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Independent Monitor Report on Montepuez Ruby Mining's Operational Grievance Mechanism 2.0

Public Report 1

Reporting period: March – August 2024

Cover image taken by Synergy at the OGM 2.0 Office in May 2024

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1 BACKGROUND, SCOPE AND OBJECTIVES

This is the first public report from the Independent Monitor to evaluate the implementation of the Montepuez Ruby Mining (MRM) Operational Grievance Mechanism 2.0 (the OGM 2.0 or OGM). The Independent Monitor is to provide bi-annual reports regarding the implementation of the OGM 2.0. We note at the outset that both Gemfields and MRM have been open, cooperative and forthcoming in their interactions with the Independent Monitor over the reporting period. We particularly recognise the Company's OGM 2.0 Team (COT) for their obvious dedication to ensuring the success of the OGM 2.0; and for their candour and rigour in our interactions. The OGM 2.0 is operating in a highly complex environment and has faced a rage of challenges over this reporting period including increasing (and highly unpredictable) conflict in the Cabo Delgado region, the sudden influx of over 2400 claims at the re-opening of the OGM, and long-standing tensions and conflicting expectations within parts of the community affected by MRM, not least of which caused by the perceived shortcomings of the OGM 1.0.

Between 2021 and 2023, MRM and Gemfields implemented an Operational Grievance Mechanism (the OGM 1.0), an independent non-judicial 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."[1] The OGM 1.0 was an outcome of a 2019 no-admission-of-liability legal settlement over allegations that MRM security staff and Mozambican state-forces, whilst providing security services to MRM, committed severe human rights abuses against individuals living in and around the MRM mining concession in Montepuez, Mozambique.

By the end of its temporal scope, the OGM 1.0 was yet to fulfil its objective. The failure to "effectively provide remedy within reasonably expected timeframes" is acknowledged by MRM and Gemfields in the Community Remediation Agreement ("the Agreement") resulting from a community meeting in Namanhumbir from 31 May to 1 June 2023. The Agreement was reached in consultation with the community and signed by community representatives. It included a commitment to implement a number of local initiatives and social investments as well as the payment of a "one-time symbolic payment", from a fund of 50 million Meticais, offered to all claimants of claims logged with the OGM 1.0 relating to alleged harm occurring before 1 January 2019 that had not yet been finally processed by the OGM 1.0. This payment was communicated as compensation for the trouble of going through the OGM 1.0 process and the undue delay in the claims process. It is under this agreement that Gemfields MRM is now implementing the OGM 2.0.

The objective of the OGM 2.0 under the Operational-Level Grievance Mechanism for Gemfields MRM and Group Companies Protocol (the Protocol) is to enhance Gemfields MRM's ability to provide remedy to claims of human rights violations by the Company. [2] The mandate of the Independent Monitor is also derived from the Protocol.

[1] MRM OGM Framework and Operating Handbook (Version dated 12th of May 2021), p.9.
[2] MRM OGM Protocol (v2.0 March 2024).

In consultation with Gemfields, MRM and human rights advisory firm Human Level, the Independent Monitor was able to comment on the development and content of the OGM 2.0 Protocol. The Independent Monitor was not, however, given the opportunity to comment on the more detailed Guidance for the MRM OGM 2.0 Team (the Guidance)[3], which was published in April 2024. It is the implementation of the Guidance that gives rise to some of this report's more further reaching recommendations.

This report is the first Independent Monitor report regarding the OGM 2.0 and focuses on the period from the 1st of March 2024 to the 31st of August 2024.

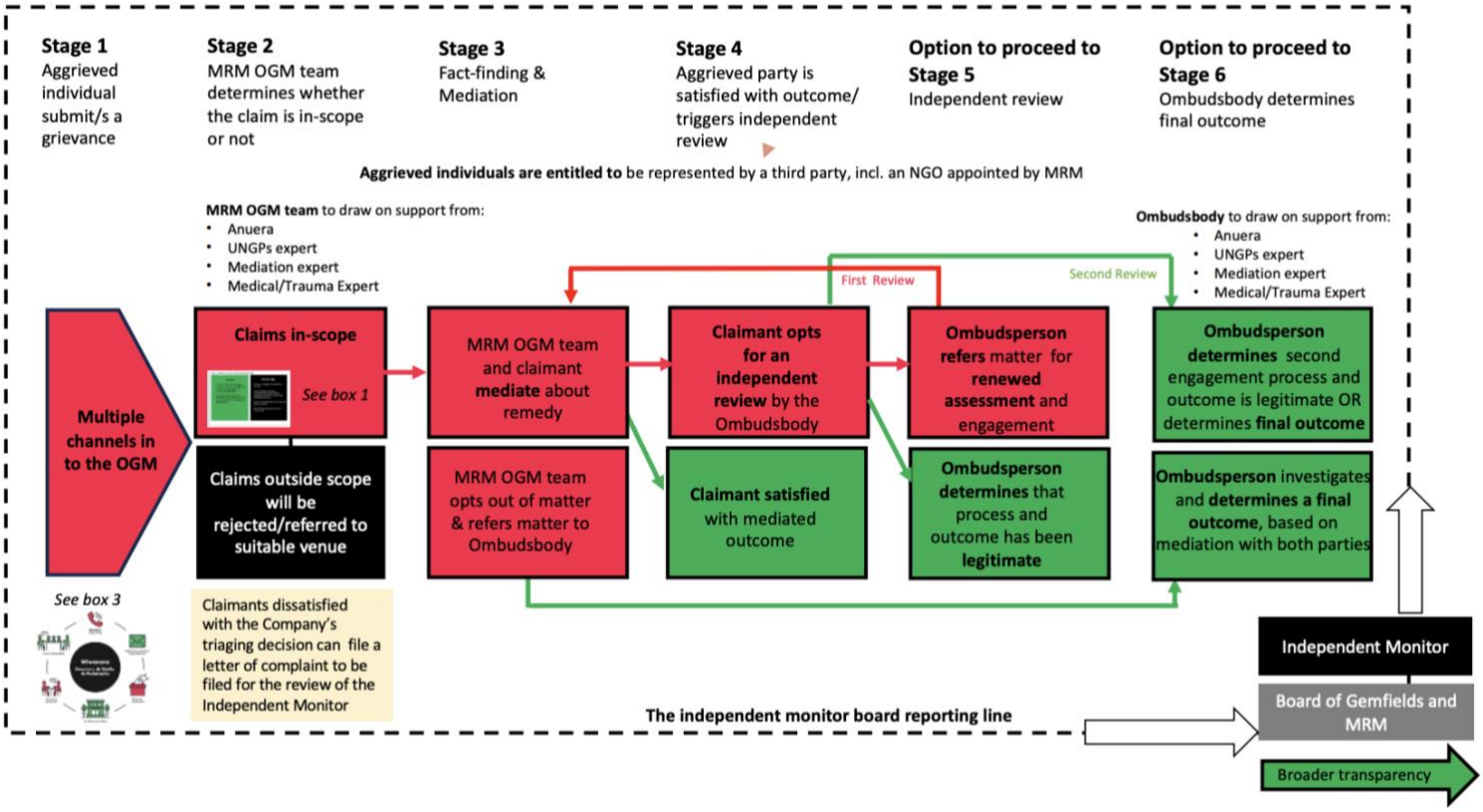
[3] Providing Effective Remedy Through the Gemfields MRM OGM 2.0, Guidance for the Gemfields MRM OGM 2.0 Team, Expert Advisors and Independent Ombudsbody v2.0, 27 March 2024

