

# The Risks Posed by the Consolidated Mining Standard Initiative: a Civil Society Briefing for Automakers and other Downstream Purchasers

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EU Raw Materials Coalition



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# Table of Contents

## Executive Summary

## Analysis & Key Findings

- 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 due human rights diligence principles and guidance that promote responsible business conduct in supply chains.
- 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.
- 8) There are no incentives within the CMSI for companies to move beyond Good Practice for any Performance Area.

## Risks to downstream minerals and metals purchasers from these gaps

Risk #1: The Standard will award Foundational, Good or even Leading Practice claims to mines that continue to perpetrate serious human rights abuses or environmental harms, exposing automakers to human rights abuses in their supply chain.

Risk #2: The Standard does not go far enough to support users in conducting rigorous due diligence. With forthcoming EU due diligence requirements, this could put automakers at risk of fines and loss of market access.

Risk #3: The weaknesses of the Standard's criteria, Assurance Process, and Governance Model open automakers up to financial risks and risks of supply chain disruptions.

## Conclusions - What should automakers and downstream purchasers do?

## Annex A

## Endnotes

# Executive Summary

This brief is the product of a collective effort by civil society, Indigenous rights and labor organizations to communicate critical findings and underscore key risks posed by the Consolidated Mining Standard Initiative (CMSI) to communities, workers, ecosystems, investors and downstream minerals purchasers.

The mining industry is attempting to develop a new voluntary 'global mining standard' through the CMSI. The initiative aims to merge the existing principles and industry standards of the Copper Mark, the International Council on Mining and Metals (ICMM), the Mining Association of Canada's Towards Sustainable Mining (MAC TSM), and the World Gold Council (WGC).

There are four draft documents published by the CMSI that are currently under consultation through December 16, 2024: the Standard, the Assurance Process, the Claims and Reporting Policy, and the Governance Model. The standard is organized into 24 Performance Areas (with one or more topics covered in each), which are further divided into three practice levels: Foundational, Good, and Leading.

Voluntary standards cannot replace the need for mandatory human rights and environmental due diligence, and "at best should be seen as one source of information about a company's practices."<sup>1</sup>

Strong voluntary standards can help drive improved mining industry human rights and environmental performance *only* if they have the level of transparency, rigor and independent oversight necessary to provide credible information and require companies to continuously improve based on independent audit findings.

Nevertheless, common problems of voluntary standards include a lack of transparency, inadequate oversight and accountability, the exclusion of affected communities and workers in the assessment process and overall governance of the schemes, and large divergences in the quality of results based on what they actually evaluate.

This analysis reveals several gaps in the current draft consolidated standard, including:

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.**

Given these gaps, the draft consolidated mining standard poses the following risks to automakers and other downstream purchasers:

**Risk #1: The standard will award passing grades, such as Foundational, Good or even Leading Practice, to mines that continue to perpetrate serious human rights abuses or environmental harms, exposing automakers to human rights abuses in their supply chain.**

**Risk #2: The standard does not go far enough to support users in conducting rigorous due diligence. With forthcoming EU due diligence requirements, this could put automakers at risk of fines and loss of market access.**

**Risk #3: The weaknesses of the Standard’s criteria, Assurance process, and Governance Model open automakers up to financial risks and risks of supply chain disruptions.**

As currently written, the first draft of the consolidated standard does not support responsible sourcing.

It sets a low bar for companies’ social and environmental performance and fails to establish the assurance and governance systems necessary to prevent harmful industry practices from going unchecked. If used in current form, it would add to, not reduce, the reputational, operational, and financial risks of mineral purchasers (including automakers, investors, governments, and other actors along mineral supply chains) using the standard.

We urge automakers and downstream purchasers to send a clear message to the mining industry that vague standards that fall short of international minimum standards, coupled with opaque assurance and a flawed governance process, are not an acceptable mechanism for monitoring human rights and environmental harms.

