

EPM AUGUST 2024 OGM ASSESSMENT

This is the third report from the Independent Monitor in relation to the Operational Level Grievance Mechanism (“OGM”) at Eastern Produce Malawi (“EPM”). Under the current Terms of Reference, the Independent Monitor is to provide annual reports by mid-August on the progress and implementation of the OGM, along with a public summary of each annual report. Consistent with that mandate, the Independent Monitor has provided a full report to EPM. This public summary of that report also has been prepared. We note the Independent Monitor has received excellent cooperation from EPM in conducting this assessment, as in years past.

The OGM is fully operational, and operates without any substantive limitations. It is separated into two tiers. Tier 1 considers and addresses operational concerns. Tier 2 considers and addresses complaints reflecting severe negative human rights impacts. Each tier has its own dedicated, detailed operations manual. There is a Grievance Officer to help administer Tier 1, who has settled into her role and is liked and respected throughout the workforce. Tier 2 has independent investigators, three Independent Senior Lawyers (“ISLs”) to oversee an Independent Human Rights Mechanism (“IHRM”), and an appeal panel. Both Tiers are actively receiving and remediating grievances, consistent with the detailed and meticulous design of the OGM, prepared with the assistance of Triple R Alliance (“TRA”).

I. Executive Summary

a. Preliminary Observations

The original OGM was created as part of a suite of efforts undertaken by the company to mitigate and prevent sexual harassment and gender-based violence within the workforce. The OGM has been expanded. It is designed to receive grievances without limitations in terms of time period, stakeholder group or substantive issue.

Before discussing the OGM, we note that the substantial efforts to address sexual harassment and gender-based violence – which continue to this day - have been impressive and successful. All stakeholders we consulted perceive a continuing reduction in sexual harassment and gender-based violence in a region where both are prevalent. Both sexual harassment and gender-based violence are discussed openly in the workforce, in villages and increasingly in local communities. That openness is coupled with reports of a greater level of workplace respect. Derogatory language and jokes are increasingly rare, and individuals reflected that many workers may simply have been unaware of what may constitute sexual harassment or disrespectful workplace conduct. Male and female workers are increasingly comfortable discussing and reporting mistreatment when it occurs. We have seen repeated instances where bystanders report observed mistreatment of others, taking ownership in creating a respectful workforce and community.

An important part of the change has been an active women's empowerment program. The program has led to a steady increase in female managers and supervisors, ongoing educational scholarships, training and skill upgrades to support promotions and qualifications for new positions, and other measures. The prominence of female leaders reportedly has increased confidence in many women across the workforce to openly voice their perspectives and concerns, regardless of the subject. Indeed, we have seen the growing confidence during our interviews.

Not limited to the workforce, EPM's efforts have included education and socialization in on-site villages called chithandos, as well as local communities. As with the workforce, these impacts are also visible and felt. Domestic violence is being discussed more commonly, as is exploitation of children. Respectful conduct in the surrounding communities is gradually increasing. As EPM is the first company in the region to undertake such efforts, the work is important, groundbreaking and commendable.

Regarding the OGM itself, there have been meaningful positive changes since the assessment last year. That includes numerous changes consistent with our recommendations from last year's report, as well as a downward trend of cases and concerns related to sexual harassment. Some of the highlights are below.

Our positive observations include:

- The OGM receives a steady stream of reports, including serious reports, at manageable but meaningful levels – e.g., about a dozen reports per month total, and perhaps 1 potentially severe human rights claim per month. Stakeholders consistently praised the number of access points, which offer multiple reporting options, enabling reporters and claimants to identify access points with which they may be most comfortable, and which may be most appropriate based on the perceived immediacy of the issue. Remediation has involved a range of measures, including restitution, transfers, and social support.
- The buy-in from EPM management – the Directors and senior management, the General Managers and Assistant General Managers, and the Heads of Estates - is highly noteworthy. They apply felt leadership, taking a personal ownership in the success of the OGM. They act quickly and decisively when issues are brought to their attention. They are proactive in encouraging claimants to come forward. They consistently seek ways to improve the OGM and its impacts. They have engendered trust in the workforce, who come to them when pressing concerns arise.
- The Grievance Officer is widely praised. Numerous stakeholders remarked positively on her attention and availability, with repeated suggestions for her greater involvement in investigations, socialization and other program components, to the extent feasible.
- The Women's Welfare Committee ("WWC") is firmly embedded within the workforce and on site villages. They are a trusted and respected group of senior women, who are leaders in socializing the OGM and respectful treatment more generally, and serve as a critical access point and advocates for victims. Though as a highly positive sign, there is a perception that the need for the WWC is not as pressing as before given the progress made at the company. To be sure, that does not suggest the WWC's importance or stature has diminished, but reflects the overall positive changes the WWC has helped engender.
- The innovative ArtGlo program has exceeded expectations. The group uses drama to help shed light on harassment and gender based violence. It has reached 23,000 individuals in

surrounding communities, and when ArtGlo leaves a community, local community groups may form to help continue its work. EPM plans to continue the ArtGlo program, which is nearing the completion of phase 2.

- There is a systematic stakeholder engagement plan that is being implemented. It includes leveraging community leaders and chiefs, and areas of substantive focus to help drive OGM awareness and its programs related to gender-based violence.

While we recommend potential enhancements as detailed below, and challenges for the OGM persist, we believe it is critical to emphasize the progress made to date, and the difficulty of the company's undertaking in a highly complex environment. Areas for potential enhancement include:

- Delays in addressing serious cases persist. Tier 1 cases are improving, and often conclude within indicative timelines. However, more serious human rights cases, as with last year, do not progress in part because of lack of access to ISL personnel. Criminal cases that involve the courts or police, where the company provides claimants with support, progress even more slowly, with challenges throughout the process. This remains, as with last year, a source of understandable claimant frustration. We also note that because grievance boxes are accessed once per month, there is an inherent delay based on reporting through boxes, though claimants still use grievance boxes for anonymous reporting and are often aware that if they seek rapid action they should use a different access point.
- Not all cases involving potential sexual harassment, and to some extent retaliation, are consistently considered at the Tier 2 level. In some instances, the ISLs suggest that the matters are addressed at Tier 1. In other cases, the Grievance Officer – who serves as a triage – may focus on other issues raised in the complaint, where sexual harassment or retaliation may only be implied. Closer review of Tier 1 cases on a periodic (eg, monthly) basis by ISLs may help identify cases where harassment or retaliation are more nuanced.
- Fear of retaliation, a common issue for OGMs, remains a concern. Specifically, targeted stakeholders remain concerned that contracts (especially short term contracts) will not be renewed if complaints are lodged. EPM has taken significant steps to address retaliation concerns, including conducting a worker survey on anonymous reporting and explaining the objective hiring criteria. Trends regarding anonymous reporting are decreasing, though still are higher than ideal, and thus continued efforts are worthwhile.
- Consciousness in chithandos and local communities related to defilement and violence against children are increasing. Residents are taking action when they learn about or witness potentially improper behaviors, particularly involving company employees. Village chiefs also are accepting greater responsibilities. However, this remains an area where focused attention should be considered, given the potential link to company personnel or harms in company housing.
- Tier 1 investigations, discussed in the last year's report, are improving. The investigators are becoming more comfortable in their roles. That said, there still is a lack of consistency, including in the expertise, resources, and outputs from investigations.

- General rumors and claims lacking detail are not always investigated. They should be, however, particularly for more serious rumors, and even where ambiguities may make review more difficult.
- The files are improving in their completeness and consistency. However, significant gaps are still common and case tracking is incomplete. That makes it difficult to evaluate the process being undertaken, or gain confidence in the OGM’s predictability and its fidelity to its protocols.

These suggestions – and others below - should not be construed to suggest that the OGM is not operating effectively as measured by Principle 31 of the UN Guiding Principles on Business and Human Rights. The OGM definitely is on the right track. It is continuing to mature and improve in an environment where it is unique among business enterprises. As is true of most OGMs, some aspects are progressing more quickly than others. We are confident that if the current management attention and resources continue, the OGM will continue to grow, EPM will deepen its respect for the human rights of affected stakeholders, and the entire surrounding community will benefit.

b. *Summary of Assessment*

The current OGM is separated into two tiers: Tier 1 focuses on operational grievances, and Tier 2 focuses on complaints reflecting severe negative human rights impacts. Both construe the notion of a “grievance” broadly, are open to the workforce, their families, and community members, have been extensively socialized, and are designed consistent with best practices for OGMs.

In regard to our recommendations last year regarding improvements to the OGM Manual, the OGM has largely addressed them:

| IM Recommendations | How Addressed in TIKUMVENI Manual |
|---|--|
| Provide guidance on how “cause and contribute” are being considered under the OGM; prepare written guidance for the ISL regarding the kinds of remediation that would be appropriate in differing circumstances for Tier 2; and complete the efforts to increase community relations resources. | Additional content on Cause, Contribution and Direct Linkage has been developed. Training on Cause, Contribution and Direct Linkage was provided in the onboarding of the TIKUMVENI personnel. |
| Complete the compensation matrix that is in the process of being developed create further clarity regarding how ISLs should evaluate evidence against the relevant burden of proof. | The Compensation Matrix has been developed with support of an independent expert on remedy under Malawian law and is included in the Manual, along with additional information about evaluating the “balance of probabilities.” |
| Develop a graduated approach for claimants depending on the relative merit of the claims being submitted where the ISLs determine that the 50% balance of probability threshold is approached but not met. | Additional information about the graduated approach for cases that do not quite meet the “balance of probabilities” threshold included in the Manual, including consideration of non-financial remedies and consultation with EPM, TRA and the Independent Monitor to agree upon the appropriate approach for the specific grievance(s). |
| Amend the Tier 2 Manual regarding the prioritization of non-financial compensation. | The Manual has been revised to state that the ISLs should consider the appropriateness of non-financial compensation rather than to prioritize it. |
| Amend Tier 2’s Manual to require claimant consent before a matter is transferred from Tier 2 to Tier 1; take particular care to explain to claimants the approach and | Additional information about the ISL(s) responsibility to explain the referral and obtain informed consent from |

| IM Recommendations | How Addressed in TIKUMVENI Manual |
|--|---|
| mitigation efforts when matters must be reported to governmental authorities. | the complainant before referring to Tier 1 has been included in the Manual. |
| Develop a case tracking system for Tier 1 and Tier 2 cases that can be overseen by the Tier 2 independent reviewer (the retired judge), to ensure deadlines are met, provide the judge with administrative assistance in maintaining the tracker, and share the tracker with the Independent Monitor on a monthly basis. | TRA has supported EPM and revising the grievance register for Tier 1 and Tier 2, which will be the main tool for case tracking. Furthermore, additional guidance about monthly and quarterly reporting has been included in the Manual. |
| Schedule weekly update calls between Tier 1 and the IHRM, and quarterly calls between the IHRM and the Independent Monitor. | Monthly and quarterly reporting from the IHRM to the IM is included in the Manual. |
| Increase public reporting on KPIs consistent with the Tiers 1 and 2 Manuals; share the monthly case log with senior EPM management, along with relevant metrics and KPIs; and the IHRM should provide EPM management a quarterly update on cases and learnings. | Monthly and quarterly reporting to EPM Grievance Committee has been included in the Manual. |
| Continue to pursue claimant and community feedback loops, and document more consistently the feedback that has been received; more aggressively consider how patterns of complaints and their resolution may inform changes to the mechanism; engage in a systematic analysis to identify relevant KPIs as reflected in the OGM Manuals. | Community engagement is to be prioritized. More systematic analysis of patterns of complaints has been considered in the revisions of the KPIs and is included in the Manual. |

A summary of our specific observations this year and further recommendations are below.

Methodology: As in prior years, the Independent Monitor team assessed the OGM through a comprehensive review of documents and extensive witness interviews, including interviews of claimants and community members. That information was considered against a template consisting of 36 indicators and 84 sub-indicators, which seek to translate Principles 22, 29 and 31 of the UN Guiding Principle on Business Human Rights (UNGPs) into an assessment framework. The template is reproduced at Appendix 1.

UNGP 22: General Remediation Principles

- *Observations:* We discussed the OGM design under UNGP 22 last year. Tier 1 has received a wide variety of operational grievances, including related to labour issues, health and safety, environment, sexual privacy issues, and other areas. Tier 2 has received a handful of “serious” human rights matters, often around sexual harassment, defilement or issues involving children that are linked to the company because they involve employees or are on company property. Stakeholders have confirmed that the OGM has provided an avenue to get in touch with the company to register concerns, which has contributed to a new sense of openness to talk about issues and concerns and drive engagement. Decisions on remediation for Tier 1 are developed in consultation with claimants by an internal Grievance Committee, while for Tier 2, remediation decisions are left to the discretion of the ISL and claimant engagement, supported by a compensation matrix developed with outside counsel to provide benchmarking against judicial decisions in Malawi.

UNGP 29: Businesses Should Create OGMS

- Observations:
 - As identified last year, workers, suppliers, community members, and visitors can submit claims directly to the OGM, without first exhausting other avenues, and the available pathways are actively used. The OGM does not preclude access to alternative state-based processes. The OGM's procedures contemplate addressing remediation for harms, which occurs in practice. Tier 1 remedies have included referrals to doctors, engagement with the state, changes to policies, repayment of wages, moving workers, and similar outcomes. Tier 2 also has provided a variety of remedies to claimants, from counseling to compensation to apologies to relocations. As noted above, the existence of the OGM has had substantial impacts on sexual harassment, which was its original focus, and some prior concerns are no longer being raised. Cases investigated and found not to have merit include health clinics failing to appropriately recognize illnesses, and that PPE is not being provided. Increased village socialization has led to marital discord cases, and family dynamic cases, outside the scope of the OGM, although the lines are not always clear (e.g., when violence is involved). Cases reported out of spite or as grudges also are increasing.
 - As discussed last year, the quantum of remedy is benchmarked against a matrix prepared with outside counsel, concerns are not arising regarding double compensation, independent counsel is provided for binding settlement agreements, and we have no concerns regarding ISL independence.
- Recommendations:
 - Consider a short protocol reemphasizing the independence of health clinics.
 - Consider further explanations about the "as needed" PPE policy with reassurance that safety is a key consideration.
 - Consider socialization specifically focused on marital discord in chithandos, and the use of the Social Welfare Office in such cases that do not involve violence, as well as the Police Victim Support Unit.
 - Develop guidance around cases involving domestic violence and parental violence toward children in chithandos (as distinguished from parental discipline of children), to encourage reporting and create consistency in addressing the cases that emerge.
 - Consider a short guidance on how to address "grudge" claims, when they should be escalated, and how they should be handled otherwise.

UNGP 31(a): Legitimate

- Observations:
 - As discussed in prior reports, the IHRM is clearly independent from management. That includes the ISLs and independent investigators, along with an independent appeal process. Tier 1 is not independent, and not designed to be (though stakeholders do not always understand that). Accountability is built into the process, in light of the appeal processes and the Independent Monitor review. EPM also has been conducting Rainforest Alliance and SMETA audits, which look at human rights issues. Some generalized rumors have been deemed lacking detail to investigate, though they may raise significant concerns and should be further considered.

- The OGM is being used, with roughly 70 OGM complaints filed in the first half of 2024, continuing to average about a dozen per month (as with 2023). Most Tier 1 cases remain labor claims. There have been 4 cases treated as severe human rights cases in the first half of the year (involving sexual harassment, harms to children linked to the company, etc.). Most Tier 1 cases are resolved within the indicative time frames, though Tier 2 cases are not (and are more problematic, as discussed below). Most Tier 1 claimants (63%) report satisfaction with the process based on surveys conducted immediately after grievances are closed. Stakeholders consistently noted that the OGM is trusted, but are conscious that certain access points are preferable to others – e.g., for rapid responses, contacting the Grievance Officer or management, while for complaints that do not require immediacy, the grievance boxes are more acceptable. Claimants felt that management is highly attentive when claims are filed. Several also appreciated that counsel was appointed. There are some perceptions of bias, and one stakeholder noted that older female workers may “suffer in silence” and not report harassment.
 - The OGM is also generally attentive to safety concerns for claimants and witnesses, and takes active steps to protect both. Claimants can report concerns in multiple ways, including anonymously and by phone or email. Transfer and relocation have been provided as remedies, and respondents may be suspended during the pendency of cases.
 - Recommendations:
 - Continue to consider means of enhancing trust in Tier 1 investigations, whether through a protocol identifying how investigators should be appointed, or additional involvement of the Grievance Officer (even in an oversight capacity).
 - Investigate rumors and general allegations of more significant negative impacts, whether through formal investigative processes or additional stakeholder engagement.
 - Include content in sensitizations and trainings focusing on fairness and lack of bias, such as through case studies and anonymized outcomes, illustrating that neither men nor women, nor field workers nor supervisors, receive preferences.
 - Consider focused sensitization efforts on older women in the workforce, where underreporting may be occurring, perhaps through the WWC.
 - Consider steps to leverage the propensity of younger women to speak up when they see improper behaviors.
 - Consider checking on victims and claimants after a case has been resolved to help confirm their safety remains intact.

UNGP 31(b): Accessible.

- Observations:
 - The OGM is actively promoted to the workforce, in company-related housing and in local communities. The workforce, community and residents of chithandos are aware of at least one, and often multiple, ways to submit claims. The massive socialization efforts have contributed to a workforce and local community that, generally, is more respectful. Further, stakeholders are not always aware of the OGM processes and the differences between the 2 tiers, in particular outside the workplace. Male managers below the supervisory level were identified as a group worthy of focus regarding workplace related matters, and particular risks have been identified regarding children and youths.

