in the definitions that: A tailings facility is safely closed when deposition of tailings has ceased and all closure activities have been completed so that the facility requires only routine monitoring, inspection and maintenance in perpetuity or until there are no credible failure modes.

Consolidated Standard Assurance Process

The assurance system gives companies and their facilities too much control over the assurance process, making it likely audits do not accurately capture a facility's human rights, environmental, and social impact. For example:

- The mine, not the auditor, is the entity providing notice to stakeholders and rights holders about an upcoming audit, which in low trust environments is likely to discourage workers, communities, workers, and Indigenous Peoples from participating in the audit.[2] The mine also determines the information and communication approach utilized to inform stakeholders and rightsholders.[3]

- The mine identifies the stakeholders, including workers and rightsholders, that auditors may decide to interview during the audit, giving companies too much control over the audit's outcome.[4] The mine also provides auditors with "any context around the list provided, including any sensitivities, such as ongoing negotiations or legal action, local political influences or entrenched opposition of certain individuals/groups."[5] Although assurance providers are required to "critically consider" the list of stakeholders and rightsholders, and bring any significant gaps to the attention of the mine, the mine bears the bulk of the responsibility for determining the stakeholders within the scope of audit.[6]

- The auditor is required to give mines a proposed list of interviewees ahead of the audit, solicit feedback from the mine on the interviewees, and even in some cases remove an interviewee from audit at the request of the mining company.[7] Mines are also encouraged to make the auditor aware of "any sensitivities with a particular interviewee and/or operating context to provide relevant background information."[8] These requirements give mining companies far too much opportunity to influence auditors' views of the credibility and importance of stakeholders. Mines are also encouraged to "conduct outreach to the potential interviewees in advance to make introductions with the aim of increasing the likelihood of gaining the consent and cooperation of the interviewee to participate."[9] In low trust contexts, direct company outreach to rightsholders risks at best dissuading them from participating honestly and frankly in the interview process and at worst creates opportunities for intimidation and threats from the mining company to interviewees.

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[2] Consolidated Standard, Assurance Process, October 2024, p. 18-19.
[3] Ibid.
[4] Consolidated Standard, Assurance Process, October 2024, p. 20.
[5] Ibid.
[6] Ibid.
[7] Consolidated Standard, Assurance Process, October 2024, p. 22-23.
[8] Consolidated Standard, Assurance Process, October 2024, p. 23.
[9] Consolidated Standard, Assurance Process, October 2024, p. 23.

- The mining company is selecting the auditor[10] and seems to pay them directly instead of a set-up that would financially separate the audit company from the mining company.

Inadequately detailed audit reports exacerbate the vagueness within the standard itself.

- The standard's proposed reporting process requires auditors to award ratings ("Foundational Practice Level," "Good Practice Level," or "Leading Practice Level") for each of the standards' 24 performance areas. Auditors are required to provide a "statement of findings" related to each of the 24 performance areas, and any sub-category, but are not required to address the facility's compliance or non-compliance with all the criteria contained in the standard itself.[11] For example, the consolidated standard's section on Indigenous Peoples includes at least twelve different criteria under the Good Practice level, from the need for meaningful engagement and decision-making processes, respect for cultural heritage, to agreement and consent for anticipated mine impacts. Audit reports, however, will only discuss in a single section the mine's practices towards Indigenous Peoples, without a requirement to address each of the twelve criteria. This risks audits failing to address vital subjects, lacking a full picture of a mine's human rights, environmental, and social performance, and glossing over abusive corporate practices.
- It is not clear whether non-compliances and corrective actions are mentioned in the assurance report or are omitted if corrective action has been taken.

Additional notes:

- There is no requirement for accreditation of audit firms, only individuals. Audit firms are typically accredited against international standards, such as ISO 17021, which requires that firms have strong procedures in place to address conflicts of interest across the firm and for the companies they are auditing. The consolidated standard would not require audit firm accreditation meaning individual auditors would be responsible for verifying their own conflicts.

