

KAGEM 2023 INDEPENDENT MONITOR REPORT ON PROGRESS OF OPERATIONAL LEVEL GRIEVANCE MECHANISM

This represents the first progress report from the Independent Monitor for the Operational Grievance Mechanism (“OGM”) that has been established at the Kagem Emerald Mine in Zambia. The Independent Monitor was engaged in March 2023. Under the Terms of Reference, attached at Appendix 1, the Independent Monitor is to provide reports on a regular basis regarding progress in establishing and implementing the OGM.

The Independent Monitor has not yet made a site visit, and engagement has been limited to communications with personnel at Kagem and Gemfields Group Ltd. (majority owner and operator of Kagem) and a review of relevant documents. Accordingly, this initial report is limited in scope and depth, and focuses primarily on the OGM’s design and structure, and early implementation of the OGM.

I. Background

Kagem is an open-pit emerald mine located in the southern part of Zambia’s copper belt, at the center of the Ndola Rural Emerald Restricted Area. Zambia is one of the world’s leading emerald sources, and Gemfields acquired Kagem in 2008. The mine currently is one of the largest emerald providers in the world, employing over 1,000 staff, with an active community relations program. It maintains open communications with area chiefs and other community leaders.

The OGM lies within a larger country and sector-level context in which human rights concerns have been reported related to environmental issues, freedom of expression and assembly, and gender based violence, in particular, as well as concerns regarding treatment by public security, discrimination, forced and child labor, and other areas. There have been limited reports of human rights concerns associated with Kagem. However, there have been reported tensions surrounding access to mine dumpsites – particularly as compared with the nearby Grizzly mine – and with certain groups in the nearby Pilala community that have sought access to the mine.

In 2022, Kagem began establishing its OGM. The OGM was created with the assistance of Human Level, a highly respected consultancy. It was intended to align with Principle 31 of the UN Guiding Principle on Business and Human Rights (“UNGPs”), which outlines the effectiveness criteria for operational level grievance mechanisms. Human Level conducted extensive local stakeholder feedback, and outlined a recommended structure that was adopted in November 2022. After a soft launch of the OGM that month, in March 2023, Kagem began extensive efforts to advertise the OGM to local stakeholders. The OGM has been contacted by numerous stakeholders since that time, with a proliferation of concerns related to employment and access to the dumpsites in particular, and no concerns related to core negative human rights impacts being reported.

II. Cooperation with Gemfields and Kagem

The Independent Monitor has, to date, received excellent cooperation from Kagem and Gemfields. There have been monthly calls beginning in April to discuss implementation and

progress, and Kagem has been highly responsive to any information sought – including providing documentation, and responding to discrete questions. That cooperation is consistent with what appears to be is a genuine desire to institute an effective OGM that can help serve as a centerpiece for local community and employee engagement. That is evident from the involvement of Human Level, the resources employed in implementing the OGM, its thoughtful and meticulous design, and the involvement of respected individuals with a long history in social and community impacts.

As of the date of this writing, the Independent Monitor has not yet begun external consultations, particularly with local community members and organizations, or victims or their representatives. However, Gemfields and Kagem both have expressed a willingness to facilitate those introductions and dialogues, as well.

III. Structure and Design of the Kagem OGM

The OGM has been designed consistent with the effectiveness criteria contained in UNGP 31 (summarized at Appendix 3). However, Kagem is aware that the OGM’s effectiveness in implementation will depend on its ability to fit into and support a larger local ecosystem of remedy, developing processes that are reliable in practice and trusted by local stakeholders, and delivery of remedies that are rights-compatible and meaningful in local context.

A. Stakeholder Engagement

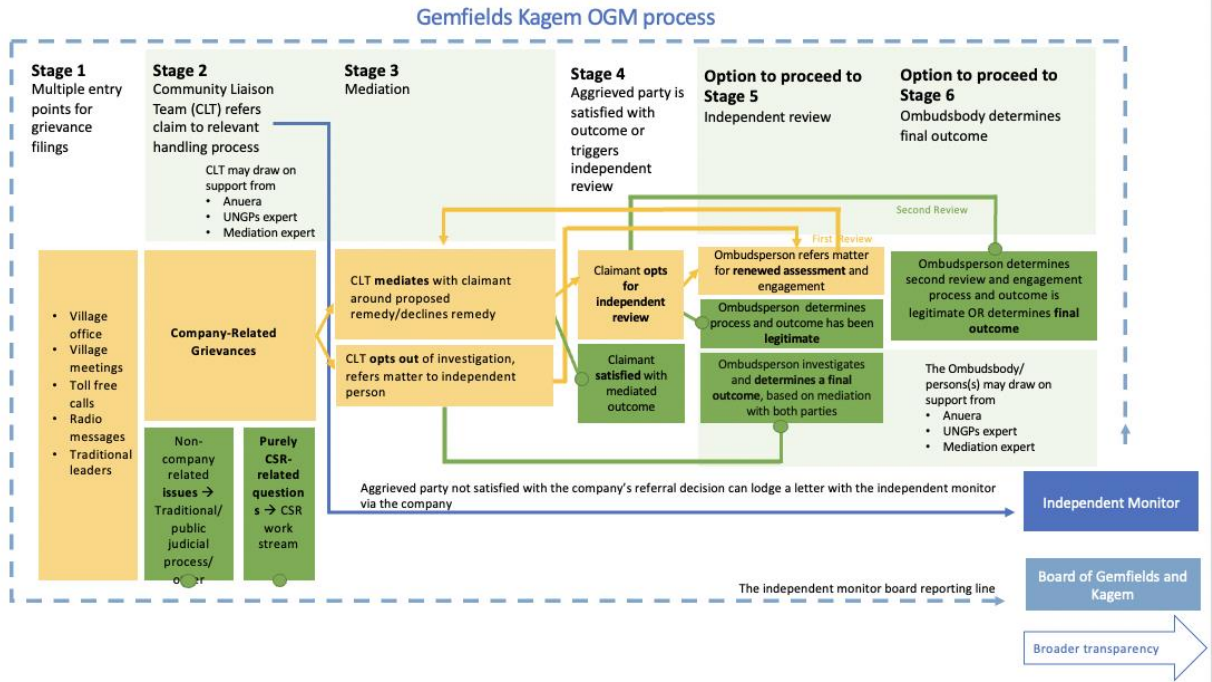
Consistent with good practice, in considering the overall design of the OGM, Human Level performed an extensive scoping visit in and around Kagem, conducting interviews with a broad range of internal and external stakeholders. These included Kagem staff and contractors at or near the mine site,¹ village leaders and community members,² union personnel, local civil society organizations, and a variety of business personnel and other external stakeholders. In all, Human Level engaged with several dozen local stakeholders, including potentially affected stakeholders.

Human Level also reviewed internal documents, as well as relevant public literature.

As part of its scoping work, Human Level identified the key contemplated grievances. It also noted certain key challenges, and outlined a design for the OGM intended to align with the effectiveness criteria of UNGP 31:

¹ These included Kagem management (including managing director, head of operations, person responsible for safety and security, as well as any others based on recommendations of the local team), Community Liaison Officers and Protection Services,

² These included traditional Chiefs Lumpuma and Nkana, local councilors, and others.



B. Key Design Considerations

The contemplated structure is intricate in design, with several levels of engagement and review, and the integration of external, independent resources into the process. The design is also conscious of several key issues that are important for OGMs. They include:

- Ecosystem of Engagement Approach:** In its design, the OGM recognizes that its function is not only to serve as a pathway to remedy for genuinely aggrieved community members, but also as part of the mine’s broader human rights due diligence efforts. The OGM thus seeks to prioritize proactive work to prevent issues from arising, while also offering an effective pathway to remedy where appropriate. That is consistent with the substance of stakeholder feedback provided to Human Level.
- Independence:** The OGM has integrated elements of independence from Kagem. While most stakeholders consulted preferred a company-led mediation mechanism to enable direct engagement, there is an appeals mechanism where remedy can be considered by an independent third-party if company-led mediation does not yield a resolution. The presence of the Independent Monitor is another key independence component. The extent to which the OGM functions independently in practice, and is perceived as independent, is closely tied to whether it will be trusted. Kagem is aware of the importance of this issue, which will be evaluated closely by the Independent Monitor going forward.
- Effectiveness evaluations (of process and outcome):** Procedures for the OGM are clearly established in a detailed written protocol. The Independent Monitor’s role, in part, is to evaluate adherence of the OGM in practice against the protocol. However, the OGM also focuses on rights-compatibility, and flexibility is built into the process, conscious of local culture and individual claimant circumstances and avoiding a binary approach to remedy. A

mediation-based OGM, as opposed to an adjudicative OGM, is important in ensuring voice for affected stakeholders and providing tailored remedy. It also can avoid potential unintended harms associated with financial compensation, which were identified as part of stakeholder engagement.

- **Equality of Arms:** The OGM will seek to resolve claims through consensual dialogue. The structure contemplates local NGO Partners available to assist claimants in submitting grievances, gathering information, and engaging to reach consensual resolution. Information from fact-finding also will be shared with claimants.

C. Roles and Responsibilities

The OGM currently has 3 staff members, operating on part-time bases. They include highly qualified personnel with experience in handling grievances, stakeholder mapping and engagement, as well as women-centric empowerment programs. The OGM team works closely with Gemfields personnel, including the Corporate Responsibility Director, who for 30 years has focused on responsible business practices in the industry.

