



**Second Independent
Monitor Report on
Montepuez Ruby Mining's
Operational Grievance
Mechanism**

Public Report II

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1 INTRODUCTION AND BACKGROUND TO THIS INDEPENDENT MONITOR REPORT

This public Independent Monitor report evaluates the implementation of the Montepuez Ruby Mining (MRM) (a Gemfield's company) Operational Grievance Mechanism (OGM) in Montepuez district in Cabo Delgado, Mozambique.

The OGM is designed to respect human rights by providing access to remedy for people who have suffered adverse impacts, including victims of serious human rights violations, as a result of MRM's operations. In doing so, the OGM assists MRM to implement its human rights policy commitments¹ and align with international standards, such as the United Nations Guiding Principles on Business and Human Rights (UNGPs), which state that businesses have a responsibility to respect human rights and should facilitate access to remedy.

In this report **the Independent Monitor evaluates how effective the MRM OGM is at providing access to remedy for claimants, including victims of reported serious human rights abuses.** The overarching aim of the evaluation is to improve the OGM's performance and, consequently, contribute towards greater respect for and enjoyment of human rights amongst people living in and around the MRM mining area.

This report is the second public Independent Monitor report and covers the performance of the OGM between the 1st of December 2021 to the 1st of June 2022. A [first](#) Independent Monitor Report covered the period from 1st of June to the 30th of November 2021 and an internal Pilot Phase Report evaluated the performance of the pilot phase between November 2020 to June 2021.

Before providing the Independent Monitor's evaluation of the OGM, this section introduces the OGM, including its purpose, scope and process, and explains the role of the Independent Monitor.

1.1 Montepuez Ruby Mining's Operational Grievance Mechanism

MRM's OGM is an outcome of a 2019 no-admission-of-liability legal settlement between Gemfields and Leigh Day, a UK law firm, over allegations that MRM security staff and Mozambican state-forces, whilst providing a security service to MRM, committed severe human rights abuses against individuals living in and around the MRM mining concession in Montepuez, Mozambique. **The OGM is a non-judicial process that has been designed, according to the UNGPs and Mozambican law, as a mechanism "to respect human rights, by receiving, assessing and remediating grievances about adverse impacts that are caused by, contributed to or directly linked to MRM or (sub)contractor operations" in Montepuez district.**² An OGM Framework and Operating Handbook (the Handbook) has been developed in order to provide OGM players with a reference tool to assist implementation. The OGM can receive issues and requests related to MRM operations which the OGM will refer to the appropriate mechanisms for resolution.

¹ Including MRM's Human Rights Policy and Community Engagement and Livelihoods Policy

² *MRM OGM Framework and Operating Handbook* (Version dated 12th of May 2021), p.9.

Gemfields committed to design and implement the OGM in line with Mozambican law and international human rights standards, such as the UNGPs. As part of this commitment, Gemfields established three Tiers to the OGM. Tier 1 is administered by MRM and investigates, resolves and remedies operational grievances. Tier 2 is overseen and largely controlled by an Independent Panel of local and national civil society members with a special mandate, procedures, and safeguards to investigate, resolve and remedy grievances related to alleged severe human rights impacts or other serious incidents. The Independent Panel is supported by an Independent Panel Secretariat, made up of Grievance Officers who receive and process grievances, a Fact Finding Team who investigate grievances and a Panel Administrator. An independent Appeals Panel, Fund Administrator and External Experts also all support the Independent Panel. Finally, Tier 3 is a process for referring crimes of a public nature, under section 160 of the Mozambican Criminal Code, to the Prosecutor (within the Attorney General's Office), whilst ensuring as far as possible that claimants and witnesses receive appropriate safeguards.

The Handbook creates multiple access points for claimants to submit grievances directly to MRM or to independent actors, safeguards and supports for claimants, a detailed grievance procedure, data management protocols, remedy programmes and compensation guidelines.

1.2 The Independent Monitor

To provide an independent view on the OGM and how effective it is at providing access to remedy for people living in and around the MRM mining area, there is an Independent Monitor. **The Independent Monitor creates accountability and contributes towards continuous improvements** through its mandate "to help evaluate the OGM according to the effectiveness criteria in the UN Guiding Principles on Business and Human Rights (UNGPs)."³ **The evaluation includes assessing how MRM and the Independent Panel are implementing the Handbook, as well as identifying risks to the effectiveness of the OGM.** The Independent Monitor is also required to submit reasonable **recommendations for continuous improvement** or remedial measures, which MRM and/or the Independent Panel are expected to take forward and implement.

