

## **EPM 2025 OGM ASSESSMENT**

This is the fourth report from the Independent Monitor in relation to the Operational Level Grievance Mechanism (“OGM”) at Eastern Produce Malawi (“EPM”).<sup>1</sup> Consistent with our prior practice, we provide a report to EPM on the progress and implementation of the OGM, as well as a public summary of that report. We note the Independent Monitor has received excellent cooperation from EPM in conducting this assessment, as in years past.

As described in prior reports, the OGM operates according to two tiers: Tier 1 is managed by EPM and addresses operational grievances occurring during normal business operations, and Tier 2 is an independent process for grievances involving allegations of severe human rights impacts that have been caused by, contributed to, or are directly linked with EPM and/or its business partners. Triple R Alliance (“TRA”) assisted in the design of the structure. Each tier has its own dedicated, detailed operations manual. There is a Grievance Officer to help administer Tier 1, supported by other personnel, all of whom have been in their roles for several years and are liked and respected throughout the workforce. Tier 2 has independent investigators, 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.

We refer to our prior reports for background on the OGM, our assessment methodology, the various effectiveness criteria within UNGP 31, and the indicators we use for purposes of our assessment. As this is a follow-up report to our 2024 report, we focus primarily on those issues that have changed since our last assessment.

This report is based on an extensive review of documentary materials, a site visit during November 2025 and interviews with a wide range of relevant stakeholders, including Tier 1 and Tier 2 claimants, OGM personnel, the police, clinicians and school representatives, external experts, personnel at EPM, union representatives, capitaos, security personnel and many others.<sup>2</sup> That information was considered against a template consisting of 36 indicators and 84 sub-indicators, which seek to translate UNGPs 22, 29 and 31 into an assessment framework. Our evaluations of both tiers, and our recommendations, are detailed below.

### **I. Summary**

The OGM continues to progress and mature. The OGM staff and ISLs are actively engaged, and have settled fully into their roles and there remains substantial buy-in from EPM leadership and general managers. Certain of the embedded workplace structures, such as the Women’s Welfare Committee (“WWC”), have become an institutionalized part of the

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<sup>1</sup> The Independent Monitor Team includes human rights experts, and Malawian subject matter experts. It has a gender balance in its makeup.

<sup>2</sup> The Independent Monitor Team interviewed some 120 stakeholders in total during the visit, including EPM management and personnel.

workforce. The repeated socialization efforts in the EPM workforce also have led to very high levels of OGM awareness. Relationships with key community stakeholders – including the police, the social welfare office, hospital staff and clinics, schools, and local chiefs – are strong. Certain of the key concerns that have existed since the OGM's early days, such as endemic delays, have materially improved, and there is a sharp reduction in anonymous reporting. Stakeholders have reported a much greater understanding of impermissible conduct, and an openness to discuss subjects that have long been taboo and stigmatizing. Bystander reporting, in which witnesses report incidents, remain common.

Those efforts are particularly important given the complex set of local dynamics. The economic situation in Malawi generally, and the tea sector in Malawi specifically, are highly unfavorable. There is high inflation across the country, and the agricultural sector has been negatively impacted by weather and recent harvests. Public reports, confirmed by stakeholder conversations, reference sharp earning drops in the tea market specifically. The overall economic circumstances and general shortage of jobs enhance the vulnerability of workers, and the potential for exploitation. Further, the Mulanje district has reported an increase in crime, as well as the influx of criminal organizations. The prevalence of sexual harassment and gender based violence also are reportedly high.

Coupled with efforts surrounding the OGM itself, EPM has sought to address crime generally, and sexual harassment and gender based violence specifically, in different ways. It conducts education and socialization in on-site villages (chithandos), and local communities – using its own personnel, state resources and the highly successful ArtGlo program. These efforts have had positive impacts. In particular, child defilement and exploitation has reduced; though an ongoing focus would be appropriate, given its continued presence and severity. Domestic disputes and violence are being reported to the OGM far more often; to a point where the OGM, while it has served in a triage role, will begin focused socialization encouraging victims to report directly the social welfare office or police. EPM also has provided support and resources to local hospitals, as well as the police, in relation to gender based violence.