In addition to OGM personnel, the structure of the OGM features several key positions, also staffed by highly experienced personnel:

- There is an Investigations Expert – Anuera – that provides fact-finding and investigation services, advice and support on an as-needed basis to the different tiers and actors. Anuera, based in London, is a risk management and business intelligence firm with deep experience in human rights-related issues.
- There also is a Mediation Expert – Thomas Gaultier – who assist the company, OGM and Ombudsbody (discussed below) in facilitated dialogue with claimants. He is an experienced mediator based in Lisbon.
- There also is a UNGPs Expert, Lloyd Lipsett, whose role is to provide support to the different tiers and actors in the OGM to ensure that its procedures and outcomes are rights-compatible and aligned with the UNGPs. Mr. Lipsett is a recognized expert in the UNGPs, and has worked for decades with companies, governments, national human rights institutions, civil society organizations and indigenous peoples on business and human rights issues.
- There are two local NGO Partners, Caritas Zambia and Democracy, Governance and Human Rights Advocates (DEGHA). The NGO partners support claimants in submitting grievances and throughout the process, including gathering information, and interpreting. The NGO partners also assist with community sensitization and outreach.
- Where the OGM and the claimant fail to reach consensual resolution, the complainant can request that an independent Ombudsbody reviews the case and the process applied. The Ombudsbody consists of three highly respected individuals, Laura Miti (Executive Director of Alliance for Community Action and Member of the Zambian Human Rights Commission), Emmanuel Chikoya (General Secretary at Council of Churches in Zambia, and Member of the Zambian Human Rights Commission) and Reuben Lifuka (Vice Chairperson of the Partnership for Transparency).

- The Independent Monitor, in addition to evaluating the OGM in design and implementation, also can receive complaints from claimants whose claims are deemed ineligible for consideration.

D. Grievance Process

There are multiple pathways that grievances can be lodged, including by phone (toll free), in drop boxes, through Community Liaison Persons or direct to a Kagem representative, although to date the overwhelming number of grievances have been submitted via telephone. If the claim is not eligible for consideration under the OGM, because it is not connected to Kagem, it seeks community development programs or employment, or otherwise, the claimant is notified and may alert the Independent Monitor for consideration in his next monitoring report.

For claims that fall within the OGM, within 5 business days, the Community Liaison Team that staffs the OGM informs the claimant and begins a process of engagement. That may be facilitated by the Mediation Expert, with fact-finding support from the Investigations Expert. If the parties are able to reach resolution, the process concludes. If the company and claimant do not reach resolution, the matter may be elevated to the Ombudsbody for further consideration. Throughout the process, the UNGPs expert may be asked to provide advice on specific issues in individual cases.

Where an agreement is reached, the parties enter into a written agreement (in the native language of the claimant and English), and also explain the outcomes and agreed-upon remedy verbally, to the extent possible. If the complainant does not know how to read or write, the explanation should be in the native language of the complainant, and involve third party support (such as traditional leaders, relatives, or NGO Partners) to ensure the complainant understands and agrees to the outcomes.

The detailed OGM protocols include provisions designed to address potential retaliation, confidentiality, illiteracy, safety and other safeguards. OGM personnel further engage with claimants regarding potential resources that may be needed to participate in the process, including translators, support in submitting a complaint, travel support, and otherwise.

IV. Application of UNGP 31

As discussed in more detail below, based on the review of information to date and preliminary conversations, the initial design of the OGM is cognizant of and thus far seemingly consistent with the effectiveness criteria of UNGP 31. It was formed following engagement with a range of internal and external stakeholders, including affected stakeholders. It actively seeks to engender trust from local stakeholder groups, and has independence and accountability features built into it. The design is mindful of relevant barriers, and will reportedly provide assistance to those who may need it. The OGM is aware of the need for rights-compatible remedies that are meaningful in local context, and there are elements designed to allow the mechanism to be a source of continuous learning for it and Kagem. Personnel associated with Kagem (internal and independent) are adamant about the importance of an OGM that is human rights-compatible – specifically, that it is and is perceived to be fair and effective - and operating consistent with human rights norms more generally. There also is a recognition that a strong and effective

mechanism can be central to effective local engagement and strong relationships with internal and external stakeholders.

a. Legitimate: UNGP 31(a)

OGM's are legitimate when they generate trust from the stakeholder groups for whose use they are intended, and are accountable for the fair conduct of grievance processes. Trust can be retained only through consistently effective operations, adherence to the OGM's stated processes, and perceived and actual fairness in its approach and outcomes. For many OGMs, stakeholder trust might exist early in the OGM's existence but is eventually lost, and it will be critical for the Company and the OGM's participants to retain their dedicated focus on UNGP 31 adherence. At this early stage, it appears that the OGM is being trusted by most affected stakeholders.