- There is language suggesting that national panels (p. 9) might have a role in determining how assurance happens in specific countries. Would national panels be able to amend the standard or assurance process, potentially lowering the bar in some contexts?

- Lack of clarity on assessment procedures, including: How much time will the auditor spend at the mine? Is there sufficient time for a thorough assessment?

- The grievance mechanism is inadequately fleshed out.

[10] Consolidated Standard, Assurance Process, October 2024, p. 10.
[11] Consolidated Standard, Assurance Process, October 2024, p. 30.

“A. Facilities and their Parent Companies

The Consolidated Standard is primarily implemented at the Facility level, though a minority of performance areas are assessed, in part or in full, at a corporate level.

A Facility includes the footprint of all operational activities (i.e. mine, ancillary Facilities such as power plants, smelter, etc.) under the operational control of the company and typically located in geographic proximity.

A Facility’s responsibilities when using the Assurance Process include:

[...]

• Contract an accredited Assurance Provider. Advise the Secretariat of the Lead Assurance Provider, including their contact details, and the dates of the planned assurance as soon as the Assurance Provider is selected.”

Direct contracting between the facility (company in reality) and an Assurance Provider creates an inherent conflict - despite any measures that can be taken to mitigate such conflict (such as the requirement to eventually change Assurance Provider after a certain number of years) - contracts with Assurance Providers should be made directly with the CMSI Secretariat.

“B. Assurance Providers
[...]

• For Facilities pursuing an assured claim but not achieving a Good Practice Level or better in all aspects, review the Facility’s Continual improvement Plan to confirm it addresses the identified gaps, is time-bound, and has been signed off by senior management.”

Isn't the Continual Improvement Plan (CIP) required for all facilities falling short of Good Practice in any Performance Area? Time-bound could be over the course of a decade or more... time-bound is meaningless without establishing a time limit for improvement - and means of sanctioning a facility for failure to meet its self-established CIP.

“4.5 Continual Improvement Plan
[...]

When a Facility has not achieved all the requirements at the Foundation Level in a particular Performance Area, it is characterised as ‘Does not meet the Foundation Level’.”

This really needs to be highlighted - the CMSI gives the impression that Foundational practice is indeed Foundational - a threshold minimum - but there is no minimum whatsoever.

“As part of its continual improvement model, all Facilities that use the Consolidated Standard and Assurance Process commit to achieve, at a minimum, the Good Practice Level of performance over time.”

How is this commitment enforced? We see that it's "monitored" but there is no indication of what happens in the case of non-compliance... presumably a facility could be below foundational in every performance area and continue to receive an Assured Claim after Assured Claim - as long as they establish (of their own design) a CIP and report on any supposed progress made "over time"?

"Table 2 – When are Continual Improvement Plans Required?

	Continual Improvement Plan	**Assurance of the Continual Improvement Plan**
Participant claim	Not applicable	Not applicable
Assured claim	Required where non conformances exist to achieve the Good Practice Level. Not required after Good Practice Level achieved.	Required where non conformances exist and Facility has not achieved Good Practice level."
Performance claim		

There is no motivation/incentive whatsoever within the Assurance + Claims policies to every move beyond Good Practice to Leading Practice. This is vital to highlight - as in my experience having spoken with CMSI Execs - they reference Leading Practice Reqs as if they are representative of what the CMSI pushes companies toward - and it is evident here that there is no expectation or requirement to ever move beyond Good - even to get their "highest mark" - the Performance Claim.

The Consolidated Standard Reporting & Claims Policy

“3.2.1 Participant Claim

The Participant Claim is permitted to be used by a facility as soon as its application to participate in the Consolidated Standard has been approved. It is intended to signal that the facility has committed to participate in the formal reporting and assurance processes of the Consolidated Standard and has begun implementing the standard. It does not convey any information on the performance of the facility against the requirements of the Consolidated Standard.

A facility may continue to use the Participant Claim until its first Assured Report is published on the Consolidated Standard’s website, which is within 18 months of the facility’s commencement date. Prior to initiating the Assurance Process and within 9 months of the facility’s commencement date, the facility must submit a self-assessment to the Secretariat, which will form the basis of the initial Assurance Process. After the Assurance Report is finalised and published, the facility will be able to progress to the Assured Claim and/or the Performance Claim as described below.

Any attempt to make use of the Participant Claim in a manner that implicitly or explicitly communicates an achievement of performance against the requirements of the Consolidated Standard is in violation of this policy.”

How will the CMSI ensure that companies are required to clearly distinguish between the facility's participation in the CMSI and the company as a participant in the CMSI - given that communications rarely come from individual facilities, but the company as a whole?

“3.2.2 Assured Claim

The Assured Claim builds on the Participant Claim and can be utilised by a facility as soon as the facility’s first Assured Report has been published on the Consolidated Standard’s website, no later than 18 months following the Commencement Date. The Assured Claim can be used to efficiently communicate to interested parties, such as customers, investors, communities and other stakeholders, that the Assurance Process has been completed and an Assured Report is available.

The Assured Claim is intended to communicate the level of performance achieved within each of the applicable Consolidated Standard Performance Areas of the Consolidated Standard.

- A facility may continue to use the Assured Claim so as long as it remains in good standing within the Consolidated Standard. This means that it must continue to:
- implement the Assurance Process and adhere to the applicable policies and procedures of the Consolidated Standard,
- continue to publish its Self-Assessed Reports in the two years between assurance

cycles,
• undertake the independent assurance every third year,
• ensure its fees are paid-in-full."

This Claim requires nothing in the way of compliance with even Foundational Level requirements in any PA (as per the Assurance Policy doc) - and yet will surely serve to meet the DD requirements of any number of investors and downstream buyers who are not sufficiently familiar with the CMSI or not sufficiently discerning.

"3.2.3 Performance Claim

The Performance Claim builds on the Assured Claim and can be sought by any facility that has undergone an independent assurance and has achieved the minimum performance threshold described below.

The Performance Claim is facility-based and intended to communicate a level of performance achieved by the facility.

Facilities that produce one or more of the minerals / metals covered by the metals marks are able to apply for one or more metals mark based on the metals they produce. For other facilities that produce metals or minerals not covered by one of the metals marks, they may apply for the Performance Claim based on the Consolidated Standard logo that does not specify a specific metal.

Qualifying for the Performance Claim and being approved to use it entitles the facility to use the respective logo as an indication of its level of performance in the standard. Performance Claims are published on the Consolidated Standard webpage and include both the facility's assured results (Assured Report) as well as the Performance Claim.
As with the Assured Claim, after a facility has earned the right to use the Performance Claim, it may continue to do so as long as it remains in good standing within the Consolidated Standard. This means that it must:

• continue to implement the Assurance Process and adhere to the applicable policies and procedures of the Consolidated Standard,
• continue to publish its Self-Assessed Reports in the two years between assurance cycles,
• continue to undertake independent assurance every third year,
• maintain its performance at a sufficient level to meet the minimum threshold for obtaining the Performance Claim, and
• ensure its fees continue to be paid-in-full.

3.3 Minimum Threshold for Obtaining the Performance Claim

In order to apply to obtain the Performance Claim, a facility must meet a minimum level of performance based on the Consolidated Standard.

CONSULTATION NOTE: the Consolidated Mining Standard Initiative (CMSI) is seeking views through the public consultation on how to set the minimum threshold to achieve the Performance Claim. We are seeking to balance the need to set the threshold at a sufficiently high bar such that the Performance Claim is a credible claim of good practice while recognising that it is highly unlikely that any facility will maintain adherence to 100% of the requirements at the Good Practice Level 100% of the time. We are also seeking to encourage large-scale adoption of the standard and setting the threshold at a level deemed highly unlikely to be achieved, especially by small and medium size facilities, will act as a deterrent to uptake and implementation. As such, the CMSI has provided two examples of what a threshold could look like. We are looking for views on these two examples and suggestions for other examples.

Example 1 – 80% Threshold

To apply to obtain a Logo Claim, a facility must meet a minimum level of performance based on the Consolidated Standard. Specifically:

1. Facilities must achieve the Good Practice level of performance in 80% of the applicable Performance Areas; and

2. Foundational Practice in the remaining applicable Performance Areas.

80% is based on the level of the Performance Area, not individual requirements. To count towards the 80% threshold, all requirements in a Performance Area up to and including the Good Performance Level must be met.

Example 2 – 75%/75% Threshold

To apply to obtain a Logo Claim, a facility must meet a minimum level of performance based on the standard. Specifically:

1. Facilities must achieve the Good Practice level of performance in 75% of the applicable Performance Areas; and

2. All remaining Performance Areas must meet Foundational Practice and 75% of the Good Practice requirements."

Neither of these formulas require/incentivize/promote complying with Leading Practice reqs in any PA - which themselves are far short of leading, in any case - rendering the Leading Practice Reqs of the Standard irrelevant for the purpose of any serious assessment of the CMSI's potential to push mining companies to reduce harm.

Consolidated Mining Standard: Proposed Governance Model

Under best practice, minimum requirements for meaningful multi-stakeholder initiatives (MSI), ensure both equal representation of affected populations and civil society and their full equal decision making power:

> "At a minimum, it is essential that a standard-setting MSI…allow NGOs and affected populations to have equal authority to participate, including the ability to participate in all governing bodies and full power to participate in decision-making functions of the MSI."

While the EU Critical Raw Materials Act (CRMA) definition does not conform with best practice for meaningful MSIs, it acknowledges the need for multi-stakeholder governance to include "a formal, meaningful, and substantive role of… at least civil society, in the decision-making of a certification scheme…"

The Consolidated Standard's Governance Model falls short of best practice and, arguably, of the CRMA definition too, notably for meaningful decision-making. Specifically:

The four partners will select the Independent Chair, who is in turn charged with overseeing the formation of the Board, meaning that the major bodies for oversight and decision-making could be filled with industry allies that may not properly check the industry's proposals and power.

The four Consolidated Standard partners (ICMM, MAC, WGC, and CopperMark) are leading the design of the criteria and the process for selecting the 'Independent' Chair. In Section 11 (pg 9), it is stated that the partners "will propose a limited number of criteria to guide the selection of an Independent Chair, which the Industry Advisory Group (IAG) and the Stakeholder Advisory Group (SAG) will review, refine and agree with the four partners."

However, there is no transparency over the specific criteria or process being used to guide the selection of the leaders who will drive decision-making on the Board, or critically, of the "independent chair" tasked with oversight of the Board.

This could trickle down to the Committee level with the effect of industry interests still disproportionately influencing decisions. For example, the mining and value chain committees each have 6 seats for stakeholders, 6 seats for companies, and 6 for "other interests" which "could include investors, providers of finance, multilateral organisations, responsible mining or value chain initiatives, academics, think-tanks, international NGOs, etc." Such ill-defined language provides no guarantees that the perspectives of rights holders, civil society, or any stakeholders critical of the mining sector will be represented in these spaces. Of additional concern is that there is no mechanism for affected stakeholders to be elected by their constituencies or to ensure that they are representative of the same.

There is therefore a strong risk that the scheme creates an illusion of having a multi-stakeholder governance (MSG) model, while in practice selecting industry allies who have moved onto other roles in finance, academia, think-tanks, consultancies, policy, etc. This tips the balance strongly in favor of corporate interests and detracts from the reasons to implement an MSG system in the first place.