

## Investor Brief: Indigenous Peoples and the Consolidated Mining Standard Initiative

### Introduction

The [Consolidated Mining Standards Initiative \(CMSI\)](#) seeks to streamline existing mining standards into a single framework incorporating key social, environmental, and governance considerations. CMSI comprises four industry standards—[The Copper Mark](#), [Mining Association of Canada's Towards Sustainable Mining](#), [World Gold Council's Responsible Gold Mining Principles](#), and the [International Council on Mining and Metals \(ICMM\)](#). This investor brief highlights how the [proposed CMSI draft](#), released in October 2024, inadequately protects Indigenous Peoples' rights. While CMSI includes a dedicated chapter on Indigenous Peoples, *Performance Area 14*, it fails to secure free, prior and informed consent (FPIC), integrate Indigenous Peoples' rights across performance areas, or ensure meaningful participation in governance and assurance processes. These gaps undermine the standard's credibility and increase investor risk.

CMSI's key gaps, include:

1. Failure to recognize and uphold Indigenous Peoples' right to FPIC as "Foundational" criteria.
2. Inadequate inclusion of Indigenous Peoples' rights across CMSI performance areas.
3. Lack of protections for Indigenous Peoples' land tenure and resource rights.
4. Failure to meaningfully integrate Indigenous Peoples' decision-making mechanisms into the governance model.
5. Insufficient mechanism in the assurance process for Indigenous Peoples' participation and reporting.
6. Reinforcement of weak industry accountability by proposing a standard that falls below existing corporate frameworks on Indigenous Peoples, including IRMA, IFC PS7, and OECD Due Diligence Guidance.
7. Misalignment with the UNGPs.

Without significant reforms and meaningful integration of feedback from Indigenous Peoples before the standard is finalized, CMSI will continue to disregard full protection for Indigenous Peoples' rights. CMSI has committed to ongoing consultations with civil society and rightsholders, however the consultations with Indigenous Peoples' representatives and organizations on the design of CMSI must not be rushed. To do so jeopardizes the saliency of the standard as a meaningful metric of responsible mining from the outset. Investors interested in CMSI developing a credible standard may consider the following shortcomings and advocate for the recommendations outlined below.

## **Key CMSI Gaps for Investor Consideration**

### **1. Failure to recognize and uphold Indigenous Peoples' right to FPIC as "Foundational" criteria**

There are three performance levels within CMSI: "Foundational," "Good," and "Leading." While CMSI acknowledges FPIC as a principle within the intent of its *Performance Area 14: Indigenous Peoples*, and references it at the "Good" performance level, it falls short of embedding FPIC as standardized, enforceable criteria and at no point requires project withdrawal if consent is denied. Instead, CMSI emphasizes consultation over consent, which conflicts with Article 32 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), where obtaining consent is a fundamental requirement.

By not requiring FPIC at the "Foundational" level, CMSI allows companies to claim they are "working toward" consent without ever securing it. This exposes investors to operational risk such as litigation and conflict risks.

In general, the standard's framework does not provide sufficient incentives for companies to move from "Foundational" to "Good" practice level, exacerbating the loophole that allows companies to measure their performance at sub-minimal standards.

### **2. Inadequate inclusion of Indigenous Peoples' rights across CMSI performance areas**

CMSI isolates Indigenous Peoples' rights in *Performance Area (PA) 14* instead of integrating them across the standard. For example, it fails to embed Indigenous Peoples' rights in land acquisition (PA 21), biodiversity (PA 16), mine closure (PA 24), and grievance mechanisms (PA 3). As a result, Indigenous Peoples' concerns may only be addressed without reference to cumulative impacts or comprehensive analysis of the total impacts.

Because CMSI does not clearly define how its performance areas interact, companies may comply with certain provisions while neglecting broader responsibilities to Indigenous Peoples. This fragmented approach undermines best practices in responsible mining.

### **3. Lack of protections for Indigenous Peoples' land tenure and resource rights**

CMSI fails to adequately protect Indigenous Peoples' land tenure and resource rights. Unlike frameworks such as the International Finance Corporation Performance Standard 7 (IFC PS7), which requires companies to identify and assess Indigenous Peoples' land rights—whether formally recognized or customary—CMSI does not impose such obligations. This omission allows companies operating under CMSI to acquire land and extract resources without ensuring Indigenous Peoples' governance systems are respected. The lack of enforceable safeguards against displacement and land expropriation creates significant risks for investors, as land disputes and relocation can delay or halt projects, leading to financial losses.

#### **4. Failure to meaningfully integrate Indigenous Peoples' decision-making mechanisms into the governance model**

CMSI does not require robust, meaningful Indigenous Peoples' participation in the governance model of the standard. CMSI lacks dedicated Indigenous Peoples' seats in its governance structures—only 10 out of 53 Board seats are allocated to “mining-affected stakeholders,” a term that groups rightsholders, such as Indigenous Peoples, with civil society organizations, including labor and environmental advocates. This broad categorization overlooks Indigenous Peoples' distinct roles and interests.

These concerns are compounded considering the prioritization of corporate influence within the governance model. The four industry bodies comprising CMSI are responsible for defining criteria for the Independent Chair on the Board of Directors and overseeing the inaugural Board selection process. Given the lack of dedicated seats for Indigenous Peoples and disproportionate corporate influence, the proposed governance model undermines CMSI's legitimacy as a multi-stakeholder structure. Mechanisms, including dedicated Indigenous Peoples' seats, should be implemented to uphold the concerns and interests of Indigenous Peoples.

#### **5. Insufficient mechanism in the assurance process for Indigenous Peoples' participation and reporting**

Assurance providers are required to interview Indigenous Peoples during the assurance process *if* rightsholders are identified. However, CMSI does not require assurance providers to undergo an independent process to identify affected Indigenous Peoples and may rely on the facility's identification, among other means. Without independent identification through on-the-ground engagements, assurance providers may fail to identify, and thereby fail to include, affected Indigenous Peoples in the consultation process.

Additionally, facilities are encouraged to conduct outreach efforts to Indigenous Peoples to garner engagement, but facility outreach in low-trust environments may deter Indigenous Peoples' participation due to safety, lack of trust, or retaliation concerns. The lack of independent identification of Indigenous Peoples and the facility's potential influence over outreach risks minimizing or omitting perspectives and lived experiences of affected Indigenous Peoples, leading to incomplete, unreliable, and potentially misleading evaluations of company performance on Indigenous Peoples' rights.

The assurance reporting requirements also lack rigor and transparency. While assurance providers publish reports on company compliance, these reports are not required to include explicit evidence demonstrating *how* a facility meets each performance indicator. This weakens accountability under *Performance Area 14*, reduces transparency in facility ratings, and increases the risk that companies receive high performance scores without meaningful compliance. This exacerbates the above concern that impacts to Indigenous Peoples will not be systematically considered in the assurance process or in the facility rating. Without independent, verifiable assurance mechanisms, CMSI fails to provide a

trustworthy standard for investors seeking reliable assessments of company impacts on Indigenous Peoples.

## **6. Reinforcement of weak industry accountability by proposing a standard that falls below existing benchmarks**

The proposed CMSI draft falls short of the existing IRMA standard in the mining sector and the broader international business expectations of IFC PS7 and OECD Due Diligence Guidance. While these standards and frameworks have gaps, they demonstrate stronger safeguards for Indigenous Peoples through clear FPIC commitments, robust due diligence requirements, and independent assurance processes. Investors may question the credibility of CMSI as a new standard given that it fails to meet existing industry and global business frameworks on Indigenous Peoples' rights.

CMSI's weak approach to Indigenous Peoples' rights is further undermined by the role of ICMM, a key organization leading the CMSI process. ICMM has a long history of engagement with Indigenous Peoples. However, its 2024 *FPIC Position Statement on Indigenous Peoples* [introduces ambiguity](#) in applying FPIC. While the ICMM statement acknowledges the importance of securing agreement from Indigenous Peoples communities, it also states that "there may be circumstances where full consent is not obtained."

## **7. Misalignment with the UN Guiding Principles on Business and Human Rights (UNGPs)**

The UNGPs establish a global standard for corporate human rights due diligence, requiring businesses to identify, prevent, and mitigate human rights risks. Global investors, including signatories of the Principles for Responsible Investment (PRI), use UNGP-aligned frameworks to assess corporate risk exposure. However, CMSI fails to meet these expectations, raising financial, legal, and reputational risks for investors relying on its credibility.