- There are multiple means of lodging complaints, which claimants praised. Most of these pathways have been used, though, most come through complaint boxes, reports to managers, or in person to the Grievance Officer. They came from essentially every estate, although more come from Lauderdale, Ruo and Minimini than most others. They allow for reporting of complaints in English and local language. Claims also have been lodged in relation to both operations and support functions. Virtually all staff associated with OGM speaks Chichewa, and no language barriers were seen to exist. Grievance boxes are fairly visible, and could be moved to more discrete locations, and schools, including teachers, principals and nurses, and the health clinics also might be leveraged as additional access points. Some stakeholders expressed concern that the complaint boxes are only opened once per month, which can create delays. Further, union membership is fairly limited (18%), and thus while union representatives are one pathway to submit grievances, it is not a well-utilized pathway. Anonymous claims also do not always have sufficient detail for effective follow-up.
 - As discussed last year, the OGM contemplates several potential barriers for potentially affected stakeholders, including illiteracy, the inability to use telephones, and the stigma women may face coming from raising claims around violence and harassment.
 - Fear of retaliation is common for OGMs, and although the situation is improving, it is not a surprise that challenges still exist with this one. The existing and expanded OGMs strongly prohibit retaliation against individuals because they lodged grievances, and safeguards exist. Active steps to promote objective hiring practices also are occurring. The primary concern today surrounds fears that short term contracts will not be renewed if complaints are lodged, and that managers will try to determine who has filed claims. We also note that claimants generally are unaware of how the company treats reported retaliation cases.
 - Both tiers of the OGM contemplate strong confidentiality protections, and OGM personnel and General Managers clearly take confidentiality concerns seriously. Trust around confidentiality has improved from last year.
- Recommendations:
- Consider focused socialization on male supervisors.
 - Continue to explain in socialization efforts the differences between Tiers 1 and 2, and how the OGM works in practice.
 - Consider increasing the presence of OGM posters outside of the workplace, in communities, villages and other local points.
 - Consider additional means of socialization to reach additional audiences, such as community gatherings.
 - Develop a focused plan to socialize issues regarding defilement and child exploitation, including parents, children, teachers, clinics and others in the sensitizations, and encompassing means of traveling to school safely and activities after school that enhance safety.
 - Build capacity for the Grievance Gender Harassment and Discrimination Committee and maximize its use for sensitization and as an access point.
 - Include in sensitization efforts the kinds of information to include in anonymous claims.

- Move grievance boxes to slightly less visible locations, where individuals can lodge grievances without being seen.
- Schools, including teachers, principals and nurses, and the health clinics might be leveraged as additional access points.
- Consider the cadence of opening complaint boxes (eg, more than once per month) based on the volume of claims.
- Continue taking the steps being taken to increase confidence in non-retaliation, which seem to be working, and further socialize with stakeholders how the company approaches retaliation claims.
- As part of socialization, make better use of metrics, such as the number of individuals who have not reported anonymously, how many of those who were rehired, and the number of claims of retaliation, which may help people come forward without fear and reduce anonymous reporting.
- Continue efforts to strengthen the union.
- Continue to take steps to emphasize remediation other than discipline, to help encourage reporting and non-retaliation.
- Increase engagement in communities and villages to address the stigma of reporting claims.

UNGP 31(c): Predictable

○ Observations:

- The OGM has Statements of Principles (“SOPs”), supported by some forms that would allow for consistency. Additional forms and a checklist at the front of each file were added following our recommendations from last year. There are some delays for Tier 1, occasioned by complaint boxes being opened once per month, anonymous claims being harder to investigate, and investigators resourcing themselves and coordinating. Despite 3 ISLs, the Grievance Officer frequently must chase the ISLs to receive guidance, and responses may take 5 or 6 months. Cases involving the courts or police remain problematic. In that vein, one question that arose last year is whether EPM will fund independent attorneys to pursue private prosecutions, given challenges and delay with state-driven processes. Further, the files still are not always regularly updated, and may be missing entries. Cases involving potential sexual abuse and/or harassment cases, and cases that seemed to have components of retaliation, are not always being addressed by Tier 2.
- Our observations and recommendations from last year regarding resources and expertise have been addressed. Investigators expressed a desire for further guidance for Tier 1 investigators regarding effective steps for conducting investigations in challenging circumstances (e.g., engaging with vulnerable populations, where investigations include employees who are senior to the investigators, where the evidence is unclear or dated, etc.). Concerns also were raised around perceived conflicts of interest, where management might select investigators who are friends, or investigators must investigate or question friends. Stakeholders also believed the selection of investigators could be more effective, supported a mechanism that allows investigators to recuse themselves from investigation and expressed a desire for a process to protect investigators from retaliation. More oversight from the Grievance

Officer or Grievance Committee regarding investigative plans, plus further support, mock templates in typical cases, and forms for reporting all should be considered.

- As we discussed last year, the SOPs for the OGM are intentionally flexible, vesting substantial discretion in the ISLs (Tier 2) and resolving Tier 1 cases through engagement with claimants.
- The OGM case tracking approach now includes detailed case-related factors maintained on a spreadsheet: the age and gender of the claimant, the stakeholder group impacted (community, worker, etc.), the date received, the access point, who received the claim, the name of the complainant or anonymous, the resident village if any, the associated estate or factory or office, whether a copy of the grievance form was provided, a description of the claim, the date acknowledged, the date of response, the date assigned for investigation, the date the investigation report was submitted, the date of resolution, the details of resolution, the date the grievance was closed, the timeliness of the investigation, claimant satisfaction with the process and outcome, and reasons for satisfaction or dissatisfaction. For Tier 1, there is also color coding around timeliness issues. The checklist at the front of each file also is helpful in making sure core steps are followed.

○ Recommendations:

- Continue to conduct further socialization to explain the process to claimants, and document in the file when it has been provided.
- Take active steps to address delays, particularly with ISLs in Tier 2, but in Tier 1 also.
- Continue to take steps to encourage the police and courts regarding delay and inaction, including potentially through private prosecutions.
- Update the case files regularly with each development to allow for review, auditability and consistency.
- Consider a review process by the IHRM to help make sure that cases that should be elevated, including those involving sexual harassment or retaliation, are escalated.
- Provide guidance on conducting investigations to Tier 1 investigators regarding challenging areas (eg, vulnerable populations, tense situations, where the evidence is not clear).
- Provide guidance to management, or involve the Grievance Officer or Grievance Committee, in the selection of Tier 1 investigators, allow investigators to recuse themselves where there are perceived or actual conflicts, and identify means of protecting investigators from retaliation.
- Provide Tier 1 investigators with more oversight from the Grievance Officer or Grievance Committee regarding the development of consistent and strong investigative plans, and provide investigators with greater support (including transportation and air time) when they are assigned to investigations.
- Provide Tier 1 investigators with more mock questions, as well as forms and templates, including in reporting.

UNGP 31(d): Equitable

- Observations:
 - Both tiers of the OGM contemplate sharing investigative outcomes, and including claimants in the results of fact-finding. Delays aside, that appears to be happening in practice.
 - As in years past, the OGM contemplates formal dispute resolution under the auspices of the court where claims cannot be resolved consensually, and claimants are advised of those rights and given support when they seek it. Given publicly reported concerns regarding the lack of reliability of the courts of Malawi, shared by a range of local and international stakeholders, we continue to question how reliable a pathway it is in practice. Regarding experts, the OGM provides psychological counsellors, as well as independent counsel, for claimants where appropriate. The Social Welfare Office also has become more involved in OGM claims.

- Recommendations:
 - Consider whether alternative pathways to remedy might exist besides the courts of Malawi.

UNGP 31(e): Transparent

- Observations:
 - The OGM is improving in providing feedback to claimants about the progress of investigations, particularly for Tier 1 cases. For Tier 2, claimants still report frustration not knowing the status of their cases.
 - EPM includes greater information on the OGM on its website. That includes our reports, and stakeholder feedback on our reports, including from civil society organizations, the UN Development Programme Malawi, and the Malawi Human Rights Commission. Best practice would include additional OGM-related public reporting on key patterns and trends.
 - While the IHRM remains independent, with confidentiality measures built-in, management is highly involved in the socialization and effective operation of the OGM. Heads of Estate, General Managers and Assistant General Managers themselves promote the OGM day-to-day, and EPM directors sit on the Grievance Committee. Monthly management and quarterly board reporting includes OGM performance, covering key metrics, cases, socialization, resolutions and other developments.

- Recommendations:
 - Continue to take steps to regularly update claimants about the progress of their cases (eg monthly), even where independent counsel may be involved.
 - Continue to take steps to increase public reporting on OGM performance, such as through a condensed quarterly version of the reports shared with the board.
 - Share key performance metrics and patterns with unions and the IHRM as planned.
 - Consider sharing the IM reports with key internal stakeholders, such as the IHRM, the Grievance Officer, and others.

UNGP 31(f): Rights-compatible

○ Observations:

- Under the OGM, remediation continues to be tailored to the needs of individual claimants, and has included restitution, including lost wages; rehabilitation through access to counseling and other services; satisfaction, including apologies from respondents; and steps to prevent recurrence through trainings, policy adjustments, disciplinary actions and terminations, enhanced security measures for individuals, relocations and other such actions. Claimants confirmed they generally felt supported in the process, and that the OGM was responsive to their requests.
- As discussed last year, the personnel associated with the OGM (Tiers 1 and 2) are highly experienced, and TRA continues to provide input. Referrals to support services is being pursued as appropriate, and outside counsel is appointed in court cases and cases involving settlement agreements.
- There have been no legal disputes, campaigns, or media reports indicating that the process is flawed or that remedy was inadequate. The OGM has been received very positively with outcomes that are rights-compatible and formed in close consultation with claimants.
- Nothing in the design of the OGM or how it functions deters individuals from pursuing claims through other channels, and they are informed of their rights.

○ Recommendations:

- Seek to better understand why claimants seek alternative pathways to remedy, such as through the labour office or local “briefcase” lawyers.

UNGP 31(g): Source of Continuous Learning

○ Observations:

- Both tiers of the OGM contemplate active engagement with claimants post-claim resolution, though it is inconsistent in practice and in confirming its occurrence in documentation.
- The OGM tracks, on a monthly basis: total claims by month (averaging about 12); number of complaints received and acknowledged on a monthly basis; access points by case type (mostly in person or grievance boxes across all areas of reporting, with limited calls or letters); number of anonymous claims by month; claims by stakeholder category, including communities, by suppliers, by workers (non-unionized) by month; percentage of repeat or recurring grievances; claims by type, broken down by abuse (physical or verbal) (roughly 2 per quarter), environmental (1 per quarter), finance (5 per quarter), health and safety (1 per quarter), labor (19 per quarter) and social (9 per quarter); claims by location, broken down by month (more cases from Ruo, Minimini, and Lauderdale, followed by Mulanje CWS, Makwasa, Limbuli and Eldorado); resolution within indicative timeframes; satisfaction with process (63%); satisfaction with outcome (58%); types of remedy; and number of cases appealed. There is relatively limited effort to identify patterns within that data, and issues such as the reasons that certain locations were generating more claims, that claims spike in certain months, or that the toll free line was not being used are not being considered. In addition, some claimants and witnesses have appeared in multiple cases. We suspect

there may be some link between those appearances, including potentially related to retaliation, and believe further consideration is appropriate. We also note concerns regarding subcontractors, who do not always seem to follow company requirements, which currently is being examined.

- Recommendations:
 - Actively consider how the patterns identified during metric and KPI tracking may inform responsive actions.
 - Review case files for potential overlapping individuals involved (including as claimants, victims and witnesses) to identify appropriate action, and consider whether a short guidance document on looking for and identifying potentially meaningful patterns between cases would assist the Grievance Officer.
 - Complete the review of subcontractor issues.

UNGP 31(h): Based on Engagement and Dialogue

- Observations:
 - As we have previously discussed, there were extensive consultations in the context of developing the OGM and the Manual for Tier 2 contemplates engagement with claimants who have had their grievances considered. This is implemented somewhat inconsistently, as feedback may be sought and not provided, and it may not be consistently sought. Continued feedback with the community is also contemplated in the Manual and EPM and the OGM have conducted extensive community-related engagement exercises, and perspectives and feedback have been received.
 - The OGM contemplates the resolution of disputes through dialogue, which is occurring in practice. As the files indicate, and claimants confirm, outcomes are being developed with the input, and sometimes based on the desires, of claimants. As referenced in our report last year, we believe this issue is particularly significant in the context of the OGM's maturity.
- Recommendations:
 - Continue to seek feedback from claimants who have been through the OGM.

August 2024

APPENDIX 1

Assessment Template: Indicators, Tests and Evidence

EVALUATION OF THE OPERATIONAL LEVEL GRIEVANCE MECHANISM: PRINCIPLES, INDICATORS AND ASSESSMENT TESTS

Introduction

To assist in evaluating the Operational Level Grievance Mechanism (OGM), we have prepared the following assessment template. The template consists of certain indicators, assessment tests, and the type of evidence to review for each test. The indicators themselves were designed to correlate to the UN Guiding Principles on Business and Human Rights (UNGPs), and in particular UNGP 31, relating to the effectiveness criteria for non-judicial grievance mechanisms. In developing the indicators, we considered the UN Guiding Principles Assurance Guidance,¹ Shift's Doing Business with Respect for Human Rights Guide,² CSR Europe's Management of Complaints Assessment Results,³ the International Commission of Jurist's Effective Operational-level Grievance Mechanisms,⁴ assessment resources associated with leading multi-stakeholder initiatives,⁵ and the indicators used for other grievance mechanism evaluation exercises. We also conferred with Triple R Alliance (TRA), and reviewed indicators that TRA and its expert personnel have developed and used.

We believe that in the context of our instruction as Independent Monitor, utilizing a template will allow for sustainable, repeatable and predictable outcomes, enhance transparency and predictability, and enable greater confidence by external stakeholders in the integrity and legitimacy of the independent assessment.

It is important to understand that the assessment template is not a "test" intended to specifically determine whether an OGM is effective or ineffective. The template will not yield passing or failing grades. Rather, it is a tool to help evaluate how an OGM may be designed or improved, the kind of documentation it might seek to generate and collect to allow for auditability and review, how it is perceived by a range of stakeholders, the way that it considers and reports information internally and externally, and other steps. Accordingly, evidence that is lacking for certain tests does not mean the OGM is weak or inadequate. It may mean that certain documents were simply not collected, or that responses from affected stakeholders are shaded by a desire for or disappointment with certain outcomes. Even a determination that certain indicators are not met is not necessarily indicative of a "problem." It may simply mean, for instance, that the indicators are not particularly relevant at that time or in that circumstance. In other words, the template is merely a device to translate the UNGPs into actionable steps "for designing, revising or assessing a non-judicial grievance mechanism" in an organized and coherent manner, and thus facilitate the kind of benchmarking that the Commentary to UNGP 31 expressly contemplates.

¹[https://www.ungpreporting.org/assurance/#:~:text=The%20UNGP%20Assurance%20Guidance%20is,among%20other%20non%2Dfinancial\)%20reporting.](https://www.ungpreporting.org/assurance/#:~:text=The%20UNGP%20Assurance%20Guidance%20is,among%20other%20non%2Dfinancial)%20reporting.)

² <https://shiftproject.org/resource/doing-business-with-respect-for-human-rights/>

³ <https://static1.squarespace.com/static/5df776f6866c14507f2df68a/t/5e666810b7c6ef5fcd9bf296/1583769622168/MOC-A+Report.pdf>

⁴ <https://www.icj.org/wp-content/uploads/2019/11/Universal-Grievance-Mechanisms-Publications-Reports-Thematic-reports-2019-ENG.pdf>

⁵ See <https://www.voluntaryprinciples.org/resource/auditing-implementation-of-the-voluntary-principles-on-security-and-human-rights/>; <https://globalnetworkinitiative.org/wp-content/uploads/2018/08/Implementation-Guidelines-for-the-GNI-Principles.pdf>; <https://www.fairlabor.org/accountability/assessments/>.

Assessment Template: Indicators, Tests and Evidence

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| GUIDING PRINCIPLE 22 | Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes. | |
| INDICATOR | EVIDENCE RELATED TO INDICATOR | EVIDENCE REVIEWED |
| The OGM was established by the company as one pathway to remediate adverse human rights impacts which it has caused or to which it has contributed. | <ul style="list-style-type: none"> • The OGM's formation documents, or other information, identifies that the company established the OGM to remediate negative human rights impacts to which the company is connected. • Where individuals have been harmed at least in part due to actions, decisions or omissions of the company, there is evidence that the OGM has provided, contributed to or otherwise assisted in enabling remediation. | <ul style="list-style-type: none"> • Review the OGM's formation documents or other materials consistent with its formation to identify the purposes for which it was created. • Review 5 or more grievance files to identify intake forms and investigative reports to determine (i) whether the company reasonably determined that it did or did not cause or contribute to negative impact,⁶ and (ii) if so, how remediation was determined. • Interview (a) OGM personnel and (b) 3 or more claimants in which remedy was provided to confirm: (i) that the OGM in fact evaluated grievances, (ii) that there was a negative impact and the company reasonably caused or contributed to it, (iii) the OGM discussed remediation approaches with claimants, and (iv) that remediation was provided. |
| GUIDING PRINCIPLE 29 | To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted. | |
| INDICATOR | EVIDENCE RELATED TO INDICATOR | EVIDENCE REVIEWED |
| Individuals who believe they have been adversely impacted by the company are able to access the OGM directly to raise their concerns, without first seeking other means of recourse. | <ul style="list-style-type: none"> • OGM procedures allow access to any individual or group potentially adversely impacted by the company's actions, decisions or omissions. • There is no evidence that the OGM requires that groups directly at risk of human rights impacts due to the company's actions, decisions or omissions ("affected individuals") file grievances through third parties or alternative processes. | <ul style="list-style-type: none"> • Confirm the total number of grievances filed, to validate usage of the OGM. • Review the OGM terms of reference to confirm that they allow any individual or group to file claims without first seeking other means of recourse. • Interview (a) OGM personnel and (b) 3 or more claimants to confirm that claims have been filed immediately and directly without first seeking other means of recourse. |

⁶ Cause in this sense is whether the company's activities on their own without other stakeholders were sufficient to cause a negative human rights impact. OHCHR Letter to Banktrack (2017), pg. 5. Contribution generally occurs in one of two ways: (1) via a third party, or (2) when acting in conjunction with another entity. The first type of contribution occurs when business takes an action or decision that "creates strong incentives for the third party to abuse human rights" or "where a company facilitates or enables such abuse." OECD Guidance, at 70; The UN Guiding Principles on Business and Human Rights and conflict affected areas: obligations and business responsibilities, at 973. In the second type, contribution can take place when a business activity leads to negative collective or cumulative impacts, such as drawing water from a well with other businesses that leaves little left for local residents or farmers (collective) or a relatively minor impact that over time leads to a significant impact (cumulative). IBA Guidance (2016), at pg. 20-21.

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| | <ul style="list-style-type: none"> • There is no evidence that the OGM requires “exhaustion” of alternative pathways of remediation. • There is evidence of individuals or groups raising complaints to the OGM directly. | |
| The OGM is designed to directly address remediation for any harms caused or contributed to by the company. | <ul style="list-style-type: none"> • The OGM has clear procedures through which it systematically considers how it may provide, contribute to or otherwise enable remediation for individuals who have been harmed by the company’s actions or decisions. • There is evidence that OGM remediation efforts have been or are being implemented. | <ul style="list-style-type: none"> • Review OGM procedures for claim consideration to identify whether its processes clearly set forth how it will (i) receive, (ii) evaluate, and (iii) remediate claims. • Interview (a) OGM personnel and (b) 3 or more claimants whose grievances have been remediated to confirm that the OGM procedures for (i) receiving, (ii) evaluating, and (iii) providing remediation have been followed. |
| The OGM does not impair access to other pathways to remediation (e.g., judicial or non-judicial accountability mechanisms). | <ul style="list-style-type: none"> • OGM procedures specifically address non-hindrance of claimants seeking remediation through other pathways. • There is no evidence that in practice the OGM requires claimants to waive their right to access other pathways to remediation. • There is no evidence that individuals were pressured or coerced by the company or OGM personnel to seek remedy through other pathways. | <ul style="list-style-type: none"> • Review the OGM procedures to confirm that it addresses non-hindrance of claimants seeking other remedy pathways. • Interview (a) OGM personnel and (b) 3 or more claimants to confirm that (i) the OGM does not require claimants to waive any rights to seek remediation through other pathways, and (ii) there has been no pressure on claimants or potential claimants to forego other remedy pathways. |
| GUIDING PRINCIPLE 31(A) | Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes. | |
| INDICATOR | EVIDENCE RELATED TO INDICATOR | EVIDENCE REVIEWED |
| The OGM was designed to include elements of independence and accountability, including those that prevent parties to the grievance from interfering with its fair conduct. | <ul style="list-style-type: none"> • OGM procedures specifically address accountability and independence. • The OGM’s Tier 2 administrators, and any OGM oversight panel, are independent of the company in practice and perception. • There is evidence that senior management and individuals with responsibility for the company’s human rights performance understand the company’s responsibility to enable effective remediation where the company causes or contributes to negative human rights impacts. | <ul style="list-style-type: none"> • Review the OGM procedures to confirm how they address (i) accountability, (ii) independence and (iii) non-interference. • Interview (a) OGM personnel, and (b) 3 or more claimants to establish their perspective on the independence of the OGM administrators and oversight panel. • Interview (a) the GM and senior leadership of the company, (b) company human rights personnel, (c) OGM personnel, and (d) personnel with oversight responsibilities for the OGM to: confirm their understanding of the company’s responsibility to cooperate in or provide remediation. |
| The OGM is perceived as fair and legitimate by affected individuals and the local community. | <ul style="list-style-type: none"> • Mindful of concerns regarding individuals who may not have received the remedy they had hoped for, confirm that there is no evidence that affected individuals reasonably believe the OGM is unfair regarding (a) its independence, (b) its handling of claims, (c) the steps taken to resolve grievances, or (d) its outcomes. | <ul style="list-style-type: none"> • To assess potential grievance patterns, identify total number of grievances and appeals filed by: (i) month, (ii) nature and date of claim, (iii) gender, and (iv) channel through which the claim was filed. • Interview OGM personnel and at least (a) 3 or more claimants, (b) 3 or more non-claimant community members, and (c) 3 or more |

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| | <ul style="list-style-type: none"> • There is no evidence that affected individuals believe the OGM will fail to engage with them respectfully while handling complaints. • Mindful of concerns regarding individuals who may not have received the remedy they had hoped for, confirm there is no evidence that affected individuals reasonably believe the OGM is unfair or illegitimate regarding (a) its independence, (b) its handling of claims, (c) the steps taken to resolve grievances, or (d) its outcomes. • There is no evidence that affected individuals believe the OGM will fail to engage with them respectfully while handling complaints. • There is evidence that affected individuals feel OGM is (a) free of bias, (b) free of discrimination, (c) culturally appropriate for the groups concerns, and (d) able to provide meaningful remediation in light of the perceived harms suffered. • There is evidence that feedback from potentially affected stakeholders was integrated into the OGM's framework. | <p>members of local vulnerable populations to determine the views of affected individuals regarding the OGM's fairness, respect and effectiveness, including specifically: its perceived (i) independence, (ii) treatment of claimants with fairness and respect, (iii) handling of claims, (iv) steps to resolve claims, (v) outcomes, (vi) bias, (vii) local cultural expertise, (viii) freedom from discrimination, and (ix) ability to deliver meaningful remediation.</p> |
| <p>Reasonable efforts are taken to ensure the safety and security of individuals who access the mechanism.</p> | <ul style="list-style-type: none"> • OGM procedures specifically address or consider the physical security of individuals who seek to access it. • There is no evidence that individuals who have accessed the OGM have been subjected to physical threats or violence. • There is no evidence that individuals have refrained from accessing the OGM out of fear of retribution. | <ul style="list-style-type: none"> • Review the OGM procedures and other relevant documentation to confirm that the physical security concerns of claimants are addressed. • Interview OGM personnel, and at least (a) 3 or more claimants, (b) 3 or more non-claimant community members, and (c) 3 or more members of local vulnerable populations to confirm that they are not aware of (i) threats of retaliation from the company, employees or community members, or (ii) individuals declining to access the OGM out of fear for their safety. |
| <p>GUIDING PRINCIPLE 31(B)</p> | <p>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> | |
| <p>INDICATOR</p> | <p>EVIDENCE RELATED TO INDICATOR</p> | <p>EVIDENCE REVIEWED</p> |
| <p>The OGM has been promoted to individuals and communities where affected individuals are likely to learn of it, in a manner that accounts for local culture, literacy, language and need, with information sufficiently widely disseminated to reach materially all potential adversely impacted stakeholders.</p> | <ul style="list-style-type: none"> • There is a plan to promote the OGM to individuals or communities who may be negatively impacted by company decisions, actions or omissions. • There is evidence of OGM promotion and consultations in all local communities where affected individuals are believed to reside or work, or other locations designed to alert affected individuals to the OGM. | <ul style="list-style-type: none"> • Review any promotion or consultation plans developed for the OGM. • Review promotional materials developed for the OGM, such as flyers, posters, advertisements, and similar materials, and where and how they have been placed and/or disseminated. • Review documentation reflecting any community consultations that have occurred, including (i) the number of consultations, (ii) |

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| | <ul style="list-style-type: none"> • There is evidence that those promotional activities and consultations took place in a manner desired to maximize the likelihood that affected individuals would understand the information conveyed. | <p>their location, length and dates, (iii) the language in which they took place, (iv) the number of community participants who attended, and (v) any presentations or scripts.</p> <ul style="list-style-type: none"> • Interview 3 or more claimants about the consultations and promotional activities to validate their understanding of the information that was conveyed. |
| <p>The OGM has multiple channels for accessing it, is easy to use, and is adapted to account for local cultural norms and language at every material step.</p> | <ul style="list-style-type: none"> • OGM procedures specifically contemplate multiple means of lodging a grievance, and take into account local language concerns and the ways through which affected individuals may lodge claims. • There is evidence that affected individuals believe the OGM is easy to access, understand and use. | <ul style="list-style-type: none"> • (a) Review the OGM procedures and (b) interview OGM personnel to confirm that: (i) there are multiple channels for reporting, (ii) reporting can occur in all relevant local languages, and (iii) the OGM procedures account for local cultural and contextual considerations. |
| <p>The OGM has been designed and implemented to account for direct and indirect costs, and physical and nonphysical hardships, that may prevent effective access or enhance harms experienced.</p> | <ul style="list-style-type: none"> • The design of the OGM specifically and consciously addresses potential barriers that may exist for affected individuals based on consultations, related past activities, the experiences of other OGMs, and similar factors. | <ul style="list-style-type: none"> • Interview individuals involved in the design of the OGM to identify how they considered potential barriers to affected individuals, and how they were addressed. • Review the OGM procedures to confirm that it contemplates and addresses reasonably anticipated potential barriers for affected individuals. |
| <p>The design of the OGM has considered the potential (and perceived potential) for retaliation against affected individuals, and affected stakeholders do not believe there will be retaliation against them for accessing the OGM or receiving remedy under it.</p> | <ul style="list-style-type: none"> • The OGM includes a clear commitment against retaliation, supported by procedures designed to mitigate any risks of retaliation for accessing the OGM. • There is no evidence that affected individuals were intimidated out of using the OGM. • The OGM procedures include confidentiality to all claimants, and makes clear to claimants if, why and when confidentiality may not be provided. • There is no evidence of retaliation against claimants who have accessed the OGM. | <ul style="list-style-type: none"> • Review the OGM procedures to confirm the commitment against retaliation and identify how it is implemented. • Review the OGM procedures to (i) confirm its commitment to confidentiality, (ii) identify how that commitment is implemented, and (iii) identify how explanations are to be provided to claimants where confidentiality may not be ensured. • Interview (a) OGM personnel, (b) 3 or more claimants, and (c) community representatives to confirm there have been no (i) reported/perceived claims of intimidation or retaliation, or (ii) known instances of individuals afraid to use the OGM. |
| <p>The physical location of the OGM and its operating hours are conducive to accessing it.</p> | <ul style="list-style-type: none"> • The OGM is located outside of the company's property. • There is evidence that the OGM is open during time periods when stakeholders with differing commitments can access it. • There is no evidence stakeholders cannot access the OGM because of its physical location or hours of operation. | <ul style="list-style-type: none"> • Confirm the location of the OGM and its operating hours, and verify that its location and operating hours are reasonably conducive to accessing it in light of the local context and needs of affected individuals. • Interview OGM participants and at least (a) 3 or more claimants, (b) 3 or more non-claimant community members, and (c) 3 or more members of local vulnerable populations to confirm that they are unaware of affected individuals being unable or deterred from accessing the OGM because of its location or hours. |

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| <p>The OGM has a process to provide reasonable assistance for affected individuals to effectively access the OGM, if needed.</p> | <ul style="list-style-type: none"> • OGM procedures contain identified steps to provide assistance to affected individuals who may face barriers, and a process through which affected individuals may request assistance. | <ul style="list-style-type: none"> • Review the OGM procedures to identify how (i) barriers to access are anticipated and addressed, and (ii) affected individuals may request assistance. • Interview OGM participants to confirm how barriers to access have been addressed in practice, including any specific instances in which – despite the OGM’s design - barriers still had to be addressed. |
| <p>GUIDING PRINCIPLE 31(C) 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> | | |
| <p>INDICATOR</p> | <p>EVIDENCE RELATED TO INDICATOR</p> | <p>EVIDENCE REVIEWED</p> |
| <p>The OGM was designed with clear steps for each material stage in the process, as well as safeguards specific to serious or sensitive grievances, with relevant timeframes.</p> | <ul style="list-style-type: none"> • OGM procedures are written in simple and plain language and: (a) address how complaints will be processed, (b) allocate responsibilities and accountabilities for handling complaints, (c) provide reasonable timeframes for addressing complaints, and (d) are designed to enable transparency for claimants about how their complaints are being handled. • OGM procedures provide for: (a) engagement with the claimant in a manner that enables a fair and respectful process, (b) support to the claimant whenever necessary to enable a fair and respectful process, and (c) steps to address issues that raise severe human rights impacts or represent significant disputes. • There is evidence that (a) these procedures have been implemented, (b) complaints typically are processed within prescribed time limits, (c) proposed solutions have been shared with claimants, and (d) solutions are compatible with human rights standards. | <ul style="list-style-type: none"> • Review the OGM procedures to confirm they are written in simple and plain language, and identify (i) how complaints will be processed, (ii) how responsibilities and accountabilities for handling complaints are assigned, (iii) the contemplated timelines associated with each OGM step, and (iv) how claimants will be informed of the progress of their claims. • Review the OGM procedures to confirm that they address (i) fair and respectful treatment of claimants, (ii) support for claimants when appropriate to enable a fair process, and (iii) how severe human rights impacts or significant disputes will be treated in the OGM. • Interview (a) OGM personnel and (b) 3 or more claimants to establish their views on whether: (i) claimants have been treated with respect, (ii) support has been provided where necessary, (iii) severe human rights impacts or significant disputes are addressed as contemplated in the procedures, (iv) the indicative timelines are generally followed, (v) claimants are regularly informed of the progress of their claims, (vi) proposed remediation is developed through engagement and collaboration with claimants, and (vii) remediation is compatible with human rights standards. |
| <p>The material steps in accessing and seeking remedy under the OGM, as well as potential outcomes and indicative time frames, have been communicated to affected individuals in a manner they could easily understand.</p> | <ul style="list-style-type: none"> • There is a process to communicate to claimants the material steps in accessing and seeking remedy under the OGM, including potential outcomes and indicative time frames, which is followed in practice. • There is evidence that affected individuals (a) know how to submit a complaint should they wish to do so, (b) are able to access at least one channel to submit a grievance given their language, literacy, geographical and cultural needs, (c) do not perceive any barriers to raising complaints should they | <ul style="list-style-type: none"> • (a) Review the OGM procedures addressing communication about (i) the OGM’s material steps, (ii) potential outcomes, and (iii) indicative time frames to stakeholders, and confirm those procedures are followed in interviews with (b) OGM personnel and (b) 3 or more claimants. • Interview 3 or more claimants to confirm they (i) understood how to submit a claim, (ii) could effectively access a complaint channel, (iii) did not perceive barriers to filing a claim, (iv) understood the process to submit claims, and |

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| | <p>wish to do so, (d) understand how complaints will be addressed, and (e) understand any limitations on the remedy that the process can provide.</p> | <p>(v) understood at the outset the potential outcomes (including limitations on the nature, form or quantum of remedy).</p> |
| <p>The OGM is sufficiently resourced to address the volume of concerns consistent with the indicative timeframes, and with sufficient internal expertise to address the range of grievances anticipated.</p> | <ul style="list-style-type: none"> • The company has provided sufficient resources to enable the effective operation of the OGM, given its nature and volume of its cases. • There is no evidence that the OGM has (a) materially failed to meet its indicative time-frames, (b) altered its published processes because of resource constraints, or (c) altered the remedy it has provided because of budgetary concerns. • The funding of the OGM has sufficient indicators of independence to avoid the (a) risk and (b) perception that the grievance process and outcomes are influenced by its funders. • The OGM is managed by individuals with appropriate training in (a) engaging with victims and vulnerable individuals, (b) handling sensitive complaints, (c) the specific types of complaints likely to arise, and (d) data protection. | <ul style="list-style-type: none"> • Review OGM procedures to identify indicative timeframes. • Review the OGM operating budget to determine its reasonableness in light of the scope of its contemplated operations. • Review (a) any terms of reference associated with OGM funding to identify steps to promote OGM independence, and (b) any indicators or steps supporting that independence. • Review (a) any information made public to try to generate confidence about the OGM's independence, and (b) documents reflecting how that information has been disclosed to claimants and affected individuals. • Interview 3 or more claimants to evaluate the extent to which they believe the OGM is independent of its funder. • (a) Review any changes to OGM procedures, and (b) interview OGM personnel to understand the rationale for the changes and confirm they were not made because of budgetary reasons. • (a) Review the OGM procedures related to how the nature and quantum of remedy is determined, and then (b) review 5 or more case files and (c) interview OGM personnel to: confirm that remedy was (i) provided consistent with the contemplated processes and (ii) not limited or adjusted because of budgetary concerns. • Review (i) the total caseload of the OGM, (ii) the number of dedicated personnel, (iii) the average length of time a case takes to progress as measured against the indicative timelines, (iv) the number of cases that fell within and outside the indicative timelines, (v) the cases that have taken the longest and shortest to resolve and the reasons, (vi) and the thoroughness of fact-finding and review. • Interview OGM personnel to confirm that they have experience and training regarding: (i) human rights, (ii) engaging with victims and vulnerable individuals, (iii) handling issues of personal sensitivity, (iv) the types of claims the OGM has received, and (v) data protection. |
| <p>The OGM maintained sufficient flexibility to adapt its processes to situations as needed to respect rights, including those</p> | <ul style="list-style-type: none"> • The procedures of the OGM are sufficiently flexible to allow for adjustment based on the specific facts of each case and the circumstances of each claimant. | <ul style="list-style-type: none"> • (a) Review the OGM procedures to verify they allow for adaptation in light of specific case concerns, and (b) interview OGM personnel to understand how those procedures are |

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| <p>of vulnerable populations or groups requiring assistance to access the OGM.</p> | | <p>implemented in practice, with specific examples where it has occurred.</p> |
| <p>The OGM was designed to allow for monitoring and review of effectiveness of each key step, to identify gaps between the process as designed and as implemented.</p> | <ul style="list-style-type: none"> • There is a process to (a) evaluate the consistency between the OGM’s design and practice at each key step, (b) evaluate the effectiveness of each key step, including through feedback from those who have brought complaints, and (c) modify any step depending on the evaluation, including in relation to: (i) submitting and reviewing cases, (ii) engaging with claimants about the case once filed, (iii) investigating claims, (iv) providing claimants with the results of the investigation, (v) engaging with claimants about remediation, and (vi) providing or enabling remediation. • There is evidence that complaints involving severe human rights impacts or significant disputes over outcomes have been escalated, consistent with the design of the mechanism. | <ul style="list-style-type: none"> • (a) Review the process to evaluate the consistency between the OGM’s design and implementation at each key step, (b) review the process to evaluate the effectiveness of each key OGM step, which should include feedback from claimants who have submitted grievances, and (c) interview OGM personnel to confirm that adjustments to the OGM have been made based on (a) and (b). • (a) Review the OGM procedures to confirm they contemplate escalation of cases involving severe harm, and (b) review 3 or more case files involving allegations of severe human rights impacts to confirm their escalation consistent with the OGM’s design. |
| <p>GUIDING PRINCIPLE 31(D)</p> | <p>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> | |
| <p>INDICATOR</p> | <p>EVIDENCE RELATED TO INDICATOR</p> | <p>EVIDENCE REVIEWED</p> |
| <p>The OGM was designed to provide affected individuals with equal access to information collected during any fact-finding process, and implemented consistent with that design.</p> | <ul style="list-style-type: none"> • The OGM has specific processes that enable affected individuals to receive the same results of fact-finding efforts that the OGM may receive, and there is evidence that they receive that information in practice. | <ul style="list-style-type: none"> • Review the OGM procedures to confirm that stakeholders are to receive the results of any fact-finding efforts. • (a) Interview OGM personnel, (b) review 5 or more case files, and (c) interview 3 or more claimants to confirm that claimants receive the results of any OGM fact-finding efforts. |
| <p>The OGM provides information to affected individuals about alternative pathways to remedy.</p> | <ul style="list-style-type: none"> • There is evidence that all claimants and affected individuals have access to at least one alternative judicial or non-judicial pathway to remedy besides the OGM, which is perceived as credible and fair. • There is evidence that the OGM provides potential claimants with information about other pathways inside or outside the company. | <ul style="list-style-type: none"> • (a) Interview OGM personnel, and (b) engage with local experts, to confirm that alternative pathways exist for remedy that (i) are reasonably trusted and (ii) do not impose undue barriers on claimants. • Review OGM procedures and documentation to confirm that claimants receive information about alternative remedy pathways. |
| <p>The OGM (Tier 2) will provide claimants access to independent expert advice as required (including in relation to severe impacts and in connection with settlement agreements).</p> | <ul style="list-style-type: none"> • There is evidence that any advisors the OGM provides (a) act independently of the OGM or the company and in the best interests of the claimant, and (b) can be chosen by and are acceptable to the individuals they are supporting. • There is evidence that affected individuals (a) are aware of the availability of any resources that the OGM, the company or | <ul style="list-style-type: none"> • Review the OGM procedures for providing independent assistance, including (i) when it may be required, (ii) how individuals are selected to provide the assistance, (iii) the role of the claimant in selecting an advisor, and (iv) how the independence of any external advisor is maintained. • Review (a) 5 or more case files, (b) any agreements with independent advisors, and |

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| | <p>third parties may offer them in connection with their grievance, (b) have confidence that any advisors will act (and have acted, where relevant) independently of the company and in their interests, and (c) have felt that advisors (where used) helped them in the process.</p> | <p>(c) interview OGM personnel, 3 or more claimants and one or more independent advisor to: (i) identify the extent to which independent assistance has been provided to claimants in connection with their claims, (ii) confirm that any contracts or agreements with providers include clauses reflecting their independence and duty to the claimant, (iii) confirm advisors consider themselves to owe a duty to the claimants, (iv) verify that any advisors were acceptable to the claimants, (v) verify that the claimants considered any advisors to be independent, and (vi) verify the claimants believed the advisors were helpful in understanding or advancing their claims.</p> |
| <p>The OGM includes independent processes to mitigate perceived power imbalances, and has the flexibility to implement additional measures if a perceived power imbalance exists.</p> | <ul style="list-style-type: none"> • There is evidence that the design of the OGM considered how local power imbalances might take place, and that processes specifically address those potential imbalances. • The OGM has sufficiently flexibility in its design to address “real time” perceived power imbalances that were not originally contemplated. | <ul style="list-style-type: none"> • Interview individuals associated with the design of the OGM to understand the potential local power imbalances identified, and how they were addressed. • Review the OGM procedures to confirm that (i) steps to address local power imbalances have been integrated, (ii) the OGM has flexibility to adapt to address those imbalances, and (iii) OGM personnel are aware of the potential imbalances and authorized to react as needed. |
| <p>GUIDING PRINCIPLE 31(E) 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> | | |
| <p>INDICATOR</p> | <p>EVIDENCE RELATED TO INDICATOR</p> | <p>EVIDENCE REVIEWED</p> |
| <p>The OGM was designed to provide, and provides in practice, regular updates to claimants about the status and progress of their claims.</p> | <ul style="list-style-type: none"> • A process exists to provide claimants with periodic updates regarding their claims from the time of their submission until resolution. • There is evidence that the process is followed in practice. • There is no evidence that claimants feel uninformed about the status and progress of their claims. | <ul style="list-style-type: none"> • Review the OGM procedures to identify how they contemplate providing claimants with updates about their claims, throughout the process. • Interview (a) OGM personnel and (b) 3 or more claimants to confirm that the OGM’s stated process regarding claimant notification is followed in practice. • Interview 3 or more claimants to confirm they have felt reasonably informed about the status of their claims throughout the process. |
| <p>The OGM was designed to provide, and regularly provides, public reports of its performance (whether through KPIs and metrics, case studies, and/or handling certain cases), while respecting claimant confidentiality.</p> | <ul style="list-style-type: none"> • A process exists to support the collection and publication of meaningful data, metrics or performance against KPIs regarding the OGM’s performance. • (a) Evidence exists that the process to provide public information about the OGM is being followed, (b) reported examples of actions taken by the company to provide or enable remedy for actual human rights impacts are accurately represented, including with regard to any context that is relevant to understand the actions taken, | <ul style="list-style-type: none"> • Identify a process used to collect information to evaluate and publicize the OGM’s performance, which may include data, metrics, or performance against KPIs. • (a) Interview OGM personnel to confirm that the process to collect and publicize information about the OGM is being implemented, (b) review the data, metrics or information collected under this process and confirm (i) it is meaningful to evaluate the |

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| | <p>(c) examples of remedy for any particularly severe impacts with which the company has been involved are included (subject to legitimate legal or other constraints as recognized under Reporting Principle G of the UN Guiding Principles Reporting Framework), and (d) the examples provided are balanced and broadly representative of the company's performance.</p> <ul style="list-style-type: none"> • (a) Assessments of the OGM, including by the Independent Monitor, are made public in a form that fairly represents the findings, and (b) any lessons or recommendations from the review have been or are being implemented, or the decision not to implement them has been clearly explained. | <p>OGM's implementation and (ii) it is used as part of public reporting.</p> <ul style="list-style-type: none"> • (a) Review any publicly reported cases or anecdotes about the OGM, (b) review data and (c) conduct interviews of OGM personnel (and relevant claimants if needed) to confirm: (i) the accuracy of OGM disclosures, and (ii) that they are representative of the cases or issues before the OGM and/or the OGM's performance. • Cases of severe negative impacts are disclosed consistent with Reporting Principle G of the UN Guiding Principles reporting Framework and are accurate, subject to reasonable constraints. • The OGM makes public (i) its metrics and KPIs, along with (ii) relevant substantive information, (iii) as well as lessons learned and how they have been integrated, in order to allow stakeholders to evaluate the performance of the OGM. |
| The OGM provides internal reporting consistent with relevant international reporting standards under the UNGPs. | <ul style="list-style-type: none"> • There is (a) regular internal reporting to key internal individuals, including OGM administrators, the company and others connected to or overseeing the OGM, (b) that includes relevant metrics, as well as substantive information (such as case studies, survey results, and stakeholder reports), sufficient to evaluate the OGM against UNGP 31 in its implementation. | <ul style="list-style-type: none"> • Review documentation confirming the regular internal reporting of information about the OGM's operations to individuals overseeing the OGM, which includes relevant metrics and data relevant to OGM KPIs, as well as substantive issues, concerns, or patterns, which permits effective oversight of the OGM. |
| GUIDING PRINCIPLE 31(F) | Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights | |
| INDICATOR | EVIDENCE RELATED TO INDICATOR | EVIDENCE REVIEWED |
| The OGM was designed to provide, and does provide, outcomes and remedies consistent with international norms, as appropriately applied in the local context. | <ul style="list-style-type: none"> • There is evidence that the OGM was designed to provide (and does provide) remedies aimed at restoring affected individuals to the status preceding the harm that was done, through restitution, compensation, rehabilitation, satisfaction, and/or guarantees of non-repetition.⁷ | <ul style="list-style-type: none"> • Review the design of the OGM to identify contemplated remedies, and validate that the design is consistent with restoration, through restitution, compensation, rehabilitation, satisfaction, and/or guarantees of non-repetition. • Review 5 or more case files to identify the nature of remedy provided, and evaluate that |

⁷ **Restitution** is intended to restore, to the extent possible, whatever has been lost (position in the community, property, liberty, etc.), and restore the victim to the state preceding the harm that took place. **Compensation** is appropriate in those cases where damage can be economically assessed. These cases include: "(a) Physical or mental harm; (b) Lost opportunities, including employment, education, and social benefits; (c) Material damages and loss of earnings, including loss of earning potential; (d) Moral damage; and (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services." Compensation can take the form of money or other fungible trade-offs. **Rehabilitation** covers medical or psychological care and social or legal services needed to restore the victim. **Satisfaction** includes such measures as a cessation of the violations; an acknowledgment of the harm done, including verification of the facts and public disclosure of the truth; public apologies from those responsible, including acceptance of responsibility; and sanctions against those responsible for the harm. **Guarantees of non-repetition** include a number of measures to prevent further abuses. These include investigation into crimes that result in human rights violations, and prosecution for those responsible for causing harm, while respecting the right to a fair trial. Changes in policies, procedures, laws, and oversight may also be necessary to ensure non-repetition.

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| | | remedy against international human rights standards. |
| The OGM has access to experts in international human rights and local culture in considering appropriate outcomes and remedies. | <ul style="list-style-type: none"> • Experts have been identified and engaged to provide advice, if requested, on appropriate outcomes. | <ul style="list-style-type: none"> • Review the experts who have been or may be consulted to provide advice on appropriate outcomes, and understand why they have or have not been contacted in the context of evaluating outcomes and remedies. |
| Claimants believe that the outcomes and remedies they received are equitable and proportionate in light of the specific harms as reflected in their claims. | <ul style="list-style-type: none"> • There is evidence that recipients of remedy consider that the remedy provided was equitable. • There is evidence in instances where claimants/recipients do not consider the remedy acceptable or effective, that they found the process itself to be fair and respectful. • There are no legal disputes, campaigns, credible media or other reports indicating that recipients consider remedy to have been substantially inadequate. | <ul style="list-style-type: none"> • Review 5 or more case files to (a) confirm that where remedy was provided it was reasonably proportionate to the harm and the evidence, and (b) identify documentation verifying that claimants at the time of remedy were content with it. • Interview 3 or more claimants to confirm that they believed the remedy they received was (i) fair, and/or (ii) that the process was fair regardless of the remedy provided. • Review media reports, legal claims, NGO reports and other public source material to identify whether recipients have expressed concerns regarding the remedy provided. |
| The OGM does not impair the rights of claimants to seek accountability through other mechanisms. | <ul style="list-style-type: none"> • The OGM contains processes that specifically do not inhibit individuals from pursuing claims through other channels, should they so choose • Claimants are made aware, through written documentation and oral explanations, of their right to pursue claims through other channels. | <ul style="list-style-type: none"> • Review the OGM procedures to confirm that individuals may, at any time, pursue claims through other channels and the OGM places no restrictions on seeking remedy through other pathways. • Review OGM-related documentation regarding information provided to claimants, and interview (a) OGM personnel and (b) 3 or more claimants, to confirm that claimants are advised of their right to pursue claims through other channels. |
| GUIDING PRINCIPLE 31(G) | A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms. | |
| INDICATOR | EVIDENCE RELATED TO INDICATOR | EVIDENCE REVIEWED |
| Feedback on experience with the OGM is solicited from users on an ongoing basis, including in regard to predictability, accessibility, transparency, equitability, and remedy, with responses considered for potential adjustments. | <ul style="list-style-type: none"> • There is evidence that the OGM engages with claimants, including those with finalized claims, to gain insights into their experiences in light of the UNGP 31 criteria. • There is evidence that the results of those consultations are continuously considered in evaluating the OGM procedures. | <ul style="list-style-type: none"> • Interview (a) OGM personnel and (b) 3 or more claimants to discuss claimant engagement with the OGM in relation to the their experiences, including specifically regarding their (i) trust, (ii) the ease of access and barriers, (iii) local awareness of OGM, and (iv) remedy • Interview OGM personnel to (i) identify specific examples of claimant feedback integrated into the OGM procedures or operations, and (ii) confirm that there is continuous engagement with claimants around the OGM's operational effectiveness. |

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| <p>The OGM was designed to, and in fact does, identify patterns, trends, and key learnings for (a) its own potential improvement, and (b) the prevention of future harms at the company.</p> | <ul style="list-style-type: none"> • The OGM has a process for identifying trends and patterns in complaints and their outcomes, which is capable of identifying relevant information regarding improvement of the OGM and preventing future company-related harms. • Information or data used to identify trends is relevant and reliable. • Trends or patterns identified are (a) fairly assessed, (b) fairly articulated, and (c) placed in the context necessary to understand their implications. | <ul style="list-style-type: none"> • Interview OGM personnel to (i) confirm that they are seeking to collect data to identify trends related to OGM steps, claims and outcomes, as well as company operations, (ii) understand how that data is being collected and those trends are being tracked and considered, (iii) confirm that the trends are relevant to the OGM's and company's operations. • (a) Review metrics or KPIs retained by the OGM regarding the nature and demographics of claims and claimants, (b) validate the sources of that information to confirm the reliability and reasonable completeness of the data tracked, and (c) interview OGM personnel to understand the rationale behind tracking those specific areas. |
| <p>Patterns, trends and lessons from the OGM were (a) considered and/or acted upon to improve the mechanism, and (b) shared with the company to prevent future harms.</p> | <ul style="list-style-type: none"> • If facts, trends or patterns from complaints or claimant feedback clearly indicate a need to introduce or change OGM policies, processes or practices, there is evidence that the OGM (a) has acted upon those lessons, and (b) has shared the lessons with any relevant third parties. • If facts, trends or patterns in complaints received or claimant feedback may be relevant to the company's operations, activities or decisions, the OGM has shared that information with the company. • Any lessons the OGM has drawn from analyzing the pattern of complaints or feedback received are based on (a) a robust analysis of the trends and patterns identified, and (b) any additional information necessary to draw informed conclusions. | <ul style="list-style-type: none"> • Interview OGM personnel to identify specific instances in which facts, trends or patterns have been integrated into the OGM procedures and/or provided to the company to improve its processes. • Interview OGM personnel to confirm (a) that perceived lessons from evaluating the pattern of complaints and feedback received are (i) valid, (ii) reasonable, and (iii) meaningful in light of the OGM's operations, and (b) that the OGM has sought additional information where needed to help reach such conclusions. |
| <p>The OGM established context-appropriate KPIs that were tracked and fairly measured.</p> | <ul style="list-style-type: none"> • The OGM has established and tracks performance against KPIs to demonstrate its robustness and effectiveness. • The KPIs established by the OGM are meaningful in light of its goals and ambitions, its operating context, and international human rights norms. | <ul style="list-style-type: none"> • (a) Interview OGM personnel to identify how the OGM's KPIs were developed, and (b) review the OGM's KPIs, to: confirm that they explicitly or implicitly encompass (i) a good faith commitment to implementing the OGM as designed, (ii) OGM performance against the goals it has set and UNGP 31, (iii) the local environment, and (iv) human rights norms. |
| <p>GUIDING PRINCIPLE 31(H)</p> | <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> | |
| <p>INDICATOR</p> | <p>EVIDENCE RELATED TO INDICATOR</p> | <p>EVIDENCE REVIEWED</p> |
| <p>The mechanism was designed following meaningful engagement with affected individuals,</p> | <ul style="list-style-type: none"> • There is evidence that engagement with a range of stakeholders occurred before the OGM was launched, and there is evidence | <ul style="list-style-type: none"> • Review (i) any consultation plans for the design of the OGM, and (ii) documentation |

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| <p>representatives, and community groups about the grievance process and outcomes, with their perspectives integrated.</p> | <p>that the feedback was integrated into the design.</p> | <p>reflecting stakeholder consultation in the design of the mechanism.</p> <ul style="list-style-type: none"> • Interview individuals involved in the design of the OGM to identify the nature of feedback provided by stakeholders and how it was implemented, including specific examples. |
| <p>The OGM solicits and receives regular feedback from affected individuals, their representatives and community members on its performance.</p> | <ul style="list-style-type: none"> • The OGM has procedures for ongoing engagement with stakeholders, and there is evidence that such engagement occurs. | <ul style="list-style-type: none"> • Interview (a) OGM personnel, (b) 3 or more claimants, (c) 1-2 claimant representatives, and (d) non-claimant community members to confirm engagement between stakeholders and the OGM, including in relation to (i) the OGM's performance, and/or (ii) how feedback is integrated into the OGM's operations. • Review OGM procedures to identify how feedback from affected individuals is integrated into the OGM's operations. |
| <p>The mechanism was designed to, and in fact does, focus resolution of grievances on dialogue and joint problem solving.</p> | <ul style="list-style-type: none"> • The OGM procedures focus on grievance resolution through dialogue and engagement, and there is evidence that grievances in fact are resolved consensually and through collaboration as opposed to unilateral OGM determinations. | <ul style="list-style-type: none"> • Review the OGM procedures to confirm that the process through which grievances are resolved is through engagement and dialogue. • Identify the percentage of grievances resolved and appealed. • Interview (a) OGM personnel and (b) 3 or more claimants whose grievances were resolved to: (i) identify the process through which the grievances were resolved, and (ii) confirm that it was through collaboration and consensus. |