2 STRUCTURE AND DESIGN

The Protocol, as the guiding document for the OGM 2.0, structures the mechanism into four essential and two optional stages. The Company's OGM 2.0 Team (the COT) is responsible for the four essential stages; namely: (1) receiving and triaging (2) investigation (3) communication and (4) dialogue and mediation. The Independent Ombudsbody is responsible for (5) reviewing and (6) determining cases that are referred to them when a claimant or MRM exercise their optional right to refer a matter for independent review. The overall structure of the OGM 2.0 is illustrated in Diagram 1 below[4].

In addition to the overall organisational structure, the Protocol creates access points to receive grievances, describes key safeguards, the mandate and accountability of the Independent Monitor, procedure for amending the Protocol, roles and responsibilities, examples of principles for triaging incoming cases and overarching principles for the provision of remedy. The Protocol requires that the Independent Monitor perform independent reviews of the functioning of the OGM 2.0 and how the COT and other of the OGM 2.0 functions perform their tasks according to the OGM 2.0 Protocol.

Diagram 1: OGM 2.0 Process and Structure



[4] OGM 2.0 Protocol, p.14.

3 THE INDEPENDENT MONITOR

3.1 Mandate

The OGM Protocol describes the overall mandate of the Independent Monitor as contributing to "fulfilling the purpose of the OGM 2.0 by performing independent, external reviews of the functioning of the OGM 2.0 and how the COT and other of the OGM 2.0 functions perform their tasks according to this OGM 2.0 Protocol and providing constructive suggestions on how the OGM 2.0 can be improved in furtherance of its overall purposes[5]. The mandate of the Independent Monitor is further defined in the Terms of Reference. This includes evaluating:

- OGM 2.0 procedures and processes;
- Consideration of the outcomes of community-led assessments of the Company's performance on fulfilling the Community Remediation Agreement, which has been designed to address historical grievances and to provide collective remediation; and
- The community-led assessment will take the form of assessment of Company performance against KPIs defined by community members with the support and advisement of external experts.

Two reference points inform the Independent Monitor's evaluation of the OGM. The first is the Protocol, which sets out the OGM 2.0 organisation structure, process and guiding principles that should be followed to provide access to remedy. Part of the Independent Monitor's mandate is to assess whether the COT are effectively implementing the Protocol.

The second reference point for evaluating the OGM 2.0 is Principle 31 of the UNGPs, which sets out the criteria for an effective non-judicial grievance mechanism. These eight criteria are the international "benchmark for designing, revising or assessing a non-judicial grievance mechanism to ensure that it is effective in practice."[6]

3.2 Methodology

This report is based on monthly meetings held with key Gemfields and MRM personnel throughout the reporting cycle and a site visit to MRM from the 13th to the 17th of May 2024. The report is based on evidence collected by reviewing OGM 2.0 documentation and materials, the OGM 2.0 grievance database, in-person and online interviews with internal stakeholders, independent consultants, claimants and limited observation of internal OGM operations. The security situation in the region at the time of the May site visit was unstable and it was decided that, as a risk mitigation measure, the Independent Monitor would not conduct engagements with external stakeholders in the surrounding community and instead limit engagement to the mine site and OGM 2.0 offices. This report is limited by this and as a result does not sufficiently consider the outcomes of community-led assessments of the Company's performance in fulfilling the Community Remediation Agreement designed to address historical grievances and to provide collective remediation. This is a specific expectation of the Independent Monitor, as listed in the Terms of Reference. It is hoped that this part of the Monitor's mandate as well as wider engagement with claimants and the community can be properly and safely fulfilled when the security situation in the region improves.

[5] MRM OGM 2.0, p.30.
[6] *UN Guiding Principles on Business and Human Rights*, Commentary on Guiding Principle 31, p.34.

To evaluate the OGM 2.0 against the UNGPs effectiveness criteria, this report assesses the implementation of the OGM 2.0 Protocol and takes a risk-based approach to identify issues and impacts that may pose a risk to one of the eight effectiveness criteria. The assessment is structured according to the key components of the OGM, as set out in the Protocol, and uses indicators tied to the UNGPs as the criteria to assess how OGM stakeholders (the COT in particular) have implemented each component. This assessment then informs the recommendations for continuous improvement and/or to implement remedial measures. A list of detailed recommendations have been provided to Gemfields MRM and are not repeated in full in this public report.

4 EVALUATION OF THE OPERATIONAL GRIEVANCE MECHANISM

4.1 Key Comments

This report finds that Gemfields MRM has invested significant energy, resources and attention into the design and implementation of OGM 2.0. Since its launch at the end of 2023, the mechanism has achieved some success and there is a widely held perception amongst stakeholders that MRM has entered a new phase of transparency, co-operation and trust-building with affected communities and the rightsholders for whom the OGM 2.0 is intended. While the Independent Monitor's external engagement was limited by the security situation at the time of our site visit, interactions with claimants revealed that the OGM 2.0 has played a significant part in this shift.

The OGM 2.0 hit the ground running and built efficiency quickly, making significant progress in resolving the considerable caseload before it. The OGM 2.0 has learned from and responded to the challenges of its predecessor. The mechanism has the necessary structures in place to enable procedural fairness and to a lesser extent, wide access. However, the UNGPs insist that even where access to a remediation process exists, it does not in itself provide reparation, nor constitute an adequate demonstration of respect of relevant rights through provision of remedy. The UNGPs distinguish between procedural remedy (being able to lodge a grievance and have it delt with) and substantive remedy (the outcome ensuring reparation) and note that effective remediation requires both. While the OGM has received many unfounded claims, what was clear to the Independent Monitor, and is accepted by the COT, is that there have been individual, sometimes serious, human rights harm suffered by members of the community and linked to Gemfields MRM. To provide effective remedy for these harms, MRM must provide both procedural and substantive remedy. Additionally, the UNGPs warn that remedy deficiencies are likely to compound a victims' sense of loss and disrespect.[7] The Guidance provided to the COT about what remedy should be offered where harm is found to have occurred, and to whom, is limiting the OGM 2.0's ability to provide meaningful, proportionate, and therefore effective remedy.

Ensuring that claimants, particularly victims of serious rights violations, receive effective remedy is at the heart of the OGM 2.0's purpose. The COT is under significant pressure and MRM needs to resolve the issues raised in this report efficiently for the OGM 2.0 to achieve its purpose. Gemfields management has already demonstrated a commitment to taking the steps laid out in this report to fulfil its responsibility to respect the human rights of people whose lives are adversely impacted by MRM.

4.2 Evaluation against the UNGPs

Principle 31 of the UNGPs states that to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be legitimate, accessible, predictable, equitable, transparent, rights-compatible, and a source of continuous learning. Operational-level mechanisms should also be based on engagement and dialogue.

[7] Human Rights Council, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework', A/HRC/17/31 (21 March 2011) (UNGPs) Principle 31, commentary.

Section 3.1 of this report sets out the Independent Monitor's evaluation of the OGM 2.0 against the UNGPs and provides high level recommendations for improvement. In addition to the evaluation, section 3.2 provides more detailed recommendations and actions.

4.2.1 Legitimate

Definition: Enabling trust from the stakeholder groups for whose use they are intended and being accountable for the fair conduct of grievance processes.[8]

Whether the OGM is considered legitimate is central to its continued mandate and existence. The UNGPs do not suggest a prescriptive list of features that elicit legitimacy. Instead, steps that the OGM 2.0 needs to take to generate authority and trust on the part of its stakeholders will depend on its context. The OHCHR's recent guidance on Access to Remedy in Cases of Business-Related Human Rights Abuse suggests that there are several features a mechanism might consider to be regarded as legitimate.[9] This report considers some of these features relevant to the OGM 2.0.

Independence

In response to the challenges experienced by OGM 1.0 in ensuring timely remedy, the OGM 2.0 is housed and controlled by MRM. This notwithstanding, the Protocol specifically includes that the OGM 2.0 should ensure legitimacy through "functional independence" which it considers to be the separation of the OGM investigation and engagement team from day-to-day MRM operational functions. The protocol also includes the provision of an optional independent third-party intervention that claimants can access if they are dissatisfied with the outcome of the company-led process. In practice, there is little perceived independence of the process. The OGM office is clearly marked as an MRM facility and all personnel wear MRM-branded uniforms. On top of this, claimants are not making use of optional independent services. By the end of June 2024, no claimants had requested access to the Independent Ombudsbody. The reason for this is not fully apparent, though engagement with claimants suggested a combination of a lack of awareness of the option and a satisfaction that the process is fair.

Despite the lack of perceived independence, OGM processes and personnel demonstrate impartiality and good governance, and claimants express that they trust the OGM process and respect its authority. MRM personnel engaged in the handling of grievances are cognizant of the rights and needs of the people for whom the mechanism has been set up and the socio, economic, and structural issues that can affect the ability of the mechanism to meet those needs. Complainants report that MRM personnel relate to them in a culturally appropriate and sensitive manner and that despite obvious power imbalances, claimants expressed that they felt free to participate in the process. Embedding the management of grievances in MRM processes and governance is therefore serving the dual purpose of building trust between the company and community. All complainants expressed that since interacting with the OGM 2.0, their sense of the company's integrity had improved.

Independence of the fact-finding process

Beyond functional independence from the day-to-day functioning of MRM, there is little independence between functions within the OGM. The fact-finding team in particular is responsible for several practical functions, including (1) investigating the facts of a grievance, (2) considering the evidence obtained, and (3) deciding about whether a

[8] Definitions taken from the UNGPs Effectiveness Criteria.
[9] Access to Remedy in Cases of Business-Related Human Rights Abuse: An Interpretive Guide, OHCHR, 2024.

grievance should proceed to mediation or be dismissed. The team is also responsible for communicating these steps to a claimant and advising them where needed. With no segregation of duties, the process is at risk of conflict and/or coercion and may be perceived as biased or too closely aligned with MRM's interests, undermining the legitimacy of the process.

4.2.2 Accessible

Definition: 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

The OGM 2.0 is considered accessible if the rightsholders who may need or want to use the mechanism know about it, understand how to use it, can readily access it, and easily participate in its processes. Due to the unstable security situation at the time of our visit, the Independent Monitor was unable to conduct broad stakeholder engagement to establish how well-known and understood the OGM 2.0 is in the community or whether additional assistance is needed for those who may face barriers to access. The COT was however able to provide sufficient evidence to show that, in line with the Protocol, the OGM proactively disseminates information to ensure proper understanding of its mandate, objectives and procedure including through targeted outreach activities.

There are several other features of the OGM 2.0's design and implementation that make it broadly accessible. Access points include the local OGM office, a toll-free phone line, dedicated email addresses, and 7 grievance boxes placed in the community, which are by far the most used entry to the OGM 2.0. The mechanism does not require complainants to waive their right to access remedy via an alternative mechanism (whether State-based or non-State-based) as a condition to access. The mechanism charges no fees to complainants and takes active steps to minimize the financial burden associated with access such as paying transport costs for complainants to travel to the OGM office, where appropriate. All written materials are provided in English and Portuguese to ensure that they are understandable to the people for whom they are intended and Makhuwa translation is provided during the grievance resolution process where needed. Complainants expressed that they were not concerned about retaliation and that the policies and processes adopted by MRM to preserve a degree of confidentiality gave them comfort that they were protected.

The Eligibility Criteria

The Eligibility Criteria (the Criteria), described in the Protocol, defines the OGM's scope and who, in practice, can access the mechanism. The Independent Monitor has identified several ways that application of the Criteria is unreasonably limiting the scope and creating a risk to the mechanism's accessibility.

Guidance to the UNGPs provides that for a mechanism to be regarded as accessible, time limits should be flexible enough at least to take account of the length of time it may take for rightsholders to find out about the mechanism and take steps to access it.[10] Timeframes should also consider community context and vulnerabilities. The Protocol allows for an amendment to the scope of the OGM 2.0 such that claimants must bring a claim within three months of the alleged incident occurring. While some limitation may be reasonable, there does not appear to be a clear basis for limiting the timeframe to such a short period, nor any strong precedent in other similar grievance mechanisms.

[10] *Access to Remedy in Cases of Business-Related Human Rights Abuse – An Interpretive Guide*, Office of the United Nations High Commission for Human Rights (OHCHR), 2024, p.64.

In discussion with Gemfields MRM, the Independent Monitor learned that the aim of the limitation period is to reduce the influx of speculative claims and to more easily allow triangulation of evidence which is more likely to be preserved. MRM implemented this amendment in July 2024 and, while it is too soon to know the full effect of this timeframe on the accessibility of the mechanism, it represents a significant change and is likely to limit the accessibility of the mechanism particularly considering contextual barriers such as the levels of literacy in the community and ongoing violent political instability in the region. This is particularly concerning given the mass internal displacement experienced in the region, linked to the ongoing violent insurgency. MRM should closely monitor the effect of this time limit and consider extending the scope, should it be necessary to ensure adequate accessibility.

Since the writing of this report, the Independent Monitor has learned that the scope has been extended for certain vulnerable groups detailed in Section 5 below, though remains as a general practice.

The Criteria also specifically excludes claims relating to "incidents of deaths caused by the collapse of illegally dug pits inside the concession area" from the scope.[11] This exception effectively bars a group of people whose fundamental rights have been adversely affected from accessing remedy, without investigating possible linkage to MRM. This is contrary to the stated objective of the mechanism to "enhance Gemfields MRM's ability to effectively address negative impacts to the internationally recognised human rights of local community members that the Company is connected to."[12] The exception also excludes incidents where MRM may for some reason be linked to the incident beyond it just being on the concession. By way of theoretical example, if MRM activities may have contributed to the collapse or if MRM could have taken steps to reduce the likelihood of a fatal incident. This should be considered in the context of the significant measures MRM has in place to prevent such incidents occurring including community engagement, warning signage on the concession, alternative livelihood provision, and security including on-foot patrolling and the use of drones.

This notwithstanding, a complete exclusion may further compound existing vulnerabilities of illegal miners such as lack of legal protection, socio-economic marginalization, and exposure to abuse and exploitation particularly in the context of the ongoing insurgency. According to MRM, the insurgency is potentially fuelling an increase in illegal ASM on the concession as some internally displaced people in Montepuez may become involved in ASM to make a living.

Gemfields MRM's responsibility to respect human rights extends even where the rights in question may be linked to illegal activity. To be considered accessible in line with the UNGPs, the OGM should be operated in a way that is respectful of the rights to equality and non-discrimination. By denying a particular group opportunity to seek redress based on their legal status rather than the harm they have suffered, this exception could represent a form of discrimination.

Finally, beyond providing a pathway to remedy, the OGM 2.0 serves two further important functions: enabling MRM to learn about the human rights impact of its operations and to prevent future harm to people affected by MRM's activities. As mentioned previously, considerable work goes on to prevent illegal tunnelling and related safety incidents on the MRM concession. Considering this, it may be that MRM is not linked to a fatality on the concession. However, the company needs to allow victims, or the families of victims, access to a pathway to investigation and

[11] OGM 2.0 Protocol, p.12.
[12] OGM 2.0 Protocol, p.5.

possible remediation. The company can then make an assessment about the circumstances of the incident and its linkage to the harm, given the due diligence steps that MRM has taken to prevent it. Excluding all pit deaths from the scope of the OGM bars victims from engaging in this process and constitutes an infringement of the company's responsibility to respect human rights. Additionally, MRM is preventing itself from learning about possible injuries and fatalities on the concession, how the incidents occurred, and ways that the company needs to adapt its ongoing due diligence to prevent future harm.

Following discussions with the Independent Monitor precipitating this report, Gemfields MRM confirm that the eligibility criteria have been extended to include incidents of deaths caused by the collapse of illegally dug pits inside the concession area within the scope of the OGM.

4.2.3 Predictable

Definition: 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.

To be regarded as predictable, the OGM 2.0 should have clear publicized procedures and provide clarity about available outcomes.[13] The mechanism's several criteria regarding who is eligible to initiate grievance processes are complex and have changed several times. This leads to confusion as to who might be eligible to have their grievance heard and creates unreasonable expectations among affected stakeholders. Given the experience of complainants with OGM 1.0 and the subsequent symbolic payments, many claimants expressed disappointment that financial remediation was not a remedy option open to them. Further, claimants expressed that this was only apparent to them at the end of the process.

At the time of writing this report, the OGM had not yet delivered enough remedy outcomes to demonstrate that it has in place ways of monitoring implementation outcomes. Delays in delivery of remedy represent a serious risk to the predictability of the mechanism. The OGM should provide indicative timeframes for remedy outcomes and make reasonable efforts to meet them while communicating progress to affected rightsholders. The Independent monitor learned that, since our site visit, the OGM has begun delivering remedy.

4.2.4 Equitable

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;

For the OGM 2.0 to be considered as equitable it must be perceived by its users as fair. The Protocol ensures procedural fairness and claimants expressed that they trust the OGM process. Claimants described that this trust is earned through the efforts of the OGM personnel rather than the design of the process. The OGM cannot demonstrate that great attention has been paid to the inherent imbalance of power between the company and its complainants, particularly in the mediation process. Recommendations for how MRM may overcome this imbalance are provided in section 3.2 below. Despite the remedy guidance allowing for collective remedy options, there is no provision for complainants to collaborate or seek collective redress for harm suffered.

[13] OHCHR Guidance, p.65.

4.2.5 Transparent

Definition: 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

The effectiveness criteria suggest that keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance builds confidence in its effectiveness and is necessary to meet public interest.

MRM has engaged claimants and local communities to inform them about the OGM, how to access it and resolve issues at access points. The OGM was also able to share their plans to inform local communities about changes to the OGM procedure that claimants need to be aware of.

However, claimants expect clear communication and updates about their claims as well as an explanation to the next steps in the OGM process. Claimants are not seeing visible progress in remediation 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.

The OGM 2.0 tracks and records a wide range of data and to a great deal of detail, including in relation to the demographic of the claimant and the outcomes of the grievance and yet there is very little publicly available information on OGM 2.0's effectiveness. Beyond publishing the Independent Monitor's report, Gemfields MRM should consider more regular reporting, given the amount of data readily available.

4.2.6 Rights-compatible

Definition: Ensuring that outcomes and remedies accord with internationally recognized human rights

Types of Remedy Offered

As is noted in the UNGPs, access to effective remedy has both procedural and substantive elements but where the UNGPs provide clear, practical guidance on what procedural remedy entails, they are weaker on substantive remedy. The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (The Basic Principles) are useful in this regard.[14]

To meet international standards, remedy offered (and remediation outcomes) should be fair, adequate, and timely. If a remedy involves compensation, adequacy must be determined with reference to the quantum of compensation.[15]

This report has so far spoken at some length as to the efficiency of the OGM 2.0. The timeliness of remedy outcomes is not of major concern though it should be noted that at the time of the Independent Monitor's site visit, while some remedies had been agreed, complications related to responsible sourcing of in-kind goods had delayed payment, and no remedies had yet been delivered. Complainants interviewed indicated some frustration and concern related to this delay. From subsequent engagements with the COT, we believe that beneficiaries have now begun to receive remedy.

[14] Accessible at https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation

[15] The Working Group on business and human rights examined the concept of access to effective remedies under the Guiding Principles on Business and Human Rights in a 2017 report accessible at https://undocs.org/A/72/162

The Independent Monitor finds that remedy offered by the OGM 2.0 falls short of international standards in terms of meeting the requirement for adequacy, particularly in respect of a consideration of proportionality to the gravity of the harm suffered.