### **Key Issues with CMSI's alignment to the UNGPs:**

- *No Requirement for Facilities to Halt Operations for Rights Violations:* UNGP Principles 17 and 18 mandate that businesses prevent, mitigate, and remediate adverse human rights impacts. CMSI does not require companies to halt projects when Indigenous Peoples' rights violations occur, failing to meet global due diligence expectations. This gap could expose investors to lawsuits, regulatory scrutiny, and operational delays linked to human rights abuses.
- *Weak Enforcement and Corporate Compliance Mechanisms:* UNGP Principles 19 and 20 emphasize the need for effective tracking of responses to human rights impacts and transparent communication of corporate actions. CMSI lacks enforceable mechanisms to ensure corporate accountability for Indigenous Peoples' rights protections. Without mandatory reporting or corrective action requirements, companies may face heightened reputational and legal risks, particularly as human rights due diligence laws expand.

- *Failure to Meet Regulatory and Investor Due Diligence Standards:* UNGP Principle 15 outlines the corporate responsibility to respect human rights by implementing due diligence processes. Regulatory frameworks like the EU Corporate Sustainability Due Diligence Directive (CSDDD) and EU Battery Regulation (EBR) enforce human rights due diligence aligned with the UNGPs, including respect for Indigenous Peoples rights and FPIC.<sup>1</sup> CMSI falls short of these standards, creating investor risks, including:
  - Regulatory Non-Compliance – CMSI does not meet current CSDDD and EBR due diligence requirements, which could lead to legal penalties, supply chain restrictions, or market exclusion.
  - Litigation and Financial Risk – Without mandates for FPIC, project suspensions, or corrective actions, CMSI increases investor exposure to lawsuits, delays, and financial losses tied to Indigenous Peoples’ rights violations.

## **Conclusion: Investor Risk and Actionable Recommendations**

CMSI’s weak protections for Indigenous Peoples’ rights pose financial, legal, and reputational risks for investors. Its lack of enforceable FPIC commitments, meaningful Indigenous Peoples’ participation, and independent assurance mechanisms undermines its credibility and risks providing company performance ratings that do not match on-the-ground realities. Without substantial reform, reliance on CMSI could lead to investor exposure to human rights violations.

CMSI’s misalignment with international standards and industry best practices further weakens its credibility. Unlike frameworks such as IRMA, IFC PS7, and the OECD Due Diligence Guidance and the UNGPs, CMSI does not mandate FPIC at the “Foundational” level, lacks clear grievance mechanisms, and provides weak governance accountability. These deficiencies are particularly concerning given that CMSI could be used as a proxy for responsible mining under key global regulations. The EU Battery Regulation (2023), and EU Critical Raw Materials Act (2023) [recognize “due diligence schemes” or “certification schemes”](#) as part of compliance mechanisms and criteria for government funding; additionally, nearly 80% of the top 18 global automakers consider certifications in sourcing decisions.

Key recommendations on CMSI for investors:

1. Embedding FPIC as non-negotiable criteria – FPIC should be required at the “Foundational” level, not an aspirational or procedural step.

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<sup>1</sup> Current references to the EU CSDDD and EBR are subject to ongoing legislative uncertainty due to the [proposed Omnibus Simplification Package](#). If passed, this package could significantly narrow mandatory human rights due diligence obligations, particularly limiting the scope to Tier 1 suppliers. Such changes would weaken protections for Indigenous Peoples’ rights.

2. Ensuring Indigenous Peoples' Rights are integrated across all Performance Areas – Companies should be required to assess impacts on Indigenous culture, livelihoods, and governance in all relevant areas.
3. Strengthening land tenure protections – CMSI must require explicit recognition of Indigenous land rights, including customary tenure systems.
4. Implementing meaningful Indigenous Peoples participation in governance – CMSI should integrate a more equitable governance model, ensuring dedicated Indigenous Peoples' seats on decision-making bodies.
5. Mandating transparent, culturally sensitive assurance processes – Assurance providers should be required to conduct on-the-ground consultations to identify and interview affected Indigenous Peoples and provide clear, evidence-based compliance reports.

CMSI, in its current form, is not a proxy for responsible mining or respect for Indigenous Peoples' rights. Investors should critically evaluate CMSI's credibility and exercise caution before using it as a benchmark for responsible mining. If CMSI does not substantially improve, it will ultimately serve to reinforce weak industry accountability rather than ensuring meaningful protections for Indigenous Peoples.