The Independent Monitor evaluates the OGM on an on-going basis and submits to MRM and the Independent Panel a progress report every six-months for the two-year period in which the OGM will be receiving grievances involving allegations of serious human rights impacts. The Independent Monitor's progress report provides an independent perspective on the OGM as MRM and the Independent Panel only provide comments on the factual accuracy of the findings.

As part of MRM's commitment to implement an OGM consistent with the UNGPs, the Handbook requires MRM and Gemfields to publish a summary of the Independent Monitor's report, including only the number and outcome of complaints submitted and determined by the OGM process, and an evaluation of the independence, fairness and accessibility of the OGM, on their websites and during community and other stakeholder meetings, with due regard to the confidentiality and anonymity of the claimants.

³ MRM OGM Framework and Operating Handbook, p.37

1.3 Scope and Methodology

The Independent Monitor completed its second progress report in September 2022, evaluating the period from the 1st of December 2021 to the 1st of June 2022. The Independent Monitor's methodology has drawn upon an extensive literature review of international guidance and best practice. It is risk-based, meaning that it focuses on identifying issues or gaps in the implementation of the Handbook that are posing or could pose a significant risk to the eight effectiveness criteria. To collect data, the Independent Monitor regularly engaged internal OGM stakeholders throughout the reporting cycle and conducted a site visit to Montepuez district from the 6th to the 10th of June 2022, coordinated by the Independent Panel Secretariat.

The Independent Monitor reviewed OGM forms and documentation, physical access points, a sample of case files and the grievance database. The Independent Monitor interviewed claimants whose grievances were being processed and/or already resolved (they were chosen according to specific criteria, such as gender, type of claim, result of claim, village where claimant lives and access point used) as well as other representatives from local communities for whom the OGM is intended. The Independent Monitor also interviewed MRM and Gemfields staff and members of the Independent Panel and Independent Panel Secretariat (including Fact Finders, Grievance Officers and the Panel Administrator).

This report is a public summary of the Independent Monitor's second progress report. The next section of this report summarises how MRM and the Independent Panel have implemented the OGM during the evaluation period and the following section evaluates how effective this implementation has been.

2 IMPLEMENTATION OF THE OPERATIONAL GRIEVANCE MECHANISM

This section reports on the number and outcome of grievances submitted to and determined by the OGM process.

The Independent Monitor continues not to be able to report the number of grievances submitted to and determined by the OGM process. MRM and the IP have not publicly disclosed this information and this lack of transparency continues to pose a risk to the OGM's effectiveness. As previously recommended, MRM and the IP need to make public sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake, in line with the Handbook requirements.

The Independent Monitor found that during the evaluation period, the OGM demonstrated limited progress to claimants that it is providing access to remedy. During this period, the IP implemented a moratorium on deliberating new grievances, pending the resolution of a number of issues raised by the IP, MRM and the Independent Monitor. In May 2022, MRM organised a **workshop facilitated by an international mediator and all parties agreed upon a number of actions designed to improve the implementation of the OGM**, including by:

- Strengthening the triaging and fact-finding process.
- Closing out claims where the claimant is no longer contactable after 30 days.
- Implementing a statute of limitations for historic claims, and communicating it to potential claimants.
- Reviewing the process for closing out out-of-scope claims.
- Improving dialogue between MRM and the IP and its Secretariat.

The Independent Monitor identified the following outcomes from the OGM process:

- **Through the Tier 1 process, MRM resolved a very small portion of grievances**, providing remedy to claimants whose grievances were found to be proven.
- **Through the Tier 2 process, the IP did not deliberate and resolve grievances** this evaluation period.
- **Through the Tier 2 process, the IP and its Secretariat provided remedy** to some claimants whose grievances were found to be proven in the last evaluation period, although some claimants had not yet received remedy.
- **MRM and the IP closed out a portion of grievances that were found to be outside the scope** of the OGM, either because of the timing of alleged incident or the parties involved.
- **Issues and requests** from local communities were closed out and forwarded to MRM's community engagement team to respond to.

So far claimants whose grievances have been resolved generally report feeling satisfied that the **OGM was fair, serious and respectful.**

3 EVALUATION OF THE OPERATIONAL GRIEVANCE MECHANISM

To report on the independence, fairness and accessibility of the OGM, **Error! Reference source not found.** sets out the Independent Monitor’s evaluation of the OGM against the UNGPs’ effectiveness criteria.

Table 1. Evaluation of the OGM against the UNGPs Effectiveness Criteria

UNGP Effectiveness Criteria	Definition	Evaluation
Legitimate	Enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes	<p>The OGM’s legitimacy amongst claimants and local communities, whilst still broadly intact, is increasingly being put at risk by the severe delays and lack of visible progress in providing remedy.</p> <p>Claimants and local communities do continue to report and demonstrate a level of trust in the OGM. The OGM continues to receive new claims, MRM and the IP have engaged local communities about the OGM and resolved issues at access points, claimants continue to report that the process was fair, serious and respectful, and the organisational structure enables an independent process. Some local communities also report that the OGM, because of its focus on engagement and dialogue as well as a demonstration that MRM is actively attempting to manage the risk of conflict and remediate impacts, has contributed to a strengthening of the broader company-community relationship.</p> <p>However, almost a year and a half after going live the OGM has only resolved a very small portion of in-scope grievances of alleged human rights violations and a very small portion of Tier 1 claims. This assessment period, issues internal to the OGM, in the relationship between MRM and the IP and misalignments over how to implement OGM procedures, mean that the IP did not resolve any claims of human rights abuses. Moreover, issues between the IP, its Secretariat and the independent fund administrator mean that some claimants waited months to receive the remedy they were awarded. There is also a lack of transparency and communication with claimants (e.g. those claimants whose grievances have been processed by the FFT and are awaiting IP deliberation or those claimants whose claims have been appealed).</p> <p>As a result, there have been signs from a small number of Tier 1 and Tier 2 claimants of dissatisfaction with, and a loss of trust in, the OGM process.</p> <p>In the next assessment period, MRM and the IP need to demonstrate to claimants significant progress in resolving claims and providing remedy in order to maintain the OGM’s legitimacy.</p>

UNGP Effectiveness Criteria	Definition	Evaluation
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	<p>The OGM appears to be broadly accessible to local communities and MRM and the IP have identified and taken some significant steps to increase that accessibility.</p> <p>MRM and the IP have continued to conduct awareness raising campaigns and engagements with local communities. MRM has resolved some significant issues at access points that affected vulnerable groups, although other resolvable issues related to the hotline and number of complaint boxes remain. However, broadly the fact that the OGM has continued to receive claims throughout the assessment period indicates a general level of awareness amongst stakeholders for whose use the OGM is intended.</p> <p>In addition, the OGM receives grievances from a variety of stakeholders and provides some supports to reduce some barriers. However, there are no access points independent of MRM and MRM and the IP have not assessed the potential implications for accessibility.</p> <p>MRM and the IP need to continue to respond to and resolve accessibility issues in close consultation with local communities.</p>
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	<p>The OGM is not providing predictable access to remedy to claimants and this is posing a major risk to the OGM's effectiveness.</p> <p>The OGM Handbook establishes clear and defined procedures with indicative timeframes to enable predictable access to remedy. However, at very few points in the grievance management process (from receiving a grievance to investigating, deliberating and remedying it) are the timeframes set out in the Handbook being implemented for Tier 1 and Tier 2. As a result, this assessment period, the OGM did not resolve any claims of human rights abuses.</p> <p>This is due largely to the significant caseload and internal misalignments between MRM, the IP and the IP Secretariat over how to implement some procedures (at the end of the assessment period, the parties met to align and solve a number of these issues). Moreover, whilst MRM has taken steps to strengthen the organisational capacity of the OGM, it is not clear if the structure has the capacity to enable predictable access to remedy for Tier 1 and Tier 2 claims.</p> <p>Many claimants do not demonstrate a clear understanding of how the OGM processes their claims and works to provide remedy, nor do they know what timeframe to expect from the OGM. Some claimants have waited months to receive the remedy they were awarded by Tier 2, others to receive the support the IP and its Secretariat offered to provide and others for the OGM to begin processing their claims. The lack of visible progress to claimants and clarity over timeframes has led to some signs from a small number of claimants of dissatisfaction with, and a loss of trust in, the OGM process.</p> <p>MRM and the IP need to strengthen the organisation of the OGM to enable a predictable process so that in the next assessment period the OGM demonstrates to claimants significant progress in resolving claims and providing remedy in order to maintain the its legitimacy.</p>

UNGP Effectiveness Criteria	Definition	Evaluation
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	<p>The equitability of the OGM cannot be fully assessed due to the limited number of claims resolved this assessment period.</p> <p>MRM and the IP have not resolved enough claims to assess fully how the equitability of the OGM has changed this assessment period. Claimants whose claims have been resolved and some whose claims are being processed report that the OGM is fair and respectful. The OGM Handbook has various provisions for ensuring that claimants have access to information, advice and expertise. In some instances, some of those provisions are used to provide evidence and support to claimants, although contextual factors do pose a challenge to the OGM's ability to implement all the provisions in the Handbook. Greater information sharing between MRM and the FFT could provide more sources of information for investigating grievances.</p> <p>The implementation of the counter-proposal procedure, although not tested this assessment period, continues to pose a potential risk to equitability.</p> <p>As the OGM begins to process a higher volume of claims, MRM and the IP need to closely monitor and respond to any issues related to equitability.</p>
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	<p>The OGM is not sufficiently transparent to claimants and external stakeholders to build confidence in its effectiveness.</p> <p>MRM and the IP have engaged claimants and local communities to inform them about the OGM, how to access it and resolve issues at access points. They also plan to inform local communities about any changes to the OGM procedure that claimants need to be aware of.</p> <p>However, claimants expect clear communication and updates about their claims as well as explanations about the next steps in the OGM process. Claimants are not seeing visible progress in resolving claims and few report receiving such communication (although the OGM generally responds to claimants who request information). The lack of transparency on key points, largely due to predictability issues, threatens the OGM's legitimacy and confidence in its effectiveness.</p> <p>There is also limited public reporting on the OGM's effectiveness. MRM has published the First Independent Monitor Report, but MRM and the IP are not implementing in full the reporting requirements of the Handbook (e.g. regularly updating claimants and distributing quarterly summary information sheets).</p> <p>MRM and the IP need to firstly demonstrate to claimants significant progress in resolving claims and providing remedy and then improve communication with claimants in order to build confidence in the OGM's effectiveness.</p>

UNGP Effectiveness Criteria	Definition	Evaluation
Rights-compatible	Ensuring that outcomes and remedies accord with internationally recognized human rights	<p>The rights-compatibility of the OGM cannot be fully assessed due to the limited number of claims resolved this assessment period.</p> <p>There is not enough evidence to assess fully how the outcomes and decision of the OGM affect the rights of claimants. Claimants do report feeling safe using the OGM and it has responded to risks faced by some claimants. MRM engaged vulnerable groups whose confidentiality had been placed at risk trying to access the OGM to resolve the issue and the IP Secretariat has implemented safeguards to mitigate risks to some claimants.</p> <p>However, the general lack of predictability to the OGM potentially poses a general risk to the right to remedy, but has also in some instances created specific human rights issues. MRM has engaged government, as required, about land disputes in the resettlement village that pose a potential risk to some claimants' rights to an adequate standard of living, however, the issue remains unresolved. There have also been delays in the provision of supports to some claimants and labour-related issues impacting upon the IP and IP Secretariat.</p> <p>MRM and the IP need to ensure that they are sufficiently responsive to rights-related issues to resolve them and prevent them escalating and posing risks to the OGM's effectiveness and the human rights of its stakeholders.</p>
A source of continuous learning	Drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms	<p>MRM formally monitors the OGM and with the IP has taken some significant steps designed to improve the effectiveness of the OGM.</p> <p>The Handbook establishes a formal and systematic approach to monitoring and evaluating the OGM. MRM closely monitors Tier 1 and Tier 2 performance as well as any risks to the OGM, and the Independent Monitor reports support monitoring and evaluation. However, there is limited evidence that the IP monitors Tier 2 performance and the provision of supports and remedies to claimants. Moreover, unresolved issues also prevent the IP Secretariat from fully using the grievance database, both issues pose limitations to the effective monitoring of the Tier 2 system and a challenge to the continuous improvement of the OGM and implementation of preventative measures at MRM.</p> <p>MRM, the IP and IP Secretariat have taken significant steps to improve the OGM, based on their own monitoring and the First Independent Monitor Report. MRM organised a three-day workshop to review a number of issues, including those raised by the First Independent Monitor Report, and the parties agreed upon a number of measures to implement learnings and improve the OGM. The effectiveness of these measures cannot yet be assessed as many are planned or have not been fully tested.</p> <p>In the next assessment period, MRM and the IP must collaborate to monitor closely the effectiveness of the planned improvement measures.</p>

UNGP Effectiveness Criteria	Definition	Evaluation
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	<p>MRM and the IP continue to implement an OGM based on engagement and dialogue with stakeholders for whose use the OGM is intended as well as with each other.</p> <p>The OGM Handbook embeds consultations with local communities and claimants in the design of the OGM and the implementation of its procedures. MRM and the IP Secretariat are generally processing claims for Tier 1 and Tier 2 based on dialogue and give claimants input into potential remedy. MRM has also consulted claimants about issues and risks, for example at access points, and with the IP plans to inform claimants about some proposed changes to the OGM procedure. The Handbook requires MRM and the IP to gather and act on feedback from claimants, but the OGM has not yet resolved enough claims to gather sufficient feedback. Some of the feedback gathered from claimants and local communities by MRM, the IP and Independent Monitor is noted throughout this report.</p> <p>Also, MRM, the IP and IP Secretariat held a workshop to strengthen their relationship and discuss a number of issues and agreed upon measures to implement learnings and improve the OGM.</p> <p>MRM and the IP need to ensure that as the OGM processes more claims, those claimants are consulted and MRM and the IP use their feedback to improve the OGM.</p>

3.1 Recommendations

To strengthen the implementation of the OGM and contribute towards greater effectiveness, in line with the UNGPs, the Independent Monitor made a number of recommendations for improvement. The following is a summarised list of the key recommendations:

1. MRM and the IP should review the Independent Monitor's report and **address gaps in implementation of the Handbook.**
2. MRM and the IP should **reduce the significant caseload** ensuring that all measures are aligned with the UNGPs, including by organising a formal independent organisational evaluation of the OGM and ensuring that the IP meet regularly to deliberate claims.
3. MRM and the IP should **strengthen the implementation of the OGM's safeguards and supports**, ensuring that they are provided predictably to all claimants who require them.
4. MRM and the IP should **increase engagement with claimants and other stakeholders** to improve accessibility and transparency.
5. MRM and the IP should closely **track the implementation of improvement measures** and strengthen monitoring efforts, particularly improvements identified in the May workshop.
6. MRM and the IP should **resolve the issue of responsibility to remedy** in claims of human rights abuses committed by third-parties.
7. MRM and the IP should ensure that claimants whose claims are closed out **receive remedy predictably.**

4 CONCLUSION

This Independent Monitor report is a tool for continuous learning. It documents how MRM and the IP have implemented the OGM, evaluates the OGM's performance against the UNGPs and makes recommendations for continuous improvement. The report aims to support and assist MRM, the IP and the IP Secretariat to implement an OGM that provides effective access to remedy for people who have suffered adverse impacts, including victims of serious human rights violations related to MRM's operations.

This report finds that the OGM continues to contribute towards a strengthening of the overall company-community relationship. This is due to the increased engagements between MRM and claimants and communities, and it is also linked to MRM demonstrating increasing efforts to implement security controls designed to reduce the potential for conflict and human rights impacts on local communities. Strengthening relations and dialogue is increasingly important as the conflict in Cabo Delgado continues and attacks in June and July 2022 occurred closer to the MRM operations and neighbouring communities than before.

The report also finds that **MRM and the IP invested significant energy, resources and attention into strengthening their relationship and aligning on key issues.** They made progress in this regard and developed a number of improvement measures. However, claimants and stakeholders for whose use the OGM is intended have not seen the impacts of these measures, rather **the OGM has demonstrated limited visible progress to claimants and other stakeholders** who are experiencing severe delays. The lack of predictability and transparency are compromising the OGM's legitimacy.

Ensuring that claimants, particularly victims of bona fide human rights violations, receive remedy is at the heart of the OGM's purpose. The OGM is under significant pressure and MRM and the IP need to resolve the issues raised in this Independent Monitor Report, particularly key challenges such as the significant caseload and the failure of the IP to deliberate a claim during the assessment period, so that the OGM can achieve its purpose and contribute towards greater enjoyment of human rights amongst people living in and around the MRM mining area.

The Independent Monitor will continue to engage with MRM, the IP and the IP Secretariat to monitor the OGM's performance. The Independent Monitor will report on progress made in the next progress report that will cover the period between the 1st of June 2022 and the 31st of November 2022.

4.1 Further Developments

The following are some significant actions that have taken place since the end of the assessment period:

- In June and August 2022, MRM and the IP completed awareness campaigns intended to improve how grievances are submitted and inform communities about changes to the OGM agreed during the workshop.
- In June, the IP Secretariat began implementing changes to the OGM procedure as agreed during the workshop.
- In June, MRM suggested a moratorium on resolving grievances of human rights violations that allegedly involve the police pending discussions between MRM and the IP to align on who has the responsibility to remedy those grievances. The parties discussed this topic in the mediated workshop but were unable to

reach agreement at that point. Further discussions have occurred following the workshop and reaching alignment on this matter is being treated as a priority by MRM.

- In August 2022, independent consultants submitted to MRM case studies advising the OGM on how to remediate grievances of burnt infrastructure and sexual violence.
- In September 2022, the IP began deliberating grievances.
- MRM and the IP continue to use the rapid response mechanism to close out out-of-scope grievances.
- MRM has increased the rate at which it is closing out Tier 1 grievances and has resolved a significant portion of grievances.