The first reason for this is that the Protocol and Guidance offer limited remedy options for moral harm. The Guidance's over-emphasis on loss of income does not consider that complainants to the OGM are likely to be living in poverty. Therefore, the financial loss suffered because of the incident in question will be minimal. Instead, the lasting harm to the victim is non-pecuniary. The Working Group on business and human rights states that in cases of business-related human rights abuses "compensation should be awarded, as appropriate, for both pecuniary and non-pecuniary harm". While the Guidance provides for what the Working Group may refer to as a "bouquet of remedies" which claimants may access, in practice this amounts to a choice between (or a combination of):

1. The provision of an apology; and/or
2. medical and psychological support where a victim has suffered an injury, sexual abuse, mental or physical illness resulting from the harm linked to MRM; and/or
3. educational and vocational opportunities; and/or
4. in the case of financial loss linked to severe human rights abuses including sexual violations, in-kind, non-monetary compensation. All compensation offered by the OGM is awarded in-kind following engagement with the community regarding the potential rights impacts associated with financial compensation.

The Guidance includes a commitment to ongoing efforts with social investment partners such as AMODEFA, as well as ongoing human rights due diligence as a remedy option. In our view, these are basic expectations on the company and cannot be seen as part of the bouquet of remedies available to a claimant. Additionally, MRM offers to launch disciplinary investigations related to individuals employed by Gemfields MRM and, where appropriate, refer cases to the Prosecutor for criminal prosecution. It is our view that this too should be considered an essential part of on-going due diligence rather than a legitimate remedy option open to claimants.

According to the Protocol and accompanying Guidance, individual material compensation, paid in-kind, can only be offered as a remedy for specific economic loss in exceptional circumstances and when several concurrent conditions pertaining to the incident under consideration are met. Aside from these confined circumstances, no individual compensation is offered to complainants. Forms of restitution and rehabilitation such as an apology and access to medical support services may, however, be open to the complainant.

It is our view that this bouquet is insufficient and represents a significant risk to the ability of the OGM 2.0 to provide effective substantive remedy. Even in cases where the company has found that individual harm had been suffered, and that the harm is linked to the company, and even in cases relating to the most serious forms of human rights abuses such as sexual assaults, the OGM 2.0's ability to offer internationally recognized forms of remedy is materially curtailed.

The Independent Monitor notes that the language and sentiment expressed in the Guidance document warrants consideration. Our concern is that the framing suggests that some forms of sexual assault and "other severe assault" which are not, for example suffered by children, or "particularly violent, humiliating or degrading" though may still be regarded as serious human rights abuses are not considered as serious enough to be due any form of compensation even where directly linked to the company, although other forms of individual and collective remedy may be available to a complainant.

Five conditions must be met for individual in-kind compensation to be considered appropriate. These are (1) the claimant was a child, lost a pregnancy as a result of the incident, contracted HIV or another severe illness, or that the incident was particularly violent, humiliating or degrading; and that (2) the claimant lost income as a result of the incident and was not able to meet the basic needs of their family; and that (3) one of MRM's staff or an MRM contracted security provider was involved; and that (4) providing individual remedy as outlined in the paragraph above would not be possible or effective; and that (5) the OGM 2.0 Team is confident that the incident happened based on evidence gathered. The sexual assault of a child by an MRM security guard, for example, fulfils condition (1) and (3) but the claimant is unlikely to be able to show loss of income necessary to meet condition (2), and consequently will not be allowed access to compensation by OGM 2.0 under the Guidance. Complainants in this position may be able to access other forms of remediation such as an apology, medical and psychological support where needed, or vocational and education opportunities where appropriate.

Following discussions with the Independent Monitor, Gemfields MRM have removed conditions 1 and 4 listed above from a consideration of eligibility for compensation. Further, the Independent Monitor has learned that Gemfields MRM intends to extend remedy available for non-pecuniary harm and increase the quantum of in-kind compensation offered for pecuniary harm.

Quantum of compensation offered

Further, even where a claim may fit within the limited set of circumstances detailed above, the quantum of compensation offered in-kind is both severely limited and not linked to a consideration of the extent of the harm suffered. Complainants interviewed reported that they were surprised and disappointed by the quantum of remedy offered to them and did not understand how the quantum was determined. At the time of writing this report, the maximum quantum offered to a victim was goods (groceries) to the equivalent value of $595 over the course of six months, even in the most severe and "particularly violent, humiliating and degrading" circumstances[16]. The quantum range available to the COT is determined using a table of average monthly income for the region and complainants may be awarded up to 6 times the amount stipulated for the agricultural industry, in-kind. Determining an appropriate and proportional quantum of goods offered is complex and needs to be sensitive to the harm suffered and the context. A determination using an average salary is not rationally connected to the human rights harm suffered and should be reconsidered.

Gemfields MRM have noted that, in their view, the level of compensation should be seen in light of the other remedies offered to the victim, including physical and mental health restoration and livelihood enabling options.

The Independent Monitor has learned that as a result of ongoing engagement with Gemfields MRM, determination of quantum will also include consideration of the severity of the harm suffered by the complainant.

No individual remedy payments had been made at the time of the Independent Monitor's visit and so this report cannot comment on the potential unforeseen impacts of remedies delivered.

