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Kakuzi Operational Grievance Mechanism - SIKIKA

SIKIKA Procedures
(Tier 1 and Tier 2)

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1. Background

Kakuzi Plc's Operational Grievance Mechanism (OGM) is a systematic, transparent, non-judicial process for receiving, investigating, and addressing company-related grievances from affected communities, workers, farmers who supply avocados through Kakuzi's economic empowerment program, and other relevant stakeholders. In Kiswahili language Kakuzi's OGM is called SIKIKA, meaning "to be heard". In this document the terms 'OGM' and 'SIKIKA' are used interchangeably.

2. Objective and Approach

The overall objective of SIKIKA is to enhance Kakuzi's existing processes to respect human rights, to provide access to remedy for those impacted by Kakuzi's operations or business relationships and to strengthen relationships with all its stakeholders. The OGM's approach is focused on identifying early resolution and remedy for grievances through a transparent process of fact finding and respectful dialogue aimed at mutually-agreed outcomes. SIKIKA's robust procedures are designed to provide all participating stakeholders a fair process and reasonable opportunities to present their case. Where a particular party may face certain risks or disadvantages vis-à-vis others, SIKIKA will provide appropriate safeguards and supports to ensure a fair and safe process for all (see section 10).

3. SIKIKA's Two Components

SIKIKA consists of two separate components, each with its own procedure. Tier 1 is a company-managed process for grievances that concern impacts that may occur during the normal course of business operations that can best be handled and resolved by Kakuzi staff. Tier 1 consists of a Grievance Officer, (departmental) Investigation Officers and a Grievance Committee. Tier 2 is an *independent* process for grievances that concern allegations of severe human rights impacts that have been caused by, contributed to, or are directly linked with Kakuzi and/or its business partners. Tier 2 consists of a Head of the Independent Human Rights Mechanism (IHRM) responsible for adjudication, a Legal-Administrative Assistant and Independent Investigators.

4. Governing Law and International Standards

The OGM is a non-judicial mechanism that operates under Kenyan law, in particular the Constitution of Kenya (2010) that has laid the foundation for corporate respect for human rights in Kenya. In addition, SIKIKA seeks to contribute to the wider dialogue about strengthening access to remedy as outlined in the National Action Plan on Business and Human Rights in Kenya.

SIKIKA does not substitute for Kenyan State-based mechanisms but is complementary to such mechanisms. Therefore, SIKIKA will involve or refer grievances to State-based mechanisms in appropriate circumstances and considering relevant safeguards and support (see section 5.4).

Moreover, at any point, complainants are free to present their grievances to relevant State-based mechanisms.

SIKIKA is aligned with international human rights standards, including the International Bill of Rights and the United Nations Guiding Principles on Business and Human Rights (UNGPs). More specifically, SIKIKA's design is based on the OGM effectiveness criteria outlined in Principle 31 of the UNGPs, i.e. legitimacy, accessibility, predictability, equitability, transparency, rights-compatibility, a source of continuous learning, and engagement and dialogue.[1]

5. Definitions and Scope

A grievance is defined as a verbal or written complaint which:

- Is related to the activities and impacts of Kakuzi and/or its business relationships;
- Refers to a specific incident, event, impact, or type of behavior in Kakuzi's areas of operation; and
- Is put forward by a specific individual, group of individuals or a representative acting on behalf of a specific individual or a group.

Anonymous grievances will be accepted. However, such grievances are by definition more difficult to investigate and will be dealt with on a case-by-case basis depending on the amount of information available to the (independent) investigators.

Feedback that is of a more general nature or requests for support are considered 'issues' or 'requests' rather than grievances and will be referred to Kakuzi's community relations team for further follow-up. The terms 'grievances' and 'complaints' are used interchangeably in this document.

SIKIKA's overall scope is to address any grievance raised by affected stakeholders and their representatives, relating to adverse impacts that Kakuzi has allegedly caused, contributed to, or is directly linked to through its operations and business relationships.

5.1. Scope of Tier 1

Grievances can be submitted to Tier 1 of SIKIKA if they relate to *impacts that may occur during the normal course of business operations*. Tier 1 grievances do not raise allegations of severe human rights impacts[2] and can be appropriately addressed by Kakuzi as part of its efforts to

[1] United Nations (2011) *Guiding Principles on Business and Human Rights. Implementing the United Nations "Protect, Respect and Remedy" Framework* (Geneva: UN Office of the High Commissioner on Human Rights).

[2] As defined by the UN Guiding Principles on Business and Human Rights (2011, Principle 14. Commentary), the severity of an impact will be assessed based on the scale, scope and irremediability of the harm to the complainant(s).

develop and maintain good relationships with affected stakeholders. Examples of Tier 1 grievances may include:

a) Grievances related to employment, e.g. irregularities in salary calculations or payment, contractual issues, complaints under the collective bargaining agreement, etc.
b) Grievances related to (non-severe) sexual harassment.
c) Grievances related to health & safety issues or (non-severe) work-place injuries.
d) Grievances related to company accommodation and/or living conditions.
e) Grievances related to environmental impacts, e.g. noise, dust, water run-off, pollution.
f) Other grievances related to minor adverse impacts resulting from business operations.

5.2. Assignments within Tier 1

Issues/concerns, requests or grievances that are within the mandate of Tier 1 of SIKIKA will be assigned to the relevant department or committee as outlined below:

- Issues/concerns or requests that do not constitute a grievance will be assigned to Kakuzi's community relations team for follow-up engagement and/or the Corporate Social Responsibility (CSR) Committee for decision-making.
- Issues/concerns, requests or grievances related to worker accommodation (housing) at Kakuzi will be assigned to the Engineering Service Team and the relevant Village Environment Committee (VEC).
- Grievances related to sexual harassment will, in first instance, be assigned to the Clinical Service Team for further assessment, protection, psycho-social support and escalation to Tier 2, if required. Perpetrators of such will face disciplinary action through Kakuzi's Anti-Sexual Harassment Policy. The Sexual Harassment Awareness Reporting and Prevention Program (SHARP) also aims to raise awareness and improve reporting of these issues.
- Issues/concerns, requests or grievances related to health & safety will be assigned to the Health & Safety Committee through the Head of Human Resources.
- Kakuzi workers (including permanent staff, fixed term employees, seasonal labourers and contractor workers) can use the OGM as an access point, and grievances about labour issues will be assigned to the Head of Human Resources, with involvement of the Shop Steward.

5.3. Scope of Tier 2

Grievances can be directly submitted or referred to Tier 2 of SIKIKA (also known as the Independent Human Rights Mechanism, IHRM) if they relate to an allegation of a *severe* human rights impact (involving personal injury) that Kakuzi has caused, contributed to, or is directly linked to through its operations or business relationships. Examples of Tier 2 grievances may include:

a) Grievances that are associated with past or current impacts by public or private security actors in the Kakuzi area of operations, including:
   i. Physical injuries caused by Kakuzi security employees or contractors.
   ii. Loss of life caused by Kakuzi security employees or contractors, or police contracted by Kakuzi.
   iii. Rape, sexual assault or other forms of sexual violence or severe sexual harassment committed by Kakuzi employees or contractors.
   iv. Forced eviction and/or destruction of permanent or temporary homes and personal property by Kakuzi employees or contractors.
b) Grievances related to sexual exploitation, such as 'sex for work', 'sex for firewood' as well as severe cases of sexual harassment that have been referred by Tier 1.
c) Grievances related to significant adverse health effects due to exposure to chemicals or the use of pesticides.
d) Other incidents that caused severe human rights impacts because of their *scale*, *scope* and *irremediability* of the harm to the complainant (as defined by the UNGPs).[3]
e) Allegations of retaliatory action (in response to a submitted grievance) by Kakuzi or a member of its staff against other staff, workers, community members, human rights defenders or other stakeholders.

5.4. Referrals to Other Mechanisms

SIKIKA may also receive issues/concerns, requests or grievances, including those that are outside the mandate of the OGM. However, in that case, SIKIKA will respond to these grievances by *referring* them to other appropriate mechanisms as outlined below:

- Impacts that are not caused by, contributed to, or directly linked to Kakuzi operations or business relationships will be referred to the relevant parties/agencies where possible.
- Grievances about labour issues that cannot be solved by the Head of Human Resources will be referred to either the Union branch level or the Labour Office.
- Where grievances about alleged severe human rights impacts concern acts of a criminal nature, the Head of the Independent Human Rights Mechanism (IHRM) has a role to refer these cases, with the informed consent of the complainant, to the Kenya Police Service or

[3] Scale means the gravity of the impact on the human right(s). Scope means the number of individuals that are or could be affected. Irremediability means the ease or otherwise with which those impacted could be restored to their prior enjoyment of the right(s). See Shift and Mazars (2017) *UN Guiding Principles Reporting Framework*, p.111 and www.ungpreporting.org.

the Office of the Director of Public Prosecution to investigate the case and consider possible implications related to the wrong doer. This is in addition to, rather than substituting for, the Tier 2 process. To minimize the risks of retaliation, the Head of the IHRM is required to conduct a risk assessment (with the participation of complainants and witnesses) and to implement all necessary safeguards and respect confidentiality prior to turning over any evidence. In addition, any referrals should be accompanied by a request that the DPP, Police or other State institutions adhere to human rights principles in their investigation. In such cases the Head of the IHRM will still consider the provision of supports and safeguards for the complainant during the referral process and may consider whether additional remedy should be provided to the complainant that is appropriate to the nature of the specific grievance.

- General historical land claims, i.e. claims from communities asking Kakuzi to give up land that was historically acquired, can only be addressed by the National Land Commission (NLC) and are therefore not within the mandate of SIKIKA. Kakuzi will proactively engage in Court processes to resolve NLC matters as effectively as possible.
- Complaints related to wild-life and environmental impacts will be referred to or, where possible, addressed in consultation with Kenya Wildlife Services (KWS) and the National Environmental Management Authority (NEMA), respectively.

All referrals will be tracked by SIKIKA (through the respective grievance register in Tier 1 or Tier 2) to ensure that appropriate follow-up actions will be taken, and to analyze and identify patterns and opportunities for grievance prevention. The Head of the IHRM has the ability to review referrals on an ongoing basis while an Independent Monitor does so formally every 12 months (see section 6 below).

5.5. Exclusions and Limitations

Neither Tier 1 nor Tier 2 have the mandate to provide punitive or administrative sanctions against individuals or organizations. Tier 1 or Tier 2 can, however, recommend internal workplace sanctions and disciplinary actions where necessary.

Grievances that have already been resolved and compensated through the Leigh Day settlement agreement with Camellia Plc (or through other judicial or non-judicial remedy processes) are barred from the OGM. However, the complainants who were part of the Leigh Day settlement or other remedy processes are able to use SIKIKA if it concerns a different grievance.

Grievances which have been placed before a Court of Law that have already been adjudicated, or for which legal proceedings are pending, are excluded from the SIKIKA process.

6. Governance Structure of the OGM

Tier 1 of SIKIKA operates directly under Kakuzi. Fact finding will be conducted by (departmental) Investigation Officers, while the access points, triage process as well as the internal Tier 1 investigations will be managed and overseen by a Grievance Committee composed of Kakuzi's Managing Director, the Gender and Human Rights Manager and the Grievance Officer. Kakuzi's Grievance Committee can receive independent advice in their triage decisions from the Head of the Independent Human Rights Mechanism as needed.

Tier 2 of SIKIKA operates independently from Kakuzi and is managed independently by the Head of the Independent Human Rights Mechanism and supported by an independent investigation team. Key parts of the Tier 2 process are open to independent observation.

Tier 1 and 2 each has a separate appeal process involving independent experts. Tier 1 appeals will be escalated to either the Union, the Labour Office, or (in the case of non-worker/community members) to an ad hoc Appeals Committee that consists of a senior Kakuzi manager and an independent technical expert relevant to the specific issue. Tier 2 appeals will be managed by an ad hoc Appeals Panel, which will consist of either one expert or three experts (depending on the complexity of the case), who will be drawn from a roster of independent retired judges.

Appeals will only be permitted if they are based on one of the following three grounds: 1) if new evidence has emerged that was not considered before; 2) if incorrect conclusions were drawn from the facts available; or 3) if the procedure was followed incorrectly, and/or if available safeguards and supports were not, or not adequately, provided. All appeals need to be clearly explained in a written request.

An Independent Monitor provides periodic external oversight of the entire OGM (Tier 1 and 2) and will make recommendations for continuous improvement based on stakeholder feedback and the UNGP effectiveness criteria. The Independent Monitor will conduct annual reviews of SIKIKA and will publicly disclose a summary report with findings and recommendations for continuous improvement (in English and Kiswahili languages).

7. SIKIKA's Tier 1 Procedure

Figures 7.1 – 7.4 below provide an overview of the access points, step-by-step grievance procedure and process flowchart with more detailed steps, forms used and indicative timeframes of the Tier 1 Procedure (managed by Kakuzi).

Figures 7.1 and 7.2 Tier 1 Access Points For Community Members and Kakuzi Employees (also available and distributed in Kiswahili and Kikuyu languages)

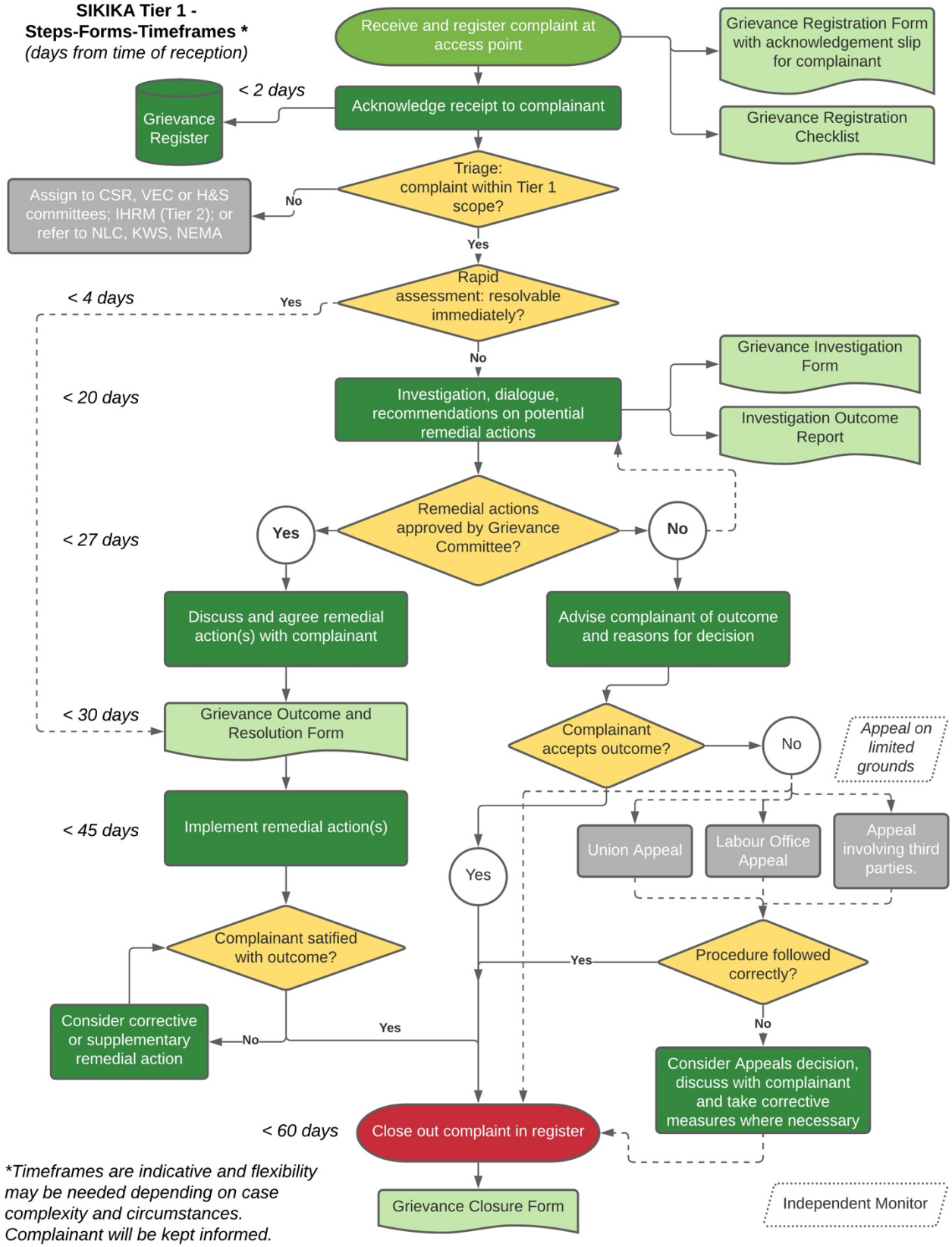




Figure 7.3 Tier 1 Grievance Procedure Steps (also available and distributed in Kiswahili and Kikuyu languages)



Figure 7.4 Detailed Grievance Process Steps, Forms and Indicative Timeframe of Tier 1



8. SIKIKA's Tier 2 Procedure

Figures 8.1 – 8.3 below provide an overview of the access points, step-by-step grievance procedure and process flowchart with more detailed steps, forms used and indicative timeframes of the Tier 2 Procedure (managed by the Independent Human Rights Mechanism).

Figure 8.1 Tier 2 Access Points



Figure 8.2 Tier 2 Grievance Procedure Steps (also available and distributed in Kiswahili and Kikuyu languages)

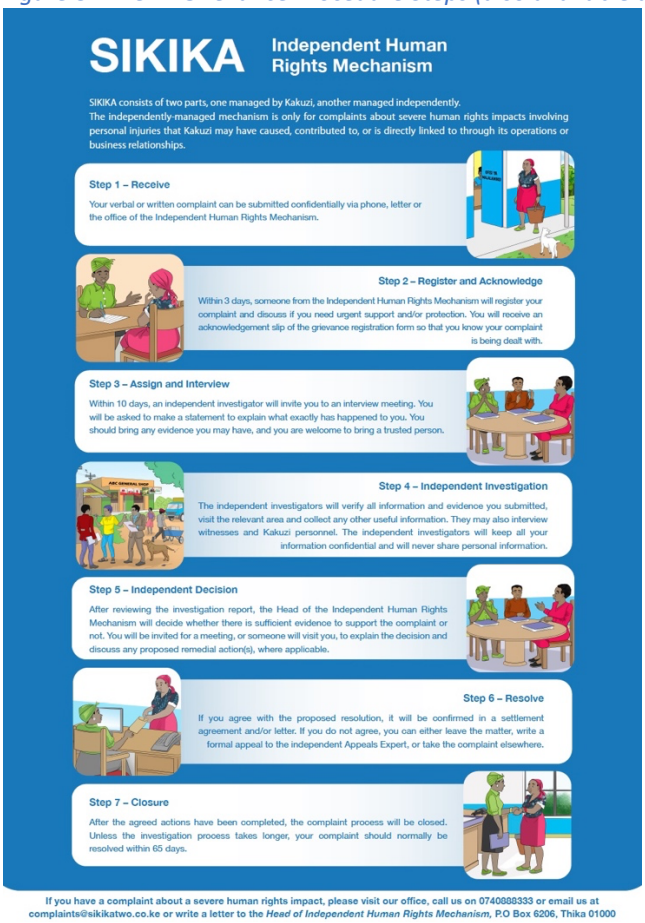
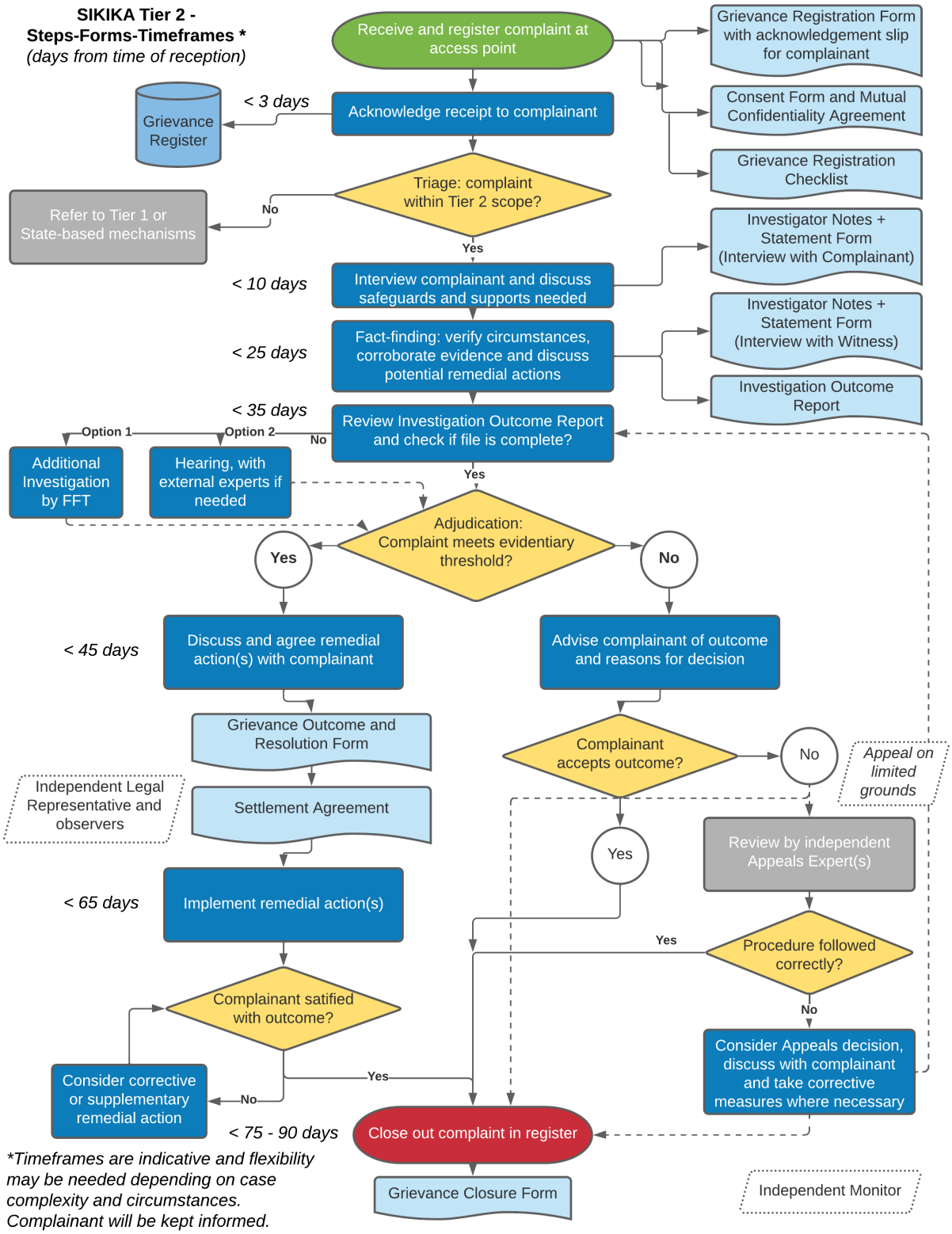


Figure 8.3 Detailed Grievance Process Steps, Forms and Indicative Timeframