



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

Public Report I

23rd March 2022

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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 first public Independent Monitor report and covers the performance of the OGM between the 1st of June and the 30th of November 2021. Gemfields began designing and developing the OGM in January 2019 and formally launched the OGM on the 4th of February 2021, following a pilot phase starting in October 2020 in which it tested and improved the OGM. The Independent Monitor evaluated the pilot phase period prior to this report in an internal report. 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 first progress report in February 2022, evaluating the period from the 1st of June to the 30th of November 2021. 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 18th to the 22nd of October 2021, 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). 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). Finally, the Independent Monitor also observed internal meetings and engagements between Fact Finders and claimants, although it was not able to observe a meeting of the Independent Panel.

This report is a public summary of the Independent Monitor's first 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 report covers the period from the 1st of June to the 30th of November 2021. Prior to June, MRM implemented a pilot phase of the OGM, starting in October 2020, which trialled the OGM on a small scale to identify issues and implement corrective measures, and formally launched the OGM on the 4th of February 2021, following a local public awareness campaign. The Independent Monitor evaluated the period from October 2020 to the end of May 2021 in an internal pilot phase report.

Since the conclusion of the pilot phase, MRM and the Independent Panel Secretariat have hired additional staff for the OGM and MRM constructed a new purpose-built office for the Independent Panel and its Secretariat in Namanhumbir village. The Independent Panel has met four times to deliberate grievances. MRM also opened a new access point for the OGM at an MRM Community Office in Namanhumbir.

During this evaluation period, the OGM received a very high number of grievances. It processed a proportion of them with the following outcomes:

- Issues and requests from local communities were closed out and forwarded to MRM's community engagement team to respond to.
- MRM and the IP Secretariat acknowledged and closed out a proportion of grievances that were found to be outside the temporal scope of the OGM or were from claimants who had already been compensated under the Leigh Day settlement.
- MRM and the IP were in discussions on how to close out a number of grievances where the relevant claimants are no longer contactable, despite reasonable efforts to identify them.
- Tier 1 resolved and closed most cases received, providing remedy to claimants whose grievances were found to be proven.
- Tier 2 resolved and closed out a small proportion of all grievances received. The Independent Panel found some grievances to meet the evidentiary threshold and awarded remedy, and found that others did not meet the evidentiary threshold and notified the claimant and closed out the grievance.

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

The Independent Monitor is not able to report the number and outcomes of grievances submitted to and determined by the OGM process, as is required by the Handbook. This is because MRM, the Independent Panel and its Secretariat have not made this information publicly available by implementing the Handbook procedures for regular monitoring and reporting. The lack of public reporting is an issue that presents a risk to the effectiveness of the OGM and the Independent Monitor has recommended to MRM, the Independent Panel and its Secretariat to resolve this issue and implement the public reporting requirements in the Handbook.

3 EVALUATION OF THE OPERATIONAL GRIEVANCE MECHANISM

To report on the independence, fairness and accessibility of the OGM, Table 1 sets out the Independent Monitor's evaluation of the OGM against the UNGPs. In addition to the evaluation, it provides summarised recommendations organised according to each UNGP effectiveness criteria.

Table 1. Evaluation of the OGM Against the UNGPs

| UNGP Effectiveness Criteria | Definition | Evaluation | Summary Recommendations |
|-----------------------------|---|--|--|
| 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 very high caseload indicates a general level of trust amongst stakeholders for whose use the OGM is intended. Claimants who have used the OGM also report that the process is fair, serious and respectful, an indication of their trust in the OGM. The organisational structure of the OGM that is being implemented for Tier 2 is also enabling an independent process for reviewing and resolving grievances, although there should be a clear procedure for how to change the Handbook to safeguard the OGM's independence.</p> <p>MRM and the Independent Panel (IP) are not aligned on how to implement the appeals process, one of the main processes to enable accountability within the OGM. As a result, the process is not yet leading to cases being resolved.</p> <p>The very high caseload and the severe delays in acknowledging, resolving and closing out grievances are significant and pose a major risk to the OGM's legitimacy.</p> | <p>MRM and the IP should jointly review the issues that have caused delays in resolving grievances and implement measures to reduce the high caseload.</p> <p>MRM, the IP and the IP Secretariat should jointly review and improve how the OGM is explained to claimants. Ensure that claimants understand that the Tier 2 process is independent of MRM.</p> <p>MRM and the IP should jointly agree on and implement a procedure for modifying the Handbook and OGM processes.</p> <p>MRM and the IP should jointly review and resolve the issues related to, and raised by, the appeals process through engagement and dialogue.</p> |