## Analysis & Key Findings

This analysis reveals several gaps in the current draft consolidated standard, including:

### 1) The standard is too vague to provide meaningful guidance to companies and to enable effective auditing.

Standards must have rigorous, specific, clear and measurable criteria to drive site- and company-level assessment of performance, as well as industry-wide improvements. The draft consolidated standard's expectations of companies lack that crucial degree of clarity and granularity. They also lack actionable guidance for companies to uniformly interpret and implement them. This ambiguity makes independent, credible and comparable third-party assessments to verify company compliance nearly impossible.

Furthermore, many of the standard's performance area requirements deal with prospective changes to a facility's footprint or associated infrastructure and potential future impacts generated by such changes. This emphasis on how a facility is expected to deal with a potential future change, in many of the requirements, obscures the urgent need for facilities to evaluate and address ongoing impacts from decisions already taken. It also makes site assessments and audits inherently difficult because audits occur at a given point in time and are not ongoing monitoring processes.

For instance, Performance Area (PA) 19 on Biodiversity requires at Foundational Practice that a mining facility "confirm that any *new operations or changes to existing operations* are compatible with the value for which [Key Biodiversity Areas, Ramsar Sites and legally designated protected areas] were designated." Such a requirement asks nothing of the facility in terms of assessing the "compatibility" of its current operations in such areas of great environmental sensitivity.

Moreover, PA19 relies on achieving "net gain" or "no net loss" of biodiversity without detailed guidelines for how companies can establish a baseline or what the appropriate point in time for such a baseline would have been. A more concrete and measurable approach would include strong language preventing deforestation or land use change in mining practices, with stricter no-go zones (covering Key Biodiversity Areas, Ramsar Sites, High Carbon Stock forest, primary forest, etc.).

While all standards should account for potential changes—such as when a mine is expanded and new, different impacts emerge, many of the current CMSI requirements—like those noted above—are vague and difficult to measure. This reliance on hypothetical future scenarios detracts from the assessment of ongoing, measurable impacts from decisions that have already been made, which remains inadequately addressed, particularly at the Foundational level of the CMSI.

## 2) Non-conformance with fundamental international laws, principles, and guidance that protect the rights of Indigenous Peoples.

The draft standard does not conform with international law and norms that protect human rights and the rights of Indigenous Peoples, especially their right to their lands, territories and resources, to self-determination and to Free, Prior, and Informed Consent (FPIC).

The right to FPIC is derived from Indigenous Peoples' right to their lands, territories and resources, and the right of self-determination.<sup>2</sup> It must be recognized as a minimum requirement for respecting and protecting Indigenous Peoples' rights at the Foundational Practice level. Indeed, the very notion that essential elements for the respect of fundamental rights, such as the right to self-determination of Indigenous Peoples, can be tiered into varying levels of performance is an inherent flaw of the CMSI draft Standard.

Requirements in a standard must also explicitly recognize Indigenous Peoples' right to give or withhold their FPIC for the different stages and cycles of projects – from exploration to mining operations and closure activities – that affect them. By stating that there are circumstances in which projects may move forward without the full agreement of Indigenous Peoples,<sup>3</sup> the standard falls short of international law and is inconsistent with jurisprudence from regional human rights courts, including the Inter-American Human Rights system, and with findings of United Nations (UN) treaty bodies.<sup>4</sup>

There should be explicit language that no relocation or eviction of affected Indigenous Peoples communities shall take place without their FPIC. Further, Indigenous Peoples have the right to fair and equitable compensation, comprehensive rehabilitation of mined-out areas, and the restoration of ownership over their lands in cases where mining activities have occurred without their free, prior, and informed consent.

## 3) The lack of alignment with widely accepted international standards already used by industry.

The requirements of the Foundational Practice level - which it should be noted, that facilities may fall below during the assurance process<sup>5</sup> - do not align with expectations of other international standards widely accepted by the industry, including the International Finance Corporation's (IFC) Performance Standards and the Extractive Industries Transparency Initiative (EITI).

As noted above, PA14 on Indigenous Peoples does not include respecting Indigenous peoples' right to Free, Prior, and Informed Consent (FPIC) as a Foundational Practice. This is out of alignment with existing standards and corporate guidance that recognize FPIC as fundamental, including the IFC's Performance Standard 7<sup>6</sup>, the Initiative for Responsible Mining Assurance

(IRMA)<sup>7</sup>, and the United Nations Global Compact Business Reference Guide to the UN Declaration on the Rights of Indigenous Peoples (UNDRIP)<sup>8</sup>, along with its recognition under international law (see finding 4).

Furthermore, the Standard's transparency requirements for mineral revenues fall below those of several widely accepted standards. For example, in PA 1 on Corporate Requirements, Section 1.3<sup>9</sup> does not make it explicit that payments to government reporting must align with the established norm of project-level disaggregation as stated in the Extractive Industries Transparency Initiative (EITI) standard<sup>10</sup> and in ICMM's Transparency of Mineral Revenues Position Statement.<sup>11</sup> This gives cover to companies for practices that can lead to corruption.

#### 4) Misalignment with government-backed international due human rights diligence principles and guidance that promote responsible business conduct in supply chains.

Recent EU legislation, including the EU Sustainable Battery Regulation<sup>12</sup> and Corporate Sustainability Due Diligence Directive (CSDDD)<sup>13</sup>, has effectively codified the UN Guiding Principles on Business and Human Rights (UNGPs) and the Organization for Economic Cooperation and Development Guidelines for Multinational Enterprises on Responsible Business Conduct (OECD Guidelines) into legally enforceable mandates, affirming them as minimum expectations for responsible corporate conduct.<sup>14</sup> The Consolidated Standard fails to fulfill these expectations. Please see Annex A for an overview of the due diligence processes articulated in the UNGPs and OECD Guidelines.

Across nearly all<sup>15</sup> Performance Areas, the draft Standard fails to meet these fundamental requirements of due diligence at the Foundational Practice level by:

1. Not requiring assessment of past and ongoing adverse impacts;
2. Not requiring prevention or mitigation measures to be implemented for past and ongoing adverse impacts; and
3. Not requiring facilities to engage in the remediation of such harms.

For example, PA5 on Human Rights lacks sufficient details and guidance to assess the alignment of human rights policies and due diligence processes with the UNGPs. Missing dimensions, which are included in the latest available World Benchmarking Alliance Corporate Human Rights Benchmark methodology, include details on internal approval processes for policies and how companies embed these in management systems and operations.<sup>16</sup> Performance assessment and auditing must consider how policies are practically acted upon.

PA3 on Responsible Supply Chains Foundational Practice of Section 3.1 (PA3.1) 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 PA3.1 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.

For example, 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.<sup>17</sup> This gives the industry a loophole to delay or avoid taking action on anything they perceive as impractical.

## 5) An assurance process that gives mining companies too much control, compromising its independence.

The assurance system gives companies and the facilities being audited too much control over the assurance process, making it likely that audits will not accurately capture a facility's human rights, environmental, and social impacts.

By way of illustration, the auditor is required to give the mining facility being audited a proposed list of interviewees in advance, solicit feedback from the mine on the interviewees, and even in some cases remove an interviewee from the audit process at the request of the mining company. 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."<sup>18</sup> This gives mining companies too much opportunity to influence auditors' views of the credibility and importance of stakeholders.

Mines are further 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."<sup>19</sup> In low-trust contexts, direct company outreach is likely to discourage workers, Indigenous Peoples and other affected community members from participating in the audit.

Moreover, the auditing process appears to allow the mining company to select and directly pay the auditor<sup>20</sup>, instead of financially separating the audit company from the mining company. This is a clear conflict of interest that further exacerbates the potential harms of too much industry power illustrated above.



## 6) An assurance system that lacks guidance, adequate accreditation, and oversight, making independent, reliable audits improbable.

The Standard's proposed reporting process requires auditors to award ratings across each of the 24 performance areas. Auditors are required to provide a "statement of findings" for each area, 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.<sup>21</sup>

For example, the 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.

## 7) A governance model that gives mining companies too much control over processes that impact the Standard's accountability measures.

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."<sup>22</sup>

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..."<sup>23</sup>

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."<sup>24</sup>

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."<sup>25</sup> 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.

## 8) There are no incentives within the CMSI for companies to move beyond Good Practice for any Performance Area.

The draft Assurance Process and Claims and Reporting Policy establishes the only incentive for companies to make any potential improvements to their performance levels: meet the threshold for a "Performance Claim" that allows facilities to use a CMSI logo with the statement: "responsibly produced [insert relevant metal]."<sup>26</sup>

The formula for a Performance Claim has yet to be established. The proposed formulas are based on some combination of compliance with Foundational and Good Practice level requirements. If a facility falls below the Good Practice Level, the facilities are required to develop a “Continual Improvement Plan”, a time-bound plan to meet the requirements of the Good Practice level in all Performance Areas. However, there is currently no limit to implementing this “time-bound” plan, a plan designed by the facility itself. There is no indication of any sanctions or disincentives for a facility’s failure to meet the objectives of its own plan.

As demonstrated above, the only incentives within the CMSI framework to achieve a given Performance Level end at “Good Practice.” This renders the contents of the “Leading Practice” requirements (themselves often falling far short of true best practice) meaningless in any potential for the CMSI to drive improvement amongst facilities that apply to enter the CMSI system.

## Risks to downstream minerals and metals purchasers from these gaps

These gaps and shortcomings translate into significant risks to automakers, as well as their investors and those impacted by their supplier operations.

**Risk #1: The Standard will award Foundational, Good or even Leading Practice claims to mines that continue to perpetrate serious human rights abuses or environmental harms, exposing automakers to human rights abuses in their supply chain.**

The fundamental flaws within the CSMI draft Standard and Assurance Process create a major risk that the Standard will be used to greenwash mines that continue to perpetrate human rights abuses and environmental harms. Vague standards that fall short of international human rights standards, coupled with an untransparent assurance process that gives mining companies too much control over audits, are a recipe for audit reports that ignore or gloss over serious human rights abuses and environmental harms.

**Risk #2: The Standard does not go far enough to support users in conducting rigorous due diligence. With forthcoming EU due diligence requirements, this could put automakers at risk of fines and loss of market access.**

The European Union's Battery Regulation (EUBR) and Corporate Sustainability Due Diligence Directive (CSDDD) both require companies, including automakers, to undertake credible and robust due diligence processes to address harms throughout their supply chains or face consequences for failing to do so.<sup>27</sup>

**While voluntary standards and certification schemes cannot replace meaningful human rights due diligence, strong standards can provide data on company practices and resulting harms that support a due diligence process. Neither the current quality of the Consolidated Standard, nor the date by which it will be fully operational, will support rigorous due diligence requirements, as are outlined in EU laws.**

From mid-2025, the EUBR will require automakers to comply with stringent responsible sourcing requirements, forcing them and other companies placing batteries on the market to undertake due diligence that identifies, prevents, mitigates, and addresses the human rights and environmental impacts across their lithium, cobalt, nickel, and natural graphite supply chains. Batteries not meeting these requirements will lose access to the EU market.

Under the EU CSDDD, automakers failing to address the negative social and environmental impacts across their supply chains, including through doing business with mining companies that fail to meet these standards, may be held financially liable.

While the EU is still developing implementation guidance for both laws, the Standard does not align with the UNGPs or the OECD Guidelines, as discussed throughout this document. Because of this, the Consolidated Standard risks not being fit for purpose to support automakers to meet EU due diligence requirements.

The Consolidated Standard will be available at-scale by 2029 at the earliest, almost four years after the implementation of the EUBR. According to the Initiative's public communications,<sup>28</sup> 2025 will be dedicated to finalizing the Standard. Assessments are proposed to begin in 2026 and it has been discussed that mining companies currently in the TSM, WGC, Copper Mark, and ICMM systems, will have a **two to three-year transition phase** to adopt the Standard.

As such, in the best-case scenario, audit reports for member companies who choose to adopt the Consolidated Standard will be available at the end of this decade at the earliest, coming in far too late to meet automakers' due diligence legal requirements. In addition, there are no current publicly announced, time-bound plans or resourcing commitments to undertake the extent of training and hiring of auditors to deliver audits of all sites in this timeline.

## Risk #3: The weaknesses of the Standard's criteria, Assurance Process, and Governance Model open automakers up to financial risks and risks of supply chain disruptions.

Undertaking strong due diligence reduces the risk of supply chain disruptions that can result from unaddressed human rights impacts and a failure to obtain community consent.

Communities, workers, and Indigenous Peoples have successfully stopped mining projects that violate their rights, including the rights to FPIC, through temporary and permanent court-ordered injunctions. For instance, community protests over environmental impacts, lack of compensation, and the failure by the mining company to fulfill its social investment commitments shut down the Las Bambas copper mine in Peru for several weeks, generating financial losses of \$9.5 million each day.<sup>29</sup>

In the last eight years, various operations supplying key electric vehicle battery minerals have also been delayed or closed altogether including First Quantum's Cobre Panama copper mine,<sup>30</sup> Vale's Onça Puma nickel mine in Brazil<sup>31</sup>, the Noranda bauxite mine in Jamaica,<sup>32</sup> Rio Tinto's Jadar lithium project in Serbia,<sup>33</sup> and Hudbay Minerals' Rosemont copper mine in the United States.<sup>34</sup>

Automakers and downstream purchasers who use weak standards, such as the current draft of the Consolidated Standard, jeopardize their access to a reliable, timely supply of responsibly-sourced minerals.

## Conclusions - What should automakers and downstream purchasers do?

As currently written, the first draft of the Consolidated Standard does not support responsible sourcing.

It sets a low bar for companies' social and environmental performance and fails to establish the assurance and governance systems necessary to prevent harmful industry practices from going unchecked.

If used in its current form, the Consolidated Standard would add to, not reduce, the reputational, operational, and financial risks of mineral purchasers (including automakers, investors, governments, and other actors along mineral supply chains) using the Standard.

The weaknesses in the current draft are reflective of the mining industry-dominated process used to develop the Standard, a concern highlighted by civil society organizations in letters in September 2023<sup>35</sup> and 2024.<sup>36</sup>

We urge automakers and downstream purchasers to send a clear message to the mining industry that vague standards that fall short of international minimum standards, coupled with opaque assurance and a flawed governance process, are not an acceptable mechanism for monitoring human rights and environmental harms.

Automakers engaging in the public consultation process should articulate a clear set of requirements for the CMSI, in line with international human rights standards and best practices. Should the CMSI ultimately not meet these requirements, automakers should make clear to the mining associations, and the companies they represent, that they will not use the CMSI as an indicator of a mining site's performance. Minimum requirements for the CMSI should include:

- **Bring the Standard into conformance with fundamental international laws, principles, and guidance that protect human rights and the rights of Indigenous Peoples and promote responsible business conduct.** Require, at a minimum, that the Standard meaningfully and accurately reflects UNDRIP, the UNGPs and the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct.
- **Align the CMSI with widely accepted international standards already used by industry.** Require, at a minimum, that the Standard fully aligns with existing standards for the mining sector, including the IFC Performance Standards and the EITI.
- **Revise the language in all Performance Areas to have clear, measurable criteria to direct corporate and facility-level implementation and support effective auditing.**
- **Develop an assurance system that can support independent, reliable audits.** At a minimum, this requires clear guidance for auditors, adequate auditor accreditation, limiting company power in the selection, payment, and site visit design process, and designing better oversight of the auditing system. CMSI should also provide a list of approved auditors, gather detailed conflict of interest declarations, prevent auditors from carrying out assessments where they have provided consulting or advisory services in the past three years, and implement a “cooling off” period for these services for at least two years.
- **Remove non-binding and qualifying language throughout the Standard because it further weakens expectations of companies.**
- **Revise the governance model to effectively check industry power and give rights-holders and impacted groups equal decision-making power.**
- **Strengthen the Claims and Reporting Policy and overall Standard structure to incentivize companies to improve their practices.**

# Annex A

## **The UNGPs**

Under the UNGPs, companies have a responsibility to respect human rights and must undertake human rights due diligence (HRDD) as part of this responsibility. HRDD is a process “to identify, prevent, mitigate and account for how they address their impacts on human rights” and remedy human rights abuses that occur.<sup>37</sup>

The UNGPs minimal, essential components for HRDD are:

- Identifying and assessing actual and/or potential adverse human rights impacts from direct operations and activities by businesses across their supply chain(s);
- Integrating assessment findings into internal systems and processes to prevent and mitigate adverse impacts. At a minimum, the company’s Board is responsible for resourcing, implementing, and overseeing policy implementation;
- Meaningful consultation with rights-holders and potentially affected groups to identify potential risks and adverse impacts, and to design company systems to prevent, mitigate, and address them;
- Transparent, consistent, and publicly available tracking and reporting by the company on the effectiveness of their plans and activities; and
- Providing effective, easily accessible, and legitimate remediation processes to affected rights-holders.

## **The OECD Guidelines**

The OECD Guidelines are UNGP-aligned, government-backed recommendations to companies on responsible business conduct. The Guidelines have a ready to use six-step implementation tool for businesses:<sup>38</sup>

1. Embed responsible business conduct into policies and management systems;
2. Identify and assess actual and potential adverse impacts linked to the enterprise’s operations, products or services;
3. Cease, prevent and mitigate adverse impacts;
4. Track implementation and results;
5. Communicate how impacts are addressed; and
6. Provide for or cooperation in remediation when appropriate.

# Endnotes

1. <https://www.hrw.org/news/2023/05/24/eus-flawed-reliance-audits-certifications-raw-materials-rules>
2. Affirmed in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and through various international treaty norms, including common Article 1 of the International Covenant on Civil and Political Rights. See UNDRIP: [https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP\\_E\\_web.pdf](https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf) and Article 1 of the International Covenant on Civil and Political Rights: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>
3. Performance Area 14 on Indigenous Peoples Good Practice requirement 7: “Recognising there are circumstances where full agreement is not obtained.... Implement and disclose appropriate steps the facility will take etc.” This is not aligned with the right to withhold consent.
4. <https://documents.un.org/doc/undoc/gen/g18/245/94/pdf/g1824594.pdf>; <https://unglobalcompact.org/library/541>
5. From Section 4.5 of the Assurance Process: “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”. <https://miningstandardinitiative.org/wp-content/uploads/2024/10/cmsi-assurance-process-consultation-draft-en.pdf>
6. <https://www.ifc.org/en/insights-reports/2012/ifc-performance-standard-7>
7. [https://responsiblemining.net/wp-content/uploads/2018/08/Chapter\\_2.2\\_FPIC.pdf](https://responsiblemining.net/wp-content/uploads/2018/08/Chapter_2.2_FPIC.pdf)
8. <https://unglobalcompact.org/library/541>
9. <https://miningstandardinitiative.org/wp-content/uploads/2024/10/cmsi-consolidated-standard-consultation-draft-en.pdf>
10. <https://eiti.org/guidance-notes/project-level-reporting#:~:text=The%20EITI%20requires%20that%20implementing,that%20gives%20rise%20to%20payments>
11. <https://www.icmm.com/en-gb/our-principles/position-statements/mineral-revenuesliant>
12. See Articles 49, 50, and 52, as well as Annex X of the Battery Regulation: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02023R1542-20240718>
13. See <https://eur-lex.europa.eu/eli/dir/2024/1760/oj>
14. Though it should be noted that further guidance and clarification is needed to bring the CSDDD fully into alignment with the OECD Guidelines. See: <https://www.oecdwatch.org/alignment-within-reach/>
15. With the exception, arguably, of PA6, PA13, PA18 and PA22 regarding points 1 and 2 below.
16. [2024CHRBmethodology\\_23Oct24.pdf](https://www.oecdwatch.org/alignment-within-reach/)
17. See page 9: <https://miningstandardinitiative.org/wp-content/uploads/2024/10/cmsi-consolidated-standard-consultation-draft-en.pdf>
18. Consolidated Standard, Assurance Process, October 2024, Section 4.2.12, p. 20. <https://miningstandardinitiative.org/wp-content/uploads/2024/10/cmsi-assurance-process-consultation-draft-en.pdf>
19. Consolidated Standard, Assurance Process, October 2024, Section 4.2.12, p. 23. <https://miningstandardinitiative.org/wp-content/uploads/2024/10/cmsi-assurance-process-consultation-draft-en.pdf>
20. Consolidated Standard, Assurance Process, October 2024, p. 10. <https://miningstandardinitiative.org/wp-content/uploads/2024/10/cmsi-assurance-process-consultation-draft-en.pdf> and language used throughout, such as under Section 2A, bullet point 5, defining facility responsibilities, which include to “contract an accredited Assurance Provider.”
21. Consolidated Standard, Assurance Process, October 2024, p. 30. <https://miningstandardinitiative.org/wp-content/uploads/2024/10/cmsi-assurance-process-consultation-draft-en.pdf>
22. See the MSI Integrity report, [https://www.msi-integrity.org/wp-content/uploads/2017/11/Essential\\_Elements\\_2017.pdf](https://www.msi-integrity.org/wp-content/uploads/2017/11/Essential_Elements_2017.pdf) which states the following about meaningful multi stakeholder initiatives (MSI): “At a minimum, it is essential that a standard-setting MSI: Ensure that companies and/or governments, NGOs and/or civil society, and affected populations are represented in the initiative; Involve at least one actor from each stakeholder group — including at least one national or local NGO and one affected population representative — from each geographic region where the MSI’s standards apply; 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; Where relevant, establish conflict of interest rules regarding financial relationships between NGOs and civil society institutions and companies and/or governments involved in the MSI.”
23. [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L\\_202401252](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L_202401252), Chapter 1
24. <https://miningstandardinitiative.org/wp-content/uploads/2024/10/cmsi-governance-proposal-consultation-draft-en.pdf>



25. Point 8 on page 8 of the governance model:  
<https://miningstandardinitiative.org/wp-content/uploads/2024/10/cmsi-governance-proposal-consultation-draft-en.pdf>
26. See Annex II of the Claims and Reporting Policy:  
<https://miningstandardinitiative.org/wp-content/uploads/2024/10/cmsi-claims-policy-consultation-draft-en.pdf>
27. See Articles 49, 50, and 52, as well as Annex X of the Battery Regulation:  
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02023R1542-20240718> and CSDDD:  
<https://eur-lex.europa.eu/eli/dir/2024/1760/oj>
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<https://www.business-humanrights.org/en/latest-news/peru-indigenous-communities-protest-against-the-modification-of-the-environmental-impact-assessment-eia-of-the-las-bambas-mining-project/>
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36. <https://leadthecharge.org/icmmletter-2/>
37. United Nations Office of the High Commissioner on Human Rights. 2011. “UNGPs: Implementing the United Nations “Protect, Respect, and Remedy” Framework.”  
[https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinessshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinessshr_en.pdf). Page 16.
38. See page 21  
<https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>