



## **Public Citizen Public Consultation Submission to the Consolidated Mining Standard Initiative**

December 16, 2024

Public Citizen advances standards associated with automotive supply chains that secure the rights of Indigenous Peoples, frontline communities and workers; protect citizens and democracy from unchecked corporate power; and advance a sustainable, fair, and fast energy transition.

Because minerals are the bedrock of electrification and decarbonization, the extent to which the mining industry's social and environmental performance aligns with the public interest is growing in importance and matters to our future collective welfare.

After reviewing the draft consolidated standard, it is our conclusion that the Consolidated Mining Standard Initiative does not advance the public interest or meaningfully protect communities affected by mining.

Public Citizen, along with a coalition of impacted groups and civil society organizations, has raised concerns with the standard since 2023. In a [September 2024](#) letter to Executives of the Consolidated Mining Standard Initiative, we again outlined minimum criteria for the standard. Our feedback was not meaningfully incorporated into the first draft. CMSI continues to engage with CSOs like Public Citizen, but continued engagement has not resulted in significant improvements.

We are increasingly concerned that the consolidated standard will not be changed to meet the level of rigor, credibility, or trustworthy governance to drive measurable industry progress that meaningfully improves outcomes for communities and workers.

We have several critiques regarding the Consolidated Mining Standard Initiative Process, the Standard's structure, and the content of its Performance Areas.

The weaknesses in the current draft are reflective of the industry-dominated process used to develop the Standard, a concern highlighted by civil society organizations in letters in September 2023 and 2024.<sup>1</sup>

The approach to developing the standard has not been inclusive or transparent.

The response to our September 2023 letter<sup>2</sup> acknowledged that this approach ‘results in an inherent asymmetry.’ The proposed ongoing consultation of Industry and Stakeholder Advisory Groups—which organizations, including Oxfam and IndustriALL Global, have exited, in part over legitimacy concerns—and public comment opportunities on the draft Standard are insufficient to address this fundamental misalignment.

Moreover, assurances that the Standard will drive a much needed race to the top by companies and promises that the Standard will have multi-stakeholder governance (which we defined in our September 2024 letter) have not been demonstrated in the content of the standard.

The mining industry designing the system, standard, and accountability mechanisms to evaluate its own social and environmental performance undermines the credibility of the Initiative.

First, the standard lacks measurable criteria so that it can be effectively implemented by companies and independently audited. Nor does it align with fundamental international norms, principles, and guidelines.

The CMSI groups its performance requirements under three levels of performance, ‘Foundational Practice,’ ‘Good Practice,’ and ‘Leading Practice.’ The starting point, or Foundational Practice, does not require companies to be aligned with international norms, frameworks and guidelines. And there are very few examples where the highest performance level, ‘Leading Practice,’ fully aligns either.

**The draft standard does not conform with international law, guidelines, 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).**

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<https://www.business-humanrights.org/en/latest-news/group-of-ngos-community-organizations-and-unions-sound-alarm-over-industry-backed-mining-audit-scheme/> and <https://leadthecharge.org/icmmletter-2/>

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<https://www.business-humanrights.org/en/latest-news/coalition-of-ngos-community-organizations-and-unions-sound-alarm-over-industry-backed-mining-audit-scheme/>

The right to FPIC is derived from Indigenous Peoples' right to their lands, territories and resources, and the right of self-determination.<sup>3</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>4</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>5</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.

Moreover, despite the stated intent to support human rights due diligence, Performance Area 5 across all Performance levels does not support robust human rights due diligence systems or approaches consistent with the UNGPs; nor does it address common systemic gaps that assessments have identified. It lacks sufficient detail and robustness to be meaningfully implemented by companies.

This is extremely problematic, as evidence shows that while there are 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

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<sup>3</sup> 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>

<sup>4</sup> 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.

<sup>5</sup> 4. <https://documents.un.org/doc/undoc/gen/g18/245/94/pdf/g1824594.pdf>;  
<https://unglobalcompact.org/library/541>

Principles, nearly half (46.2%) of companies assessed in the 2020 Corporate Human Rights Benchmark failed to score any points under due diligence indicators.<sup>6</sup>

There is nothing 'leading' about Leading practice. All elements listed are fundamental under the UNGPs and therefore should be Foundational practice, not Leading. Dividing and tiering the UNGPs further fragments the landscape rather than improves it.

This is particularly problematic considering one of the largest gaps identified by the “UNGP at 10+: A Roadmap for the Next Decade of Business and Human Rights,” found that human rights due diligence (HRDD) implementation was inadequate, even as companies increased their uptake on UNGP-aligned policy commitments.<sup>7</sup> Further fragmenting the UNGP requirements into different bands of practice, rather than treating them as elemental to starting in the Consolidated Mining Standard, will only worsen these implementation gaps.

The Foundational practice should both align with international principles and guidelines and seek to address the known and persistent implementation gaps. This is critical for the standard to drive progress and implement the UNGPs, not undermine them.

**The structure of the standard further promotes a race to the bottom by user companies.** The 24 performance areas are not equally applied or universally applicable under the standard. The CMSI considers that some performance areas are only applicable “where certain conditions prevail” (2).

Requirements are broken into two categories: facility-level and corporate-level. The determination of whether a performance area applies is made by the company, with verification of an assurance provider: “In all cases, the rationale for the facility’s determination of non applicability will need to be verified by the assurance provider, based on evidence provided by (and discussions with) the facility during the assurance process, and publicly disclosed in the assurance report” (pg 4).

**The standard employs non-binding and qualifying language, such as ‘impractical,’ ‘where feasible,’ and ‘intended to be implemented’ throughout, which weakens it further and leaves unclear whether action is required, who makes that decision, and how.** For example, early in the draft (page 9), the document notes that the standard aligns with the UNGP mitigation hierarchy principles, an overall positive aspect; however, it notes that there are unavoidable impacts that will arise where mitigation is ‘impractical,’ without giving a definition or criteria where action would be deemed impractical. This gives companies an easy loophole to delay or completely avoid taking action on anything they deem impractical.

**The performance areas of the standard (meaning the actual standard itself) lack adequate detail for companies to meaningfully implement them or independent auditors to assess**

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<sup>6</sup><https://www.ohchr.org/sites/default/files/Documents/Issues/Business/UNGPs10/Stocktaking-reader-friendly.pdf>, pg 14

<sup>7</sup> <https://www.ohchr.org/sites/default/files/2021-12/ungps10plusroadmap.pdf>

**a company's implementation.** For example, Performance Area 1 lacks a coherent, streamlined approach for reporting for companies. Section 1.2 does not specify minimum reporting requirements, such as baseline sustainability risks to report, which reporting standard to use, or the level of details these reports should contain. These gaps leave it to companies to decide how to comply with the reporting standard—meaning there is effectively no standard at all.

The Foundational Practice level does not align with any internationally recognized standards. 'Good Practice' and 'Leading Practice' do not require the use of a single recognized reporting standard; instead, they promote various options (Global Reporting Initiative, International Financial Reporting Standards, European Sustainability Reporting Standard). The lack of a streamlined, unified approach for reporting and transparency by user companies makes meaningful assessment and comparison between companies nearly impossible. It also permits wide gaps between companies within each practice level.

**Finally, the CSMI does not simplify or even *standardize* the standards landscape; rather, the CSMI merely adds another complex, vague, ill-defined structure , while expressly recognizing that other weak standards will continue to exist.** Per pgs 2 and 3, the CSMI will consider “equivalency assessments in order to provide cross-recognition with other standards in the future. The intent would be to further reduce duplication in the implementation of different standards which have similar objectives and requirements.”

Minimum improvements to the Consolidated Mining Standard Initiative must 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 CSMI 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. CSMI 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.**