| UNGP Effectiveness Criteria | Definition | Evaluation | Summary Recommendations |
|-----------------------------|--|--|---|
| 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 high caseload indicates a general level of awareness amongst stakeholders for whose use the OGM is intended and that a large number and variety of stakeholders are able to access the OGM. However, some claimants who are aware of how to access the OGM do not demonstrate a good understanding of how the OGM functions.</p> <p>There are also vulnerable claimants, such as families residing in the resettlement village⁴ and elderly women, who do not understand how to access the OGM and perceive there to be barriers to access. In the former case, resettled persons are sometimes not aware of their ability to raise complaints about the resettlement process to Tier 1 of the OGM. Some vulnerable claimants have also been put at risk whilst trying to lodge grievances.</p> | <p>MRM and the IP should jointly implement all the Handbook measures designed to enable access to remedy.</p> <p>MRM should conduct awareness raising campaigns and more frequent stakeholder engagement and should consider doing so in collaboration with the IP.</p> <p>MRM should engage vulnerable groups to review the appropriateness and effectiveness of all access points and minimise any barriers to access and should consider doing so in collaboration with the IP.</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 sufficiently predictable remedy to claimants. The OGM has procedures in place, yet these do not appear to be clear enough given that MRM and the IP are not agreed on how to implement some key Tier 2 procedures. The OGM has indicative timeframes but MRM, the IP and the IP Secretariat are mostly not following these, due in large part to issues with procedures and the quantity and availability of resources to the OGM.</p> <p>The OGM has a significantly high caseload and MRM and the IP are not yet effectively managing this risk. MRM has identified the risk, engaged the IP, and is in the process of implementing corrective measures. At the end of the evaluation period, the issue had not yet been resolved.</p> <p>These issues pose a risk to the predictability of the OGM, and consequently potentially to its legitimacy and to the right to remedy for claimants with legitimate grievances.</p> | <p>MRM and the IP should jointly review the issues that have caused delays in resolving grievances and implement measures to reduce the high caseload.</p> <p>MRM and the IP should jointly review the grievance procedure, identify issues and agree on how to implement it to enable predictability.</p> <p>MRM, the IP and the IP Secretariat should jointly review and improve how the OGM is explained to claimants.</p> <p>MRM should organise a formal independent organisational evaluation of the OGM.</p> |

⁴ Pursuant to the government mandated and approved Resettlement Action Plan.

| UNGP Effectiveness Criteria | Definition | Evaluation | Summary Recommendations |
|-----------------------------|---|---|--|
| 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 OGM has access to information to resolve cases. Information and advice are made available to claimants in most cases and claimants report feeling satisfied that they were able to engage the OGM on fair, informed and respectful terms. In some instances, the IP Secretariat has engaged external experts for information.</p> <p>However, the way that the IP and IP Secretariat are implementing some Tier 2 procedures creates a potential risk that claimants are not having equal opportunities throughout the OGM.</p> | <p>The IP and the IP Secretariat should review the risk assessment process and implementation of supports and safeguards.</p> <p>The IP and the IP Secretariat should demonstrate that claimants are being made aware of their right to appeal and supported to exercise it.</p> <p>The IP and the IP Secretariat should ensure that claimants are able to counter-propose in a way that is equitable, appropriate and effective.</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 significantly high caseload indicates that many stakeholders for whose use the OGM is intended received information on how to lodge grievances. However, once lodged, the IP Secretariat is unable to proactively keep all parties to a Tier 2 grievance informed about its progress due to the high caseload and delays in resolving grievances. As a result, the OGM has received a number of repeat grievances that impact upon its predictability.</p> <p>MRM, the IP and the IP Secretariat are transparent with claimants about the high caseload and communicate to claimants that there will be delays as a measure to manage expectations.</p> <p>MRM and the IP have not reported publicly on performance and, as a result, the OGM is not yet transparent to external stakeholders.</p> | <p>MRM and the IP should jointly review the issues that have caused delays in resolving grievances and implement measures to reduce the high caseload.</p> <p>MRM should conduct awareness raising campaigns and more frequent stakeholder engagement and should consider doing so in collaboration with the IP.</p> <p>MRM and the IP should jointly review and resolve the issues that prevent the OGM from externally reporting and implement in full the Handbook requirements.</p> <p>MRM, the IP and the IP Secretariat should jointly review and improve how the OGM is explained to claimants. Ensure that claimants understand that the Tier 2 process is independent of MRM.</p> |
| Rights-compatible | Ensuring that outcomes and remedies accord with internationally recognized human rights | <p>The OGM has supports and safeguards to protect the human rights of stakeholders. Claimants report feeling satisfied that the risks to using the OGM are being mitigated, that the safeguards are adequate to protect their rights and that the outcomes of the OGM are rights-compatible.</p> <p>However, accessibility issues and delays in the implementation of supports and safeguards have posed a risk to the rights of some vulnerable claimants. The severe delays in resolving grievances are also posing a risk to the right to remedy for claimants with legitimate grievances.</p> | <p>The IP and the IP Secretariat should review the risk assessment process and implementation of supports and safeguards.</p> <p>MRM and the IP should demonstrate that the OGM is responding to the risks posed to claimants in a systematic, consistent and proportionate way.</p> |