Some 9 months after its hard launch, the OGM has been accessed more than 450 times, both from employees and external stakeholders. Most of the grievances fall into one of several categories: identifying community relations programs, seeking employment, or testing the OGM and seeking more information. Occasionally, there are other grievances, such as impacts on the roads, and in relation to dust. For claims related to community relations, employment and similar issues, staff explains the purpose and intent of the OGM, and considers the claim in the context of future programming or refers to Kagem's hiring processes as may be relevant. For claims such as road impacts, Kagem will examine the issue and evaluate whether appropriate action should be undertaken.

Importantly, we also note that grievances have been launched from Pilala, an informal town with both permanent residents and numerous temporary illegal miners. This is significant because during community-facing stakeholder engagement exercises it was noted that there is hostility between certain elements of Pilala and Kagem. Whatever tensions might exist, there is at least some level of trust – or perhaps interest – in the OGM. We encourage the OGM to continue to conduct outreach to local community members and organizations and otherwise to work to build trust in the mechanism.

However, it is also important to note to date, there have been no core “human rights” complaints, alleging violations of international human rights norms, warranting investigation and mediation. To some extent that is not a surprise, as stakeholder engagement exercises did not identify significant concerns related to negative human rights impacts. Yet the fact that there are no grievances alleging negative human rights impacts over a 9 month period, regardless of their merit, is worth scrutinizing closely on an ongoing basis.

b. Accessible: UNGP 31(b)

OGM's are accessible when they are known to those stakeholder groups for whose use they are intended, and provide reasonable assistance for those who may face particular barriers to access. In examining accessibility, we look at promotional activities, multiple pathways to access the mechanism, consideration of direct and indirect costs, steps to prevent retribution, and similar factors.

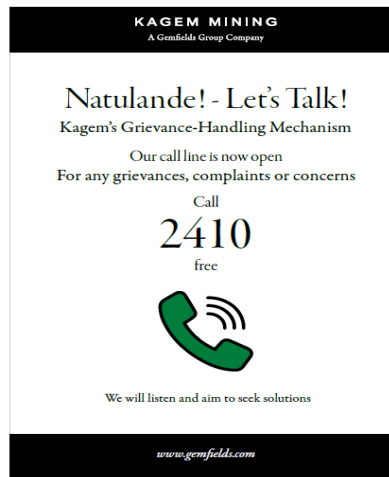
The Company engaged in consultations with dozens of stakeholders and key local leaders. NGO partners also have been enlisted to assist with socialization. After considering the most culturally effective options, the Company has advertised the OGM extensively in local communities through an immersive radio campaign (in English and local languages), posters and other means, including t-shirts and hats. Posters are placed at strategic locations, including schools, markets and health centers, to maximize their effectiveness, and Kagem used a London-based public relations firm to help make the posters especially accessible. These steps appear to have provided a high-level of awareness to affected stakeholders about the process, steps and salient features of the OGM. We have not received reports of retaliation or similar concerns, and the OGM's approach appears consistent with UNGP 31(b) at this point.

One issue that has not yet been addressed, but will be important in promoting accessibility, confidence, and non-retaliation, is engagement with domestic law enforcement around protocols for providing information related to criminal activities. It is common for OGMs to receive information from claimants that include allegations of potential crimes. Failing to provide that information to law enforcement may be seen as undermining legitimate law enforcement efforts; providing it may contribute to concerns related to retaliation and retribution. The balance between claimant confidentiality and law enforcement desire for evidence of potential criminal activity should be actively considered and discussed with the police and complainants, with written protocols developed for clarity and consistency.

ACCESS POINT POSTERS AND FLYERS



HOTLINE POSTERS AND FLYERS



CHITENGE MATERIALS



We also note that information about the OGM does not appear on the Gemfields or Kagem webpages, and the protocols are not publicly available. The OGM may wish to publish the protocols to enhance the overall credibility and accessibility under UNGP 31(b), particularly for international stakeholders seeking to gain confidence and an understanding of the processes being employed. Finally, as no human rights grievances have been lodged, the OGM may wish to consider publishing sample case studies or hypothetical examples of the kinds of matters it is designed to address to help educate targeted stakeholders about the OGM.

c. Predictable: UNGP 31(c)

OGM's are predictable when they have a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation. These are typically addressed through clear internal processes reflecting each material stage of the OGM process, with relevant timelines, and those processes are communicated to affected stakeholders and actively monitored. One common challenge that can impact the predictability of OGM's is adequate resourcing.