EPM's women's empowerment program within the workforce also has progressed, with more female managers and supervisors, ongoing educational scholarships, training and skill upgrades to support promotions and qualifications for new positions. The prominence of female leaders has encouraged women across the workforce to voice their perspectives and concerns, according to interviews.

Despite these persistent and good faith efforts, the OGM continues to face a range of challenges. Perhaps most significant surrounds fear of retaliation and a hesitance to report. EPM has sought to improve employment transparency and address fear of retaliation associated with contract renewals, and anonymous reports have reduced. Further, fear of workplace retaliation is almost universal among reporting mechanisms. However, in addition to contract renewals, stakeholders continued to report concerns that supervisors and line managers would provide them with undesirable assignments or retaliate in similar ways. They also reported shunning by other employees or in their home communities following reports of workplace mistreatment. The issue is exacerbated by the overall

economic circumstances, plus a justice system perceived to be ineffective and slow. Victims thus must weigh the benefit of reporting a concern, and the likely discipline of a perpetrator, against perceived employment ramifications, possible social and workplace shunning, and the knowledge that justice very well may not occur. This dynamic has contributed to reports from the Malawi Human Rights Commission ("MHRC") and perhaps a recent lawsuit.

In addition, while Tier 1 investigations are improving, with investigators becoming more comfortable in their roles, there still is a lack of consistency, including in the expertise, resources, and outputs from investigations. Confidence in the Tier 1 investigatory approach also could be improved.

We further identified a number of reported concerns regarding the security function. Given its size, footprint, engagement with surrounding community members, and personnel assignments to remote areas, security members may both be perpetrators and victims. Stakeholders raised concerns regarding violence, sexual assault, and extortive behaviors. While management is considering its general approach, this is an area to address. In that vein, focused OGM socialization in the communities immediately adjacent to EPM remains important, as the lines between the villages and EPM's property lines are fluid, these communities often interact with security and other EPM personnel, and local communities may perceive that EPM can have impacts on local water supply through fertilizers and other chemicals.

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 remains on the right track. It is continuing to mature and improve in an environment where it is unique among business enterprises, and should be actively praised and promoted. Certain of the challenges are a reflection of the difficult local dynamics. 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.

a. *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.

b. *Summary of Assessment*

Many of our recommendations from last year have been, or are being addressed. These are discussed in the chart immediately below, with updated analyses:

UNGPs	Status/Update
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<b>UNGP 29</b>	
Consider further explanations about the “as needed” PPE policy with reassurance that safety is a key consideration.	PPE is reviewed regularly for adequacy, and individuals are being reassured of that.
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.	This is ongoing, and a socialization plan was accomplished, but further efforts are suggested to avoid burdening the OGM with contacts regarding non-violent domestic turmoil (such as affairs) given the number of contacts. Consistent messaging and additional socialization, perhaps involving the Social Welfare Office and the police, might be considered
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.	Guidance is considered less critical than continued and focused socialization. In addition to consistent messaging on marital discord, training and sensitization toward parental neglect is an important part of content.
Consider a short guidance on how to address “grudge” claims, when they should be escalated, and how they should be handled otherwise.	This no longer seems to be a prevalent concern, according to stakeholders.
<b>UNGP 31(a): Legitimate</b>	
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).	As discussed in detail below, we suggest enhancing the Tier 1 investigation process substantially. That includes making sure appropriate investigators are appointed for appropriate matters, perhaps with the assistance of the Grievance Officer and Tier 2 investigator.
Investigate rumors and general allegations of more significant negative impacts, whether through formal investigative processes or additional stakeholder engagement.	This no longer seems to be a prevalent concern.
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.	This no longer seems to be a prevalent concern, though stakeholders did report concerns that male workers are hesitant to report claims against female supervisors to the WWC. Appointing male “friends” or liaisons to the WWC is suggested.

Consider focused sensitization efforts on older women in the workforce, where underreporting may be occurring, perhaps through the WWC.	We continue to recommend this, and other demographic considerations.
Consider steps to leverage the propensity of younger women to speak up when they see improper behaviors.	We continue to recommend this, and other demographic considerations.
Consider checking on victims and claimants after a case has been resolved to help confirm their safety remains intact.	This remains an important consideration, particularly in respect to the profile of retaliatory actions relayed by stakeholders, which occur after reporting during the pendency of claims, and after claims have been resolved. It becomes harder when contracts conclude, but a plan to address those circumstances is warranted.
<b>UNGP 31(b): Accessible</b>	
Consider focused socialization on male supervisors.	While this has been done, additional efforts are recommended in light of ongoing claims and the responses from stakeholders.
Continue to explain in socialization efforts the differences between Tiers 1 and 2, and how the OGM works in practice.	This no longer seems to be a pressing concern in light of the reports submitted, however, continued socialization is worthwhile.
Consider increasing the presence of OGM posters outside of the workplace, in communities, villages and other local points.	This still should be considered, at least for communities surrounding the plantation, where further socialization about the OGM is appropriate.
Consider additional means of socialization to reach additional audiences, such as community gatherings.	This still should be considered, as focused efforts on communities surrounding the estates are appropriate given stakeholder feedback. The OGM might consider enlisting the support of other institutions, such as the police or MHRC.
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.	There has been extensive training and socialization around child defilement, with positive impacts. Cases are reducing, and individuals are much more likely to report issues that they see and hear about. There is awareness regarding areas of particular concern ("hotspots"), though state prosecutions remain disappointing. Schools are versed on the OGM generally and child safety issues specifically, though the OGM itself does not engage much with schools about these issues. While clinics also are attuned to the OGM,

	ensuring training of clinic personnel is up to date, and that posters are in plain view, should be considered.
Build capacity for the Grievance Gender Harassment and Discrimination Committee and maximize its use for sensitization and as an access point.	We continue to recommend this, and in particular continued strengthening of the Gender Committee.
Include in sensitization efforts the kinds of information to include in anonymous claims.	While anonymous claims are reducing, they still contain insufficient detail for meaningful follow-up. As discussed below, we suggest creating forms for complainants to complete that might allow for adequate investigation.
Move grievance boxes to slightly less visible locations, where individuals can lodge grievances without being seen.	Since it has been several years since the location of grievance boxes has been reviewed, we suggest the Grievance Officer and GMs confirm the placement is appropriate, perhaps in consultation with the WWC.
Schools, including teachers, principals and nurses, and the health clinics might be leveraged as additional access points.	Many of these now serve as access points, and we do not believe that additional access points are required. The OGM is well known to the workforce, villages and some surrounding communities.
Consider the cadence of opening complaint boxes (eg, more than once per month) based on the volume of claims.	We continue to recommend this, and the complaint boxes should rigorously be opened at least once per month.
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.	While anonymous cases have dropped, the fear of workplace retaliation through employment action remains. The existence of workplace "shunning" is also present. Both strongly warrant detailed strategic plans, developed with external experts, as discussed in detail below, including follow-up, training, workplace oversight from the WWC and others, and other steps.
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.	We continue to believe the use of metrics in training and public reporting would help create confidence in reporting.

Continue efforts to strengthen the Plantations and Agriculture Workers Union (PAWU).	The union serves as an access point, but there is still relatively limited union involvement at EPM. The union perhaps can be used more effectively in Tier 1 investigations, as well.
Continue to take steps to emphasize remediation other than discipline, to help encourage reporting and non-retaliation.	This remains an important consideration. Claimants and stakeholders strongly supported, for claims that do not involve serious human rights violations, an immediate mediation process. The claimant and the perpetrator can come together with the support of the WWC or perhaps a designated human rights champion immediately, at the time of the incident, to discuss what happened and obtain apologies, if appropriate. This would avoid the formality of investigations, lengthy disciplinary hearings and the potential for retaliation.
Increase engagement in communities and villages to address the stigma of reporting claims.	Headmen are increasing their reporting, but this continues to be important. As discussed in detail below, we strongly recommend EPM develop a strategic plan, with the assistance of external experts (MHRC, the police, schools, religious figures, chiefs, doctors, nurses and clinicians), to address community-based retaliation associated with reporting serious claims, as well as the use of witchcraft.
<b>UNGP 31(c): Predictable</b>	
Continue to conduct further socialization to explain the process to claimants, and document in the file when it has been provided.	Claimants generally feel like they understand the process, and the Grievance Officer does brief claimants on the steps that will be followed.
Take active steps to address delays, particularly with ISLs in Tier 2, but in Tier 1 also.	The prior delays that beset the OGM have been addressed. There still can be improvements, but the process is far better than in years past.
Continue to take steps to encourage the police and courts regarding delay and inaction, including potentially through private prosecutions	We continue to recommend this, but believe it will require the assistance of additional actors, such as the DPP, ICC and MHRC, to make any meaningful progress. This is a substantial concern, as it deters claimants from reporting to the OGM, reduces satisfaction and undermines trust in the OGM.

Update the case files regularly with each development to allow for review, auditability and consistency.	The case files are improved, though continued efforts are appropriate. Quarterly review of open cases to identify any appropriate steps to progress or close the matters is suggested, with appropriate documentation in the files.
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.	This no longer is a substantial concern, and each Tier appears to be handling appropriate cases.
Provide guidance on conducting investigations to Tier 1 investigators regarding challenging areas (eg, vulnerable populations, tense situations, where the evidence is not clear).	The Tier 1 investigative process remains in need of enhancement. Additional guidance on complex cases (sexual harassment, anonymous, etc.) is appropriate.
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.	Tier 1 investigators should be able to recuse themselves in appropriate cases (eg, where they are friends with key actors), and outcomes should be free from managerial influence.
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.	At least in complex case, Tier 1 investigators still could use further oversight, perhaps from the Tier 2 (professional) investigator in formulating investigative plans and appropriate questions. They also could use assistance in drafting and finalizing effective reports.
Provide Tier 1 investigators with more mock questions, as well as forms and templates, including in reporting.	Tier 1 investigators continue to believe this is useful, at least for difficult cases. That would include report and question templates, along with further oversight from the Tier 2 investigator.
<b>UNGP 31(d): Equitable</b>	
Consider whether alternative pathways to remedy might exist besides the courts of Malawi.	The MHRC report and the existence of the class action, plus the availability of the labour office, no longer makes this an important consideration.
<b>UNGP 31(e): Transparent</b>	
Continue to take steps to regularly update claimants about the progress of their cases (eg	Claimants report regular updates now, and the Grievance Officer indicates that updates occur

monthly), even where independent counsel may be involved.	about once per month. Those are not documented in claimant files, however, which we suggest (even a short note). Some stakeholders also indicated they were unaware that their cases had been closed.
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.	The OGM's primary means of transparency is through the annual Independent Monitor reports. Publishing metrics, which the OGM collects, about the number and type of cases, sample resolutions, and other key data points is highly recommended.
Share key performance metrics and patterns with unions and the IHRM as planned.	We continue to recommend this.
Consider sharing the IM reports with key internal stakeholders, such as the IHRM, the Grievance Officer, and others.	We continue to recommend this.
<b>UNGP 31(f): Rights-compatible</b>	
Seek to better understand why claimants seek alternative pathways to remedy, such as through the labour office or local "briefcase" lawyers	We very much continue to recommend this in light of a new class action and claimants reporting to the MHRC but not the OGM. Consider enlisting the advice of experts, such as counsel for claimants, about how the OGM can enhance its appeal to claimants.
<b>UNGP 31(g): Source of Continuous Learning</b>	
Actively consider how the patterns identified during metric and KPI tracking may inform responsive actions.	We continue to recommend this. Although metrics are collected, they are not analyzed in depth for usefulness in making relevant policy adjustments or changes.
Review case files for potential overlapping individuals involved (including as claimants, victims and witnesses) to identify appropriate action, and consider whether short a guidance document on looking for and identifying potentially meaningful patterns between cases would assist the Grievance Officer.	This analysis is being done, and is leading to greater insights surrounding individuals who are repeat claimants, witnesses and perpetrators. We do not believe a guidance document is necessary at this point.
Complete the review of subcontractor issues.	This remains ongoing, with the assistance of the regional office.
<b>UNGP 31(h): Based on Engagement and Dialogue</b>	

Continue to seek feedback from claimants who have been through the OGM.	Feedback is being sought, but should be documented in the file. For serious cases, follow-up might be conducted every 14, 30 and 60 days, as discussed in more detail below.
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A more fulsome description of our analysis, along with additional recommendations beyond those immediately above, are discussed below. To prioritize potential responses by the OGM, we have added a star to those recommendations we believe should be most strongly considered.

### **UNGP 22: General Remediation Principles**

- Observations: We discussed the OGM design under UNGP 22 in prior years. Internal and external stakeholders have remarked that the OGM has provided an avenue to get in touch with the company to register concerns, which has helped enhance the relationships between the company, the workforce, the surrounding community and key local institutions. 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 range of “serious” human rights matters, often around sexual harassment or rape, physical assaults and other issues linked to the company because they involve employees or are on company property. Decisions on remediation for Tier 1 are developed by an internal Grievance Committee, who develop remediation approaches in consultation with claimants. Tier 2 remediation decisions remain within the discretion of the ISL and claimant engagement, supported by a compensation matrix developed with outside counsel to provide benchmark against judicial decisions in Malawi.

### **UNGP 29: Businesses Should Create OGMS**

- Observations:
  - As identified previously, 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 (although the vast majority of claims have been submitted through complaint boxes, by approaching managers, or approaching the Grievance Officer herself). 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/medical facilities, 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. Claimants report that the OGM will stay in touch after claims have been submitted.
  - EPM’s efforts have improved the environment regarding sexual harassment and gender based violence, which was its original focus. Individuals see action being taken when harassment occurs, potential perpetrators restrain their behaviors, and hospitals are now staffed for gender based violence claims. The expectations

for respectful workplace treatment have grown, which is filtering into local communities.

- Sexual harassment has not been eliminated, and it remains an endemic problem in local communities, with the economic downturn increasing worker vulnerability. Sexual harassment at work also manifests through consensual relationships, including supervisors having relationships with workers that may involve promises for payments or job security. Stakeholders reported a number of relevant concerns focusing on the security function, including in relation to capitaos.
- There also are a stream of grievances related to marital discord, which may be outside of the scope of the OGM.
- As discussed previously, the OGM does not impair claimants in seeking remedy through other channels, the quantum of remedy is benchmarked against a matrix prepared with outside counsel, concerns are not arising regarding double compensation, independent counsel is provided to claimants to ensure informed consent for binding settlement agreements, and we have no concerns regarding ISL independence. The unions can be strengthened and perhaps used to further support the OGM.

- Recommendations:

- \*Continue active efforts to address sexual harassment in the workforce and surrounding communities, perhaps enlisting other resources, such as the MHRC.
- Create a procedure for workplace relationships, including in particular those involving supervisors and subordinates.
- Create a socialization effort specifically focused on reporting issues of marital discord to the Social Welfare Office in cases that do not involve violence.
- Include in socialization efforts on reporting directly to Legal Aid Bureau and Courts for some issues of marital discord where Social Welfare Office fails to mediate.
- \*Consider additional steps to reduce potential risks associated with the security function.

### 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. Accountability is built into the process, in light of the appeal processes and the Independent Monitor review, although complaints that managers may attempt to alter investigative reports warrants further changes (discussed below). EPM also has been conducting Rainforest Alliance and SMETA audits, which examine the OGM, and there are reviews by regional leadership.
- The OGM is being used, with some 330 OGM claims lodged in 2024 and 2025 at both tiers, and some 500 since inception. Tier 1 cases generally are resolved within indicative time frames and Tier 2 delays have dissipated. There is a general (57%)

reported satisfaction with the process. Most cases are submitted by employees, with some from the community. Serious human rights allegations in 2025 have centered on sexual harassment and rape, sex with a minor, and physical assaults, though serious claims have reduced. Other claims include labor, social, environmental and health and safety cases.

- Stakeholders report trust in the OGM, stating they were treated with respect and that they would use the OGM again. Several claimants noted with appreciation the appointment of counsel to assist in their cases. Relationships with chiefs, village leaders, and other community members is further embedding the OGM and increasing community trust.
- 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. However, the OGM should strongly consider checking on claimants and reporters after claims have been filed and after grievances have been resolved, to help confirm there are no ongoing safety concerns.

- Recommendations:

- \*Take steps to understand the reason that potential claimants elected to submit litigation, and engaged with the MHRC, versus submitting grievances to the OGM, and review and consider the MHRC recommendations for implementation.
- The Grievance Officer should review the current location of grievance boxes, perhaps in coordination with the WWC, Union and General Managers.
- Rigorously stick to a schedule of opening the complaint boxes at least once per month.
- Consider adding male liaisons to the WWC to receive complaints by men uncomfortable reporting to women against female supervisors.
- 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.
- \*Conduct focused training and socialization of male captaos, as well as other male managers, perhaps with organizations focused on training men related to sexual harassment.
- \*Check with claimants and reporters while complaints are pending and after cases are closed, to confirm continued safety, and develop a plan to engage with those whose contracts have expired.

### **UNGP 31(b): Accessible**

- Observations:

- The OGM is actively promoted to the workforce, in company-related housing and in local communities. Because training occurs during induction, there are now workforce reminders of the OGM every two weeks, and managers receive specialized trainings given their roles. Relationships with local chiefs, the police, hospitals and community leaders has further grown and ArtGlo has reached tens

of thousands of stakeholders. Posters appear throughout the estates as reminders of the OGM and processes. The workforce and residents of chithandos generally are aware of at least one, and often multiple, ways to submit claims and there is strong word of mouth when incidents arise. The massive socialization efforts have contributed to a workforce and local community that, generally, is more respectful. Male managers below the supervisory level were identified as a group worthy of focus regarding workplace related matters, along with communities immediately adjacent to EPM.

- 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. Anonymous claims still do not always have sufficient detail for effective follow-up, despite socialization efforts. Schools are aware of the OGM, but our interview at a clinic did not indicate OGM awareness or a poster (though the clinician did have a proper understanding of how to progress a claim).
- As discussed last year, the OGM contemplates several potential barriers for potentially affected stakeholders, including illiteracy, language and the inability to use telephones.
- 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 OGM strongly prohibits retaliation against individuals because they lodged grievances, and investigations occur when issues are reported. Active steps to promote objective hiring practices also are occurring, though a fear of rehiring remains. However, there were also reports of managerial retaliation through unfavorable assignments or dangerous shifts, setting up workers to be blamed for thefts or incidents, or declining to sign their pay slips. Stakeholders also reported “shunning” by coworkers after a complaint is lodged, and through threats and complaints (including witchcraft) in local communities.
- Both tiers of the OGM contemplate strong confidentiality protections. For Tier 1 cases, it is almost always known who is being investigated, and who the claimants are. There are concerns regarding disclosing the identities of minors in court cases, and protecting confidentiality in meetings with independent counsel.

- Recommendations:

- Consider focused socialization on communities immediately adjacent to EPM.
- Continue to socialize the process of addressing claims post-filing.
- Ensure that the WWC and others perform planned training in villages and local communities.
- Update training materials, with the input of different stakeholders, to tailor content to specific roles (eg, security, pluckers, factory workers, etc.).
- Continue efforts to strengthen the union and chiefs as access points.

- \*Identify means of including forms under or nearby to grievance boxes to improve the details associated with anonymous reporting.
- Consider building the capacity of Tier 1 and 2 investigators for handling anonymous cases, through training or otherwise.
- Ensure that all clinic personnel are trained at induction, with TIKUMVENI posters nearby to each clinic.
- \*When claimants submit grievances, to reduce retaliation risks, follow-up with claimants during the pendency of the grievance, and 14, 30 and 60 days thereafter, to understanding potential negative workplace or community responses.
- \*Develop an approach to reduce the fear and risk of employment retaliation in addition to contract renewals, whether through greater union involvement, targeted socialization, on-the-spot mediation, or otherwise.
- \*Develop an approach to reduce the risk of workplace “shunning” of complainants, whether through greater union involvement, targeted socialization, the involvement of MHRC and local leaders, or otherwise.
- \*Develop an approach to reduce the risk of community-based retaliation for complainants, including through witchcraft, whether through the involvement of local leaders, targeted socialization, or otherwise.
- \*In conjunction with the Tier 2 investigator and independent attorney for claimants, develop an approach to enhance confidentiality in Tier 1 investigations, in cases involving minors and when claimants must meet with independent counsel.

### **UNGP 31(c): Predictable**

- *Observations:*
  - The OGM has Statements of Principles (“SOPs”), supported by some forms that are generally completed and a checklist at the front of each file. The procedures are generally followed, with Tier 1 cases generally completed within indicative timeframes. Delays in Tier 2 cases are reducing, though complex cases still could be completed more rapidly. Case files can be updated more regularly. Cases involving the courts or police remain problematic, and may deter claimants from reporting.
  - We do not have resourcing concerns, per se. However, Tier 1 investigators expressed a desire for further guidance for complex investigations (sexual harassment, anonymous cases, etc.), and from the Tier 2 investigator for developing effective investigative plans. They also asked for an ability to recuse themselves in appropriate cases, and oversight in selecting appropriate investigators is prudent along with ensuring that managers do not seek to alter investigative reports. Further guidance should be considered for their reports, and the investigators believe that a gathering once per year discuss strategies, challenges and receive additional training would be helpful.

- 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 includes detailed 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. The checklist at the front of each file also is helpful in making sure core steps are followed.

- Recommendations:

- \*Engage with the DPP, ICC and perhaps MHRC, regarding concerns related to police speed and effectiveness, and the integrity and speed of court actions.
- Update the case files regularly with each development to allow for review, auditability and consistency.
- On a quarterly basis, review each open file to make sure that all appropriate steps are being taken, and to identify the steps that may be taken to close the grievance.
- \*Develop a plan to strengthen Tier 1 investigations, including:
  - Providing guidance on conducting investigations to Tier 1 investigators regarding complex cases (eg, sexual harassment, anonymous cases, where the evidence is not clear).
  - Creating greater oversight and guidance surrounding the selection of Tier 1 investigators, such as through the Grievance Officer or the Tier 2 investigator, and allow investigators to recuse themselves where there are perceived or actual conflicts.
  - Take steps to insulate Tier 1 investigative outcomes from the influence of managers.
  - Providing Tier 1 investigators with more oversight from the Tier 2 investigator regarding the development of effective investigative plans.
  - Providing Tier 1 investigators with more mock questions, training, and forms and templates, including in reporting.
  - Providing further assistance and guidance to Tier 1 investigators around the formulation of their reports.
  - Convening once per year Tier 1 investigators to discuss strategies, challenges and receive additional training.

#### **UNGP 31(d): Equitable**

- Observations:

- Both tiers of the OGM contemplate sharing investigative outcomes, and including claimants in the results of fact-finding. 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. A recent class action against EPM by a group of claimants shows that this pathway is a realistic one. The MHRC has undertaken investigatory steps associated with claimants, as well.

- 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.

### **UNGP 31(e): Transparent**

- *Observations:*
  - The OGM has improved in providing feedback to claimants about the progress of investigations, according to stakeholders (though it is not always documented in the file).
  - EPM includes some information about the OGM on its website, such as the Independent Monitor reports, but there can be greater public information of OGM performance, including patterns and metrics.
  - Management remains highly involved in the OGM, with frequent engagement and monthly management and quarterly board reporting on cases and key metrics and developments.
- *Recommendations:*
  - Take steps to increase public reporting on OGM performance.
  - Ensure that claimants are apprised when their cases are closed.

### **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. In certain instances, medical and psychological services have been provided immediately for those in need, regardless of the merit of their claims. Claimants confirmed they generally felt supported in the process, and that the OGM was responsive to their requests.
  - As discussed previously, 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. Additional engagement with the MHRC should be considered.
  - Claimants generally report satisfaction as to the process and outcomes, which appear to be rights-compatible. Claimants express concerns regarding the judicial system and police but praise for the OGM and its personnel.
  - There have been no legal disputes involving the OGM, but there is a new class action and MHRC report reflecting (directly and indirectly) ongoing concerns regarding the

- issues related to the OGM's implementation, including socialization and non-retaliation strategies.
- Nothing in the design of the OGM or how it functions deters individuals from pursuing claims through other channels, which are being pursued, and claimants are informed of their rights.
- Recommendations:
  - \*Consider whether additional engagement with the MHRC regarding the OGM would be beneficial.
  - Evaluate the reasons that claimants are pursuing litigation and reporting claims to the MHRC, but are not reporting to the OGM, and take appropriate action in response.
  - \*Review and consider the MHRC suggestions for potential implementation.

### **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. This is particularly significant in light of workplace and community-related retaliation.
  - The OGM tracks, on a monthly basis: total claims by month (averaging about 12 for several years); 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 (3 per quarter), health and safety (2 per quarter), labor (20 per quarter), security (4 per quarter) and social (6 per quarter); claims by location, broken down by month (more cases from Ruo, Minimini, and Lauderdale, as with last year); resolution within indicative timeframes; satisfaction with process and outcomes; types of remedy; and number of cases appealed. There is still relatively limited effort to identify patterns within that data. Concerns regarding subcontractors is still being considered.
- Recommendations:
  - Reconsider the metrics being tracked, how they can inform the OGM's performance, and what the patterns reveal against the OGM's objectives.
  - 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 generally implemented,

although attention could be paid to documenting it, and given reports of workplace and social shunning continued follow-up with claimants regarding serious allegations at regular intervals (eg, 14, 30 and 60 days) is prudent. 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. Stakeholders strongly support an approach that allows claimants and perpetrators to engage in immediate mediation, at the time of the potential infraction, for less significant issues.

- *Recommendations:*

- Continue to seek feedback from claimants who have been through the OGM at either tier.
- \*Develop an approach to obtain feedback and regular intervals, at least for serious cases.
- \*Continue to identify additional stakeholders for consultation, such as the MHRC, Social Welfare in Thyolo, and the independent external counsel.
- \*Develop an approach to immediate on-the-spot mediation, perhaps through the WWC, to address less significant grievances in a “light touch” manner.

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