| UNGP Effectiveness Criteria | Definition | Evaluation | Summary Recommendations |
|---|--|--|---|
| A source of continuous learning | Drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms | <p>MRM and the IP are partially implementing the process in the Handbook to monitor the OGM to identify lessons to improve the mechanism and prevent future grievances and harms. The OGM has procedures to enable continuous learning but these are not being implemented in full.</p> <p>The IP is not monitoring the OGM and reporting, as required by the Handbook.</p> <p>MRM does monitor the OGM, including through community engagement, and with the IP has identified and managed some issues and risks. MRM is also still in the process of implementing some corrective measures and so, at the time of the assessment, some risks remained unresolved.</p> <p>MRM and the IP are not implementing in full the requirements for internal reporting, which should contribute towards measures to prevent future grievances and harms.</p> | <p>MRM and the IP should jointly implement in full the Handbook requirements related to monitoring and evaluation.</p> <p>The IP and the IP Secretariat should resolve all issues related to the database.</p> <p>MRM and the IP should jointly establish and implement clear processes to enable them to solve problems jointly and continuously improve the OGM and prevent future grievances and harms.</p> <p>MRM should conduct awareness raising campaigns and more frequent stakeholder engagement and should consider doing so in collaboration with the IP.</p> <p>MRM should demonstrate that the OGM is leading to the implementation of preventative measures at MRM.</p> |
| 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 consulted stakeholder groups for whose use the OGM is intended during the design of the OGM and has formally consulted them about some key performance issues. As a result, MRM has identified some risks to the OGM and sought to manage them.</p> <p>The OGM does implement clear processes that enable grievances to be addressed and resolved through dialogue and engagement with claimants. MRM and the IP committed to resolving performance issues through engagement and dialogue, although there remain issues in communication between both parties.</p> | <p>MRM should conduct awareness raising campaigns and more frequent stakeholder engagement and should consider doing so in collaboration with the IP.</p> <p>MRM and the IP should jointly establish and implement clear processes to enable them to solve problems jointly and continuously improve the OGM and prevent future grievances and harms.</p> |

4 CONCLUSION

This Independent Monitor report is a tool for continuous learning. It highlights the significant challenges facing the OGM and evaluates its performance with the aim of supporting and assisting MRM, the Independent Panel and the Independent Panel 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.

4.1 Further Developments

Since the close of the evaluation period, MRM and the Independent Panel have taken some significant actions to address some of the issues raised in this report, these include:

- Scheduling a workshop for the second quarter of 2022 to be facilitated by a mediator. The purpose of the workshop is for MRM and the Independent Panel to agree on how to address some significant issues and risks facing the OGM.
- Initiating a research project led by external experts who will support the Independent Panel by providing advice on potential strategies for remediation for certain types of grievances where there is limited evidence. At the time of writing the research was underway and scheduled to be completed in the second quarter of 2022.
- Increasing MRM's stakeholder engagement efforts, including through a community engagement campaign to gather feedback on the OGM and also by representing the OGM at an event organised by the United Nations' Office of the High Commissioner for Human Rights (OHCHR).

4.2 Concluding Comments

Overall, the OGM has improved since the pilot phase, the outcomes of which strengthened the OGM and both MRM and the Independent Panel have demonstrated their commitment to it. As a result, more grievances are being investigated through Tier 1 and Tier 2 processes and some claimants have started to access remedy. Moreover, many claimants whose grievances have been processed report feeling satisfied with their treatment and the outcomes of the OGM. MRM and the IP have also been proactive in identifying and developing solutions to some of the problems that the OGM faces, although many solutions have not yet been implemented in full.

Nevertheless, the OGM has several significant issues that are currently limiting its ability to provide remedy to claimants, particularly where the grievant alleges serious human rights violations. Demand for the OGM is very high amongst local communities and internal issues are impacting upon the OGM's ability to resolve and remedy cases, as well as manage issues, at the rate required. Ensuring that 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 Independent Panel need to strengthen their relationship and ensure that all measures are taken as rapidly as possible 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 Independent Panel and the Independent Panel 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 December 2021 and the 31st of May 2022.