The OGM has a detailed protocol. It reflects how cases are addressed, roles and responsibilities, engagement with claimants, the relevant processes, and other key components. It has some indicative timelines, particularly around the assessment of cases, though additional timing guidance around fact-investigation, mediation and resolution are worth considering. In addition, while there are some forms and templates, it will be useful to review what has been developed to date, and what could further assist in enhancing consistency in the process and record-keeping.

We do note that cases are lodged on a database which assists in reviewing the trends, along with monitoring progress, timing, and resolutions. This allows the Company to evaluate the extent to which the OGM is operating consistent with its procedures, consistent with UNGP 31(c).

In terms of resourcing, there is little question that the OGM, at present, has the capacity to handle the grievances being lodged. Further, there are well-known and well-regarded international and local experts who have been engaged to assist in various aspects of the OGM, including the design, investigations, mediation, support and oversight. It will be important to monitor the number and type of claims, and ensure that the OGM is adequately staffed to address them in a timely and predictable manner.

d. Equitable: UNGP 31(d)

OGMs are equitable when they seek to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms. That may include advice on processing claims, on alternative remedy pathways, and on information collected during fact-finding.

The OGM's protocol aims to provide stakeholders with sufficient information to progress their claims, including sharing information developed during any fact-investigation. It further provides that the OGM should keep the complainant updated on expected next steps. It also

recognizes that claims may be advanced with support of a variety of external actors, including NGOs.

One potential challenge – not yet manifested but that is worth keeping in mind - involves self-identified community representatives who claim they are acting on behalf of the community or individuals, who emerge in connection with OGM's such as this one. Some of these representatives obviously may indeed represent the interests and wishes of larger groups in the community; others may be more opportunistic. It will be important for the OGM to be able to differentiate between those representatives who are legitimate and those who are not.

e. Transparent: UNGP 31(e)

OGM's are transparent when they keep parties to a grievance informed about its progress, and provide sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake. That will include regular updates on the progress of grievances, as well as public reporting.

We understand that parties who use the mechanism are informed quickly (within 5 days) whether their lodged concern is eligible for consideration. To date, the complaints – centering largely on requests for jobs, community programs and access to the waste dumps – have not been eligible for further consideration. While we recognize the OGM is recently established, at some point it will be appropriate to publish key metrics associated with the OGM, such as the number of times it has been accessed, key trends among the issues being raised, or other pertinent data. The absence of this kind of information, on a representative or aggregated level, can create an information gap and over time can undermine confidence in the OGM's operations. As the OGM matures, it will be important to look for ways to increase its external transparency to maximize the trust it can earn and generate full consistency with UNGP 31(e).

f. Rights-compatible: UNGP 31(f)

OGMs are rights compatible when they provide outcomes and remedies that accord with internationally recognized human rights. It is important that the processes established for OGMs reflect internationally recognized remedies and has access to experts to assist appropriate outcomes.

The remedies contemplated are developed in collaboration with claimants. A UNGPs Expert has been identified, in particular, to help ensure that remedies will be rights compatible. The OGM protocols also discusses rights-compatibility extensively, as well as the different types of remedies that may be available in any given case. We understand there also has been research to identify legal judicial precedents to establish a framework for comparison regarding potential remedy quantum, and guidance is being developed to assist in the provision of remedy in eligible cases. While there have been no human rights grievances that have proceeded to resolution, and thus we cannot evaluate rights compatibility in practice, it is clearly contemplated in the design, protocols and resourcing of the OGM.

g. Source of Continuous Learning: UNGP 31(g)

OGMs should serve as a source of continuous learning, providing lessons to improve the mechanism and prevent future harms. That includes obtaining and considering feedback from affected stakeholders and their representatives, as well as identifying patterns and trends from the grievances that are lodged.

Kagem's OGM is consciously intended to serve as a source of continuous learning for Kagem and the OGM. The company and OGM examine both the substance of the grievances and their potential trends, which they monitor through internal systems and processes. The trends as reviewed have resulted in various operational changes, such as community relations projects focusing on livelihood initiatives. As the OGM continues to mature, the examination of trends and grievances, and integrating the understanding into company-related processes, will remain very important.

h. Based on Engagement and Dialogue: UNGP 31(h)

OGMs should be designed in consultation with the stakeholder groups for whose use they are intended, they should continue those consultations during the OGMs existence to assist in monitoring performance, and should focus on dialogue as the means to address and resolve grievances.

The OGM's design was developed following extensive stakeholder engagement with a variety of affected stakeholders and their representatives, as well as local leaders. Comments and perspectives of as expressed during those consultations, were expressly included within the OGM's design, such as the involvement of chiefs and local leaders. It will be important to continue that engagement as the OGM continues to mature and human rights grievances emerge.

V. Conclusion

The reflections in this initial progress report must be taken as highly preliminary. They are based only on an analysis of the blueprint for the OGM, engagement with Kagem, Gemfields and OGM personnel, and limited document review. There has been no engagement with external stakeholders, and in particular potential survivors or their representatives. Further, there have been no human rights-specific grievance to test the process in practice. Whether the OGM is truly effective as implemented, and whether it supports and does not undermine additional accountability mechanisms, will be critical to its overall effectiveness under UNGP 31

VI. Key Activities Over the Next 6 Months for the Independent Monitor

Over the next 6 months, the Independent Monitor will continue to engage regularly with Gemfields and Kagem, and receive updates on the progress of the OGM development. The Independent Monitor will also conduct a field visit, engage with a range of external stakeholders and integrate their important perspectives into further analyses. The Independent Monitor will issue a more thorough report measuring the OGM against a range of indicators and subindicators that are consistent with UNGPs 22, 29 and 31, which will be used to assess the effectiveness of the OGM. This framework will be available for Kagem to evaluate its own performance, and placed in the public domain. A summary of the report will be available for public review.



Independent Monitor, Kagem OGM

December 31, 2023

Date

APPENDIX 1

Gemfields Kagem Operational Grievance Mechanism

Terms of Reference (ToR) for Independent Monitor

Jon Drimmer

November 2022

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Background

Kagem Mining Limited (“Gemfields Kagem” or the “Company”) is a supplier of responsibly sourced coloured gemstones. Among other things, Gemfields Kagem specialises in emeralds mined at the Kagem Emeralds Mine in the Ndola Rural Emerald Restricted Area south of Kitwe and west of Ndola, in Zambia’s Copperbelt Province.

Gemfields Kagem is implementing an operational-level grievance mechanism (“OGM”) for communities nearby the Kagem emerald mine, in line with the United Nations Guiding Principles on Business and Human Rights (“UNGPs”) and international good practice implementation.

The objective of the OGM is to enhance Gemfields Kagem’s ability to address any negative impacts to the internationally recognised human rights of community members that it may be connected to through its Zambian emeralds mining operations and third-party contractors to local community members. The ultimate purpose of an OGM for Gemfields Kagem, in line with the effectiveness criteria for OGMs contained in the UNGPs (the “Effectiveness Criteria”), will be to:

- Ensure any local community member that has had his, her or their human rights negatively impacted by Gemfields Kagem’s operations and/or the conduct of any third-party contractors in their performance of work for Gemfields Kagem are remediated in line with the principles reflected in the UNGPs;
- Provide a source of learning for Gemfields Kagem so that potential, future negative human rights impacts can be prevented or mitigated; and to
- Improve community relations and help maintain a low level of conflict between Gemfields Kagem and the local communities, so that available resources and efforts can be focused on much needed community development instead of conflict resolution.

In addition, it is imperative that neither the structure, governance, and practice of the OGM, directly, or indirectly, cause or contribute to negative consequences or drive increased negative impact on community members or Gemfields Kagem’s staff or third parties serving in certain roles and otherwise supporting the functioning of the OGM.

The structure of the OGM is described further in the Gemfields Kagem Operational Grievance Mechanism Protocol (“OGM Protocol”) and visualised in [Annex 1](#).

The Independent Monitor is appointed by Gemfields Kagem to help evaluate the OGM according to the UNGPs and the OGM Protocol, with particular emphasis on the UNGPs Effectiveness Criteria. This will include regular assessments of the outcomes of the grievances received, identification of risks to effective OGM implementation and submission of recommendations for continuous improvement of the OGM processes as well as practices by the Company (including with regard to those engaged by the Company in various functions for the OGM).

Jonathan Drimmer has offered to act as an Independent Monitor on the terms outlined in the following and a separate agreement between him and the Company. The Independent Monitor and the Company may amend this Terms of Reference to accommodate for any changes to the OGM structure or process.

1. Mandate of the Independent Monitor

- The **overall mandate** of the Independent Monitor is to contribute to fulfilling the objective and purposes of the OGM by performing independent, external reviews of the functioning of the OGM and providing constructive suggestions on how the OGM can be improved in furtherance of its overall purposes.
- The **primary mandate** of the Independent Monitor is to **conduct formal evaluations** of the OGM to assess the functioning of the OGM against the OGM Protocol and the UNGPs, especially the Effectiveness Criteria, utilizing as a guide the Assessment Template set out in Annex 2 where relevant
- The Independent Monitor should perform formal evaluations on a **6-months reporting cycle**, with the first formal review to take place in on or around May 2023 or as the Independent Monitor and the Company agrees. As the OGM practice settles, and there is evidence that it is functioning as intended, the Company and the Independent Monitor can agree together to extend the regular, formal reporting cycle to 12-months.
- Following each review, the Independent Monitor should promptly **prepare a report** of his findings that will be **made public** on the Company's website as well as communicated to the local communities. The Independent Monitor should also be prepared to present his results to the Gemfields Kagem **board of directors** and to the **local communities** during one of the Company's regular community meetings.
- The Independent Monitor should at all times carry out his tasks for the OGM in accordance with the OGM Protocol.
- In practice, this means that the approach of the Independent Monitor **must be guided first and foremost by international human rights laws and principles** set out in the UNGPs and in the OGM Protocol.
- In particular, the Independent Monitor will be expected to conduct assessments with **due consideration of the Effectiveness Criteria**, the core guidelines and qualities that grievance mechanisms should have in order to meaningfully ensure access to remedy.
- To this end, the Independent Monitor **may also be called upon periodically by the Company or Ombudsbody** to provide informal feedback on the effectiveness of the mechanism and appropriateness of remedies. The Independent Monitor will seek to understand and communicate with relevant stakeholders how the Effectiveness Criteria and other principles concerning companies' responsibility for negative human rights impacts should be understood in line with the OGM Protocol.

- During the first year, the Independent Monitor will have **regular check-ins with the Company and the Independent Ombudsbody**. At these check-ins, the Independent Monitor will discuss and make a light-touch assessment of the effectiveness of the OGM against some or all of the Effectiveness Criteria, as well as the performance of the Ombudsbody (including on impartiality, independence, and integrity).
- The role of Independent Monitor is **independent** from the Company and any other stakeholder and actor (including, by way of example, traditional and elected community leadership, civil society organisations, government actors, law firms,³ religious groups or churches etc.). This means that neither the Company, nor any other actor may interfere in the review process and reporting by the Independent Monitor.

2. General responsibilities of the Independent Monitor and the Company

- The Independent Monitor is independent from the Company, complainants and any of the other functions and parties to the OGM. As such, the Independent Monitor's ultimate responsibility is to perform his evaluations and prepare and submits reports to the best of his ability in ways that helps the OGM uphold the Effectiveness Criteria and the OGM Protocol. The Independent Monitor may inform the Gemfields board of directors if he cannot effectively and independently perform his duties due to circumstances in the Company's control.
- The Independent Monitor may engage local professionals to assist him or with relevant parts of his assignment.
- The Independent Monitor shall declare any existing and potential conflicts of interest and recuse himself from his assignment if there is a risk of a conflict of interest.
- In the service of monitoring and reporting on the OGM, the Independent Monitor may interact and request any such information that he needs from the Company, Ombudsbody, UNGPs Expert, Investigative Expert, complainants and any other stakeholders, in line with his mandate. Gemfields Kagem is responsible for accommodating for such interactions in ways that are secure and non-retaliatory for all parties; and to provide such information and documentation that the Independent Monitor so requests.
- Gemfields Kagem is responsible for allocating and providing a pre-set budget to ensure that the Independent Monitor can perform his duties without budgetary constraints.

3. Key characteristics of the Independent Monitor

- The Independent Monitor should have key characteristics (“soft skills”) that will facilitate an OGM process that is rights-respecting, effective (in accordance with the UNGPs) and centered on remedy where individuals and communities have had their human rights negatively impacted in relation to the Company's activities. These include:

³ Appropriate carve-out can be made for Paul Hastings.

- Ability to engage constructively and fluently with multiple different types of stakeholders, including Company staff, security staff, complainants and other community members, Ombudspersons and independent experts of the OGM, etc., in order to assess the effectiveness of the OGM. The process of assessment is expected to rely on both the Independent Monitor's own expertise and experience with the Effectiveness Criteria, as well as to analyse the situation on the ground and identify areas for practical improvement.
- Demonstration of judgment, prudence and discretion in carrying out the role of Independent Monitor, including avoidance of making public statements or taking positions that would compromise the perception that the OGM is impartial and independent from either party. The Independent Monitor is not expected to avoid making public statements or taking positions in relation to his work in general (i.e., work unrelated to the OGM); but must be able to demonstrate the ability to judge whether certain statements or activities may undermine the functioning or effectiveness of the OGM.
- Avoidance of any potential or actual conflicts of interest that would undermine or seem to compromise the impartiality and independence of periodic assessment of the OGM.
- Ability to determine which details of cases (e.g., number, type, whether grievance was resolved satisfactorily, etc.) should be made public through periodic reporting, and which details (e.g., specifics of cases, identifying features of complainants, specific amounts of compensation, etc.) should be kept confidential to preserve individual safety, security and integrity as well as the effectiveness of the OGM.

4. Core competencies and expertise of the Independent Monitor

- There are also several core competencies and areas of expertise underpinning the role of Independent Monitor which are fundamental to ensuring that the OGM is rights-respecting, meets the UNGPs Effectiveness Criteria and is centered on remedy for negative human rights impacts. These include a deep understanding and practical experience of the application of the UNGPs and the Effectiveness Criteria in line with international best practices for company-community engagement and the right to remedy based on UNGPs principles, as well as experience from mine sites in Africa.

5. Term of mandate

- The Independent Monitor will be contracted for an initial term of two years.
- The contract between the Independent Monitor and the Company may be subject to renewal based on the quality and usefulness of reports.
- The Independent Monitor may at any time ask to be acquitted from his position, upon one month's notice. Provided his or acquittal is due to other considerations than the Company's conduct, he should make that clear to the Company and other relevant stakeholders.

APPENDIX 2

Sources of Information

Interviews:

- Personnel at Gemfields and Kagem

Documents Reviewed

OGM, Gemfields and Kagem Documents

- Listing of case register and OGM materials from Kagem OGM (2022), including OGM Protocol and CVs
- Stakeholder engagement plan, along with meeting notes from stakeholder engagement regarding OGM formation (2022), including Pilala stakeholder engagement report (2023)
- Kagem Community Development Strategy (2022)
- News articles and reports about Kagem, maps regarding Kagem, and Gemfields website
- Gemfields VPSHR Member Report (2020)
- Gemfields Modern Slavery and Human Trafficking Statement (2023)
- Gemfields Press Statements

Zambia Background Reports and Information

- U.S. State Department Country Report on Human Rights Practices: Zambia (2022)
- U.S. State Department Trafficking in Persons Report (2023)
- U.S. Department of Labor Country and Forced Labor Reports: Zambia (2022)
- OHCHR, Zambia country report (2023)
- USAID, Democracy, Human Rights and Governance: Zambia (2023)
- Human Rights Watch Country Page, Zambia (2023)
- Amnesty International, Zambia Human Rights Country Report (2022)
- Freedom House, Zambia Country Profile (2023) country report
- Danish Institute for Human Rights, Human Rights and Business Country Guide: Zambia
- UNICEF Zambia Country Page
- Verite, Trafficking Risks in Sub-Saharan African Supply Chains & Zambia Country Overview
- Lungowe v. Vedanta decision and related case materials and releases
- Kabwe litigation press releases and public statements

Resources Regarding OGMs

- International Commission of Jurists, Effective Operational-level Grievance Mechanisms
- SHIFT, Human Rights Reporting and Assurance Framework
- Ergon, Access to remedy - operational grievance mechanisms: An issues paper for ETI

- Mark Wielga & James Harrison, Assessing the Effectiveness of Non-State-Based Grievance Mechanisms in Providing Access to Remedy for Rightsholders: A Case Study of the Roundtable on Sustainable Palm Oil
- Emma Wilson and Emma Blackmore, Dispute or Dialogue? Community perspectives on company-led grievance mechanisms
- Accountability Framework Initiative, Operational Guidance on Remediation and Access to Remedy
- IFC, Addressing Grievances from Project-Affected Communities
- CAO Ombudsman, A Guide to Designing and Implementing Grievance Mechanisms for Development Projects
- Verite, Evaluating the Effectiveness of Grievance Mechanisms
- UNICEF, Discussion Paper: Operational-level grievance mechanisms fit for children
- Prof. Dr. Stefan Zagelmeyer, et al., Non-state based non-judicial grievance mechanisms (NSBGM): An exploratory analysis
- Caroline Rees, Piloting Principles for Effective Company-Stakeholder Grievance Mechanisms: A Report of Lessons Learned
- UN Human Rights Working Group report (July 18, 2017) (regarding effective remedy)
- BSR, Grievance Mechanisms in the Dutch Hard Coal Supply Chain
- BSR, In Search of Justice
- Damiano de Felice, Measuring the effectiveness of grievance mechanisms: Between key performance indicators and engagement with affected stakeholders
- ICMM, Handling and Resolving Local-Level Concerns and Grievances: Human Rights in the Mining and Metals Sector
- Mining Association of Canada, Site-Level Grievance and Community Response Mechanisms: A Practical Design and Implementation Guide for the Resource Development Industry
- IPIECA, Worker grievance mechanisms

APPENDIX 3
UNGPs Effectiveness Criteria

Effectiveness Criteria	Description (developed by the Guiding Principles)
Legitimate	Enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes
Accessible	Being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access
Predictable	Providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation
Equitable	Seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms
Transparent	Keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake
Rights-Compatible	Ensuring that outcomes and remedies accord with internationally recognized human rights
Source of Continuous Learning	Drawing on relevant measure to identify lessons for improving the mechanism and preventing future grievances and harm
Based on Engagement and Dialogue	Consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances