

**Submission to Public Consultation on the CRAFT Standard
26 April 2018**

1.0 Introduction

This document is submitted on behalf of CIRDI to the CRAFT Standard Committee as part of the public consultation on the draft CRAFT Standard. Our feedback is structured as follows:

- **Section 2** provides general feedback on the standard focusing on the implications for process of formalization, the distribution of the burden of implementation of the standard's requirements and the accessibility of the code for artisanal miners.
- **Section 3** provides specific comments on material covered under each of the standard's modules.

The feedback was compiled in consultation with staff involved with delivering CIRDI's ASM programming and who have expertise in ASM-related environmental sustainability and social justice issues. The review team included Patrick Weiler (Program Development Officer), Mikhaela Meznaric (Program Manager), Keanna Driedger (Program Officer) and Priya Bala-Miller (Program Development Manager).

2.0 General comments

2.1 Sector focus

- CIRDI notes that the standard's focus on the gold value chain is both strategic and appropriate given the economic scale and impact of gold mining. For this reason, we strongly encourage the language in the code make this commodity focus explicit at the outset and ensure that the language focuses on ASGM, rather than ASM writ large.

2.2 Theory of change

- The general theory of change underpinning the standard is not obvious and should be spelled out. As it is currently stated, the implicit theory of change suggests that "the overall intent of the Code is to promote sustainable social, environmental, and economic development of the ASM sector, by leveraging demonstrable compliance with due diligence requirements as an instrument for generating a positive development impact for ASM gold producers."
- CIRDI recommends that the immediate development outcomes expected from the market entry standard be made explicit (essentially a clear business case for downstream buyers who are expected to bear the cost burden). We suggest this would go a long way

to support uptake of the standard. In conveying this business case, we recommend anchoring the Code's theory of change as seeking to leverage downstream due diligence compliance as a trigger for sustainable upstream market access and value addition in ASGM communities.

2.3 Clarity across geographic contexts

- In general, the code is difficult to follow in the way that it is currently phrased. Although some leeway should be permitted for linguistic constraints, we believe that getting the language and phrasing right is important for the wide geographic applicability and uptake of the standard. An example of where the language is difficult to follow is page 7 "AMPs that wish to join a CRAFT scheme (which is equivalent to CRAFT Schemes that wish to engage with AMPs) shall do so in a stepwise approach." The meaning of this statement is not clear and may benefit from being simplified to "Craft Scheme or AMPs wishing to engage each other." This degree of opacity and confusion in language is evident in many sections of the Code, and CIRDI recommends that future revisions pay close attention to addressing these inconsistencies for better accessibility, particularly in areas where literacy will be a major barrier for uptake of the CRAFT standard.
- The current iteration of the Code assumes that target audiences have in-depth knowledge of the OECD due diligence framework. Rather than assuming this knowledge, it would be helpful to footnote key elements of the framework for easy cross-reference.
- As illustrated on page 6, our work with ASGM communities sheds light on the fact that there is significant variation in the nature of points of commercialization within a value chain, even within a single country. For example, in Ecuador, a gold seller can range from the mine owner, to a processing plant owner, to a gold buyer, to the central bank of Ecuador. One potential risk here is that the code may work *against* national efforts to harmonize commercialization (e.g. in Ecuador where the desire is to have the Central Bank be the sole purchaser). Closer consideration of these risks may generate valuable insights on potential mitigants.

2.5 Legitimacy v/s legality

- We also note that measures of legitimacy tend to defer to legality, and this may pose a major impediment for informal miners (which typically constitutes more than 90% of ASM miners). The distinction between legitimacy and legality needs to be further considered.
- We further request the inclusion of the role of indigenous justice mechanisms in serving as a complement to state-based or colonially-derived legal systems in instances where such institutions are entitled to serve as a guarantor of an AMP's legitimacy.

2.6 Formalization

- CIRDI recommends that the standard strengthen its references to prevailing processes for formalization of the ASGM sector, where the aforementioned issues of legality and legitimacy are vital. A deeper consideration of the ways in which the standard can advance or potentially detract from formalization and legalization are needed. We suggest improvements in this respect could greatly enhance the public policy case for

supporting diffusion of the standard. In this respect, we note that there are no government representatives on the CRAFT Committee. CIRDI would be very interested in serving as a convening forum for a public-policy dialogue on the implications of the CRAFT standard for ASGM formalization. The goal of such a dialogue would be to identify pragmatic ways in which the standard would dovetail into existing formalization efforts across a variety of jurisdictions.

- Overall, CIRDI commends and supports the CRAFT's efforts to have buyers and industry bodies play a key role in advancing formalization and legitimization of the ASGM sector globally. If buyers are willing to take this role on and accept the associated risks, this will be very positive for the ASGM sector as a whole. We recognize however that voluntary action is not a substitute for robust public-sector governance, and building state capacity to facilitate formalization is an important activity that will need to take place in tandem with market-based instruments for advancing long-term sustainability in the ASGM sector.

2.7 Distribution of responsibility

- The current iteration of the code places significant responsibility on buyers or CRAFT Schemes to shepherd AMPs through the process of certification (p18: "it is the responsibility of CRAFT Schemes to support AMPs in their tasks to the extent possible").
- It is not clear if the expected support for AMPs from the CRAFT Schemes goes beyond report preparation. If so, this approach will require downstream supply chain actors to have skills in areas such as community-based development, stakeholder engagement and gender-based analysis they may not currently have or may not be invested in. CIRDI supports this greater ambit of responsibility.
- **Torture, cruel, inhumane and degrading treatment:** Our concerns on the reliance on testimony of state and NGO actors may also place too much credibility on existing complaints mechanisms. The responsibility to ensure that operations are not located in CAHRA's seems better placed on the Scheme than the AMP.
- An elaboration of how the CRAFT code has analysed and been informed by the current capacity of buyers to play their envisioned role would be helpful in alleviating these concerns.
- We further note that AMPs do not need to pay for third-party verification in order to be granted tiered levels of status. While this is a positive approach in terms of limiting the cost burden of a pro-sustainability market entry standard, leaving third party verification to the discretion of supply chain actors may generate unhelpful segmentation of the market, where it is not clear whether there will be a market-based incentive or reward for those who adopt the higher standard of third-party verification over self or two-party verification systems.
- The scope is heavily focused on the OECD guidelines. Echoing earlier concerns, it may be helpful to consider policy harmonisation between the code, the OECD guidelines and other systems of due diligence, such as Dodd Frank s. 1502.

2.8 Accessibility of the code for miners

- Noting the challenges in following the technical aspects of the Code, CIRDI suggests a translation of the Code into lay-language to aid accessibility for miners.
- In its current form, it is not clear how the Code can advance associativity of ASGM players. For example, it does not address the common practice of toll milling and other complex mining practices which create entrenched and unequal power dynamics within mining supply chains, that keep vulnerable groups trapped in poverty. Indeed, from CIRDI's perspective, the Code risks legitimizing these types of practices by certifying toll mill operators or ASGM stakeholders with commercialization potential (often the more powerful ASM actors). Kindly refer to comments in module 5 which suggest addressing potential routes for this challenge.

3.0 Module-specific feedback

Module 1: SCOPE AND AFFILIATION

- We would like to flag that the table with differences between the CRAFT Code and CRAFT Scheme is very helpful (page 10). Similar efforts on data and concept visualization would be helpful additions in improving the accessibility of the code for non-specialist audiences, particularly in the public sector.
- The rationale for allowing CRAFT Schemes to be proprietary or whether this is a subjective qualification that may or may not apply in all instances, should be elaborated.
- There is high chance of market confusion by decentralising ownership over the schemes. How will this risk be mitigated? Given the primary challenge that the Code seeks to mitigate is that there does not exist a uniform market entry standard for ASGM producers regardless of status, membership, access to licencing etc, the high degree of heterogeneity permitted in the Code's application poses some challenges. An example of this concern lies in the broad interpretation of third-party verification standards for due diligence over CRAFT reports (page 10). The market advantage of such heterogeneity is not clear and could be elaborated further.
- It is understandable that the organisational scope of the standard needs to focus on consenting adults. Given the scale of child labour involved in ASGM, it may be prudent to consult with UNICEF's corporate accountability team in order to determine best practice for addressing children's rights in the context of formalization and voluntary sustainability standards, and where possible to integrate these best practices in accounting for how the Code may impact on children in ASGM communities.
- CIRDI acknowledges that confidentiality is often demanded by AMPs in order to protect trade secret extraction and recovery processes. In many cases, these requests are credible and justified. However, another reason for confidentiality could be because certain players (such as processing plant owners) do not want more vulnerable groups (plant-renting miners) to understand the magnitude of losses due to intentionally inefficient processing. We flag this as a potential impediment to transparency in the ASGM supply

chain. The Code could benefit from a clear explanation on how due diligence could advance transparency.

- Furthermore, we also note that there is some cost burden involved for achieving candidate status that relates to the above issues. For example, disclosure of scale location maps and mineral flow charts are required to advance through the Code's tiers of practice. How might this information be used against small producers, and is it a reasonable entry requirement? In CIRDI's experience, most ASGM miners are highly mobile and production systems are subject to a number of interruptions. These realities may pose significant constraints on determining the actual production capacity of the entities seeking CRAFT status. Furthermore, given high mobility of miners, it is not clear if a purchasing body would stop buying gold until verifiable traceability was possible, particularly in instances where processors and miners are not unified under a common scheme.
- CIRDI supports further refinement of performance indicators for the AMPs, and particularly for assigning responsibilities for measuring and monitoring performance indicators. We urge the Standards Committee to consider the temporal dimensions of reporting requirements, as commitments that will require more than one reporting period to complete and the lack of non-linear performance targets may pose a challenge for AMPs.

Module 2: LEGITIMACY OF THE AMP

- In general, CIRDI applauds the efforts of this module to advance legitimization of the ASGM sector.
- As noted previously the current conceptualisation of legitimacy is grounded in legality. However, the implications of the stance may be problematic, particularly for communities with marginalised property rights (such as indigenous groups contesting ancestral title and mining rights and women) or for a country such Ghana where ASGM is formally banned.
- In addition, the concept of legitimacy is especially complicated in CAHRAs. For example, it is not clear how the Code accounts for communities that were forced to participate in illegal economies during times of conflict (such as in Colombia or the DRC). We find that the Code does not address the ways in which market access is mediated by the state. For instance, would this standard begin to function as an inadvertent trade barrier against AMPs in countries such as Ghana where ASGM is formally banned? We therefore request that these assumptions around political will are clearly laid out as they relate to the implementation and diffusion of the Code.
- It may also be prudent to consider how Code compliance may inadvertently contribute to bribery and corruption, as well as potential mitigants for this risk. For instance, if the costs of becoming legitimate (EAs, permits etc.) are too expensive for the AMP to afford, these conditions increase vulnerabilities for bribery and corruption in resource governance.

- Based on the current iteration, it is not clear which actors are responsible for determining the legitimacy of an AMP, and whether outside forces make this determination with reasonable credibility.
- CIRDI strongly endorses the effort to spell out legitimacy criteria for different country contexts as a valuable guide. Drawing on our current programming experience, we note that legitimacy will be very difficult to achieve in Country Context Case 3. For example, in Colombia the law does not distinguish between ASM and LSM, and often times ASM operators will have local authorization from traditional authorities, but they are still considered illegal and illegitimate in the eyes of the government. Openly engaging with ASM operators for commercialization activities would be very risky for a buyer and may inhibit Code adoption in the circumstance. Similar dynamics are evident in Ghana.
- Overall, CIRDI is also concerned that the market entry standard is driven by the “absence of evidence” rather than “evidence to the contrary”. The former involves a very high degree of subjectivity that makes the standard prone to abuse. An example is the requirement that “no evidence exists that the competent authorities have taken action against the AMP since the AMP initiated the formalization process” (pg. 22). Re-framing such that the burden of proof is dependent on showing progressive engagement between authorities and the AMP may be more feasible. Similarly, it is not clear how an AMP can prove that it operates with implicit local consent, and whether this is measured by the absence of complaints. Such an approach assumes viable complaints mechanisms, however, does not account for instances when such mechanisms do not exist or are inaccessible for ASM communities.
- Given that legality is a requirement of Code compliance, a number of implications are noteworthy:
 - AMPs are likely to get stuck at Applicant Status
 - CRAFT Schemes or BUYERS are expected to support AMPs with Applicant status or higher – supporting AMPs in complex legalization efforts may become a significant burden and will require Schemes to be willing to make long-term investments. Given current CSR trends, this is not infeasible, however it should be more clearly stated. This will also require new skill sets within BUYER supply chain management teams, particularly in terms of understanding of ASM complexities and country legal contexts.

MODULE 3: ANNEX 2 RISKS [Immediate disengagement]

- **Worst forms of child labour:** CIRDI welcomes the emphasis on baseline analysis and that the Code includes a thoughtful consideration of effect of bans on children. However, the Code currently favours an approach that focuses on mapping and disclosure of child labour only, rather than on reduction and elimination strategies. Our work within ASGM communities also suggests that the threshold for “no persons under the age of 18 (children) perform any of the following work classified as the worst forms of child labour” (p. 26) may be difficult to verify and overcome with respect to underground mining activity.

- **Any forced or compulsory labour:** Although care has been taken to avoid being overly prescriptive, in this instance, it will be helpful for the Code to specify mechanisms for how confirmations that any work or service of any person is performed under voluntary terms will be determined. In this regard, deeper engagement with sector-based trade unions, ILO staff working on forced labour, as well as regional bodies tackling this issue would provide much needed granularity to contextualizing this issue within the ASGM sector.
- **Gross human rights violations and abuses (such as widespread sexual violence).** CIRDI strongly objects to the rolling of gender rights into this indicator, rather than as a standalone topic (page 28). The assumption that “Governmental or NGO human rights bodies are considered the most credible sources of third-party testimonies” on the absence of human rights violations is seriously flawed given that the worst kinds of human rights violations may be perpetrated by state agents and large multi-national enterprises. Additionally, the poor conduct of representatives from humanitarian organisations operating in Haiti, as well as UN agencies operating in active conflict zones challenge this assumption. Given the ASGM sector’s prevalence in weak governance zones where civil society tends to be weak and diffuse, having empowered NGOs capable of providing such testimony may pose a significant barrier. These barriers result in a default to the legal system, may be costly and inaccessible for rural and indigenous women.
- Similarly, the emphasis on reported cases of sexual violence is far too weak a standard given the staggering barriers women and girls face reporting sexual assault. This section also does not consider the implications of meeting the Code’s requirements in cases where gender-based violence against men and boys can be a systematic tool of oppression in conflict-situations (as was the case in the DRC and Darfur-Sudan).
- Overall, guidance in this section does not adequately reflect barriers induced by intersectionality (for example Afro-Colombian women in ASGM communities in Choco are at much higher risk for sexual violence).
- In light of the above gaps and given the Code’s contextual emphasis on CAHRAs, allocating women’s rights as a “sub-issue” appears to be a mis-step. To address these gaps, CIRDI strongly recommends that the CRAFT code secure experts on Gender and ASGM to improve current stipulations in the Code related to its contributions for advancing gender equality.

MODULE 4: ANNEX 2 RISKS [Disengagement after unsuccessful mitigation]

- CIRDI recently completed a [detailed analysis](#) of 167 mining-related conflict incidents in 44 countries in 2012 and 2013. The data indicated that reported conflict incidents correlate with the level of industry activity in these regions in 2013 (Latin America – 29%, Africa – 14%, Asia – 9%). Against this backdrop, it may be essential for the Code to proactively specify security risks that may arise in the process of Code compliance. In particular, clearly outlining what is meant by “tensions” between the AMP and security forces (p. 38) would be helpful. CIRDI also recommends that upstream suppliers should be held to a concomitant responsibility for severing ties with a security force that is found to commit gross human rights abuse(s).

- CIRDI observes complex operating environments may include high levels of mis-information or poor information related to tax governance. In this respect, miners may not be aware that they are in tax arrears. To address this risk and improve revenue transparency, it may be prudent to consider an obligation be placed upon the AMP to relay comprehension of taxes/fees/royalties that may be payable to ensure the members understand those taxes and ensure they are paying them, or will begin paying them (if they were previously unaware).
- With regard to offering, promising, giving or demanding any bribes, we urge the standards committee to consider adopting stronger language for the “pass” criterion. CIRDI suggests that a policy without monitoring mechanisms or sanctions for non-compliance, will not lead to desired changes in firmly embedded insidious practices of bribery and corruption. There must be an educational component to change this behaviour. The obligations attached to the progress criterion seem more rigorous and progressive than in the previous “mitigated” section. We would suggest requiring this level of detail therein.

MODULE 5: NON-ANNEX 2 HIGH RISKS REQUIREING IMPROVEMENT

- CIRDI commends effort to identify some of the most prominent non-OECD risks associated with ASGM. With regard to specific health and safety aspects, CIRDI recommends that downstream operators consider obligations for education and awareness raising on risks and mitigants, as well as sanctions for weak health and safety compliance.
- We also recommend that the Code specific mention the Minamata Convention and measures to avoid worst practices as identified in that Convention, such as with respect to cyanide leaching.