Exclusion of individuals involved in illegal ASM

As expressed in the section 3.1.2 on Accessibility above, claims related to injuries sustained through illegally dug pits on the concession are barred from access to the OGM 2.0. This exclusion is further compounded by limits to in-kind compensation for *any* claimants linked to illegal ASM on the MRM concession. Claimants linked to ASM have

[16] Noting that other remedies such as physical and mental health restoration and individual livelihood-enabling options may be available.

access to remedy in the form of an apology, medical and psychosocial support where needed, and vocational opportunities, as mentioned above. However, this group, who make up most claims, are not entitled to in-kind compensation and are instead limited to what the Guidance refers to as "humanitarian assistance" which is capped at a lower amount than the $99 per month, no matter the severity of the harm suffered nor the linkage to the company. The Guidance further extends this limitation to the families of illegal miners. The Guidance on remedy explains that "where an individual claimant has lost income due to a husband having left her after an incident of sexual assault" she may be due in-kind, non-monetary compensation to the equivalent of the specific value of the loss of income". However the Guidance goes on to caveat this with the exception that if that income was made through illegal mining activities, no compensation should be provided except for "individuals who due to the income loss from the incident is in need [sic] of a form of humanitarian assistance; at an amount lower than USD 99 per month". [17] This raises significant concerns regarding the rights-compatibility of the mechanism. While illegal mining is a violation of Mozambiquan laws, those involved in it are still entitled to human rights protections, including the right to remedy if their rights, or the rights of their family, are violated by the company.

With these considerations in mind, Gemfields MRM should review the Protocol and Guidance to ensure the OGM 2.0 is sufficiently rights compatible.

4.2.7 A source of continuous learning

Definition: Drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms

The Protocol does not establish a formal or systematic approach to monitoring and evaluating the OGM 2.0. beyond the reports of the Independent Monitor. Gemfields does however monitor the OGM 2.0's performance as well as any risks to the OGM. To be considered a source of continuous learning, the OGM 2.0 should be able to use lessons learned from grievance processes to improve the mechanism itself. While the COT gather feedback from claimants as a matter of course, what is less clear is the effectiveness of those feedback loops in effecting change to the mechanism. There is limited evidence that MRM monitors the process as experienced by claimants or the provision of safeguards or remedy.

Secondly, and importantly, for the OGM to be considered as a source of continuous learning it should be able to use lessons learned from grievance processes to prevent future adverse human rights impacts. The Independent Monitor saw no evidence to suggest that MRM is analysing data gathered from the OGM 2.0 (including frequency, patterns and trends in grievances) to identify and implement actions to prevent future harm. This is a major risk to the OGM's ability to function as a source of continuous learning.

Gemfields MRM have noted that OGM data is shared and discussed at regular project calls attended by representatives from Gemfields and MRM management. A member of the MRM security function is also present on these calls. Work is also ongoing to implement a feedback loop between the MRM security function and the COT.

[17] Guidance Document, p.55.

4.3 Recommendations for Improvement

To support continuous learning, drive improved implementation and ensure the OGM 2.0 meets its objectives, this report sets out recommendations for improvement for Gemfields, MRM, and the COT. This sub-section summarises the key recommendations and groups them around issues and risks to assist MRM in implementation.

Recommendation	MRM should review the Protocol, Guidance, and their implementation to ensure the OGM 2.0 enables trust in all stakeholders and is accountable to its users.
Actions	1. MRM should measure and track that the OGM 2.0 has effective structures and procedures in place as well as sufficient resources and capacity for the OGM 2.0 to achieve the outcomes named in the Protocol. 2. MRM should investigate reasons why complainants are not requesting access to independent functions of the OGM 2.0 and evaluate and address any barriers to complainants' access to the Independent Ombudsbody.
Recommendation	MRM should review the Protocol, Guidance and their implementation to ensure the OGM 2.0 is accessible to all intended stakeholders, without discrimination.
Actions	1. MRM should review and implement all Protocol requirements related to access points. In particular: • Continue to conduct regular awareness raising campaigns and frequent stakeholder engagement. • Continue to engage with vulnerable groups, particularly those who are likely to have issues related to accessibility, including internally displaced people. • Effectively communicate to all stakeholder groups what the eligibility criteria is and the reasoning for the criteria. Stakeholders need to understand the forum open to them should they have grievances related to the company that fall outside of the scope of the OGM 2.0. • Review whether amending the eligibility criteria creates barriers to access for certain groups, considering vulnerability. • Consider analysing trends in claims raised by vulnerable groups before and after the change as well as proactively consulting vulnerable groups. 2. MRM should review all measures designed to ensure efficiency of the mechanism to ensure that they are aligned with international best practice, particularly the UNGPs. In particular: • Demonstrate the scope of the mechanism and any exclusions do not pose a risk to the effectiveness of the OGM, particularly to its legitimacy, accessibility and equitability. • Demonstrate that affected communities are aware of the scope and the reasons for it. • Demonstrate that if a claimant is not contactable for more than 30 days it does not prejudice their ability to access remedy (e.g. by lodging a new claim).

	3. MRM should consider reviewing the Protocol to ensure that the eligibility criteria are as simple and easy to understand as possible and that the criteria does not unnecessarily exclude certain groups, particularly vulnerable groups. • Review of the eligibility criteria should specifically include reviewing the exclusion of incidents caused by collapsed pits.
Recommendation	MRM should strengthen the implementation of the OGM 2.0's safeguards and supports.
Actions	1. MRM should seek to continue to understand changing vulnerabilities in the community and issues which may prevent access. MRM should consider what support may be needed to ensure safe access to the OGM in light of the political instability and ongoing conflict in the region. 2. MRM should review and resolve any issues preventing claimants from accessing supports, including access to the Independent Ombudsbody. 3. MRM should investigate opportunities for local psycho-social support for vulnerable claimants including less traditional or formal systems of support such as community help centres or groups[18].
Recommendation	MRM should review the Protocol to ensure that the OGM has sufficient internal functional independence to enable legitimacy.
Actions	1. MRM should ensure that the fact-finding team has sufficient capacity to meet the high number of cases to be investigated.[19] 2. MRM should review the Protocol and consider the inclusion of internal controls including the separation of different functions in the fact-finding process to mitigate the risk of conflicts of interest and/or coercion. 3. MRM should implement measures to allow for continuous learning to ensure it can take actions to prevent future harm[20].
Recommendation	MRM should ensure transparency of the OGM 2.0's progress through regular engagement and reporting.
Actions	1. MRM should make public this report and seek to meaningfully communicate its contents to affected stakeholders. 2. MRM should make a good faith effort to implement all recommendations made in this report, including where effective implementation requires an amendment to the Protocol or Guidance. 3. In line with the Protocol, MRM should continue to meaningfully engage affected stakeholders before making changes to the OGM 2.0 process set forth in the Protocol and make the necessary efforts to sensitise structural or procedural changes to the needs and expectations of the community.
Recommendation	Gemfields MRM should review the Protocol and Guidance to ensure remedy outcomes are sufficiently rights compatible.
Actions	1. MRM should review the Guidance regarding remediation to ensure that it is proportional to the level of harm suffered by the complainant, fair and equitable. 2. MRM should consider how remedies already awarded could be reviewed to ensure that changes to the Guidance to bring it in line with the UNGPs may be applied retroactively. Awards relating to the most egregious human rights violations including sexual assault and rape should be prioritised. 3. MRM should resolve the issues which may impact predictability in the provision of remedy to claimants, resolve delays in providing supports and formalise the communication process.

[18] Gemfields MRM note that the OGM is in the process of hiring two psychologists. These psychologists will be available to provide support to claimants as well as to the communities in and around MRM more broadly.
[19] Gemfields MRM notes that the size of the fact-finding team has already been increased, and the COT is currently made up of a team of 7 permanent staff. Gemfields MRM have confirmed that resourcing is kept under constant review.
[20] Gemfields MRM notes that it is working on developing a feedback loop between the MRM security function and COT.

Recommendation	Gemfields MRM should review implementation of the Protocol to ensure the OGM 2.0 process is based on dialogue as a means to resolve grievances
Actions	1. MRM should and consider the provision of independent legal aid to ensure complainants are aware of their rights and what the limits in remediation are, understand the mediation process, and can advocate for their best interests.[21]

[21] Gemfields MRM notes that the OGM has engaged an NGO Partner whose role includes providing advice and guidance to claimants throughout all stages of the OGM process. The NGO Partner is made available to all claimants and some claimants have utilised their support during the mediation process. The Independent Monitor saw no evidence of this and so cannot comment.

5 FURTHER DEVELOPMENTS

Since the close of the evaluation period, Gemfields and MRM have taken actions to address some of the issues raised in this report. Some of these have been acknowledged in the body of the report, where possible, but also include:

- Meaningful engagement with the Independent Monitor to understand our recommendations.
- Review of the Guidance and changes to the eligibility criteria to include pit collapse incidents as part of the scope of the OGM.
- Review of limitation period, which will remain 3-month rolling but with the inclusion of an extension of up to 6 months for vulnerable groups which includes:[22]
  a) Potential victims of sexual assault (of any age and gender);
  b) Those with a diagnosed disability (both physical and mental);[23]
  c) The elderly (to be confirmed what ages this will capture);
  d) Those who have been physically unable to lodge a claim within 3 months due to being in hospital/incarcerated.
- Removal of the conditions which must be met for individual in-kind compensation to be considered appropriate, as well as increasing the quantum of in-kind compensation available.
- Strengthening the remediation options available for non-pecuniary harm.
- Discussion with the independent Ombudsbody to consider how to make their presence better understood by claimants.
- Consideration of more regularly reporting of key data around the OGM 2.0's effectiveness.

6 CONCLUSION

In line with the overall mandate of the Independent Monitor, this report is intended to be an instrument of continuous learning, contributing to fulfilling the objective and purposes of the OGM 2.0. It documents how MRM has designed and implemented the OGM 2.0, evaluates the OGM's performance against the UNGPs Effectiveness Criteria and makes recommendations for continuous improvement.

After considerable effort and expense, the OGM 1.0 closed without achieving its intended purpose and leaving affected stakeholders without adequate pathway to remedy. The task before OGM 2.0 includes repairing the damage done to the legitimate cause of endeavouring to provide remedy to the impacted community as well as the trust between the company and the community. To add to this, the OGM 2.0, and MRM in general, is operating in an increasingly complex set of local dynamics.

Since its launch, the OGM 2.0 has made significant progress, both from a point of view of efficiency and procedural effectiveness. MRM has recruited highly qualified and committed local personnel for key functions and

[22] If once a claim has been lodged with the OGM, a claimant is not contactable for more than 30 days MRM will re-open their claim if they wish their claim to continue. Being uncontactable will not prejudice a claimants claim or ability to access remedy. This is not a change to the process but reflects how the OGM has been operating

[23] It is unclear to the Independent Monitor what diagnosis will be accepted by MRM given the widely reported limits to access to medical services in the region.

enlisted international experts to provide external advice. MRM and the COT are cognizant of the task before them and remain dedicated to the objectives of the OGM. There are however several flaws in the foundation of the OGM 2.0, particularly in the expression and implementation of the Guidance that pose risks to the OGM 2.0's effectiveness, specifically in terms of its accessibility and the rights-compatibility of remedy outcomes. Gemfields MRM have confirmed that they are considering an all recommendations in this report to ensure the OGM 2.0 can meet its stated objective. The Independent Monitor remains committed to engaging with Gemfields MRM to monitor the mechanism's performance and provide any guidance necessary to ensure continuous improvement. The Independent Monitor will report on progress made in the next progress report that will cover the period between the 1st of September 2024 and the 31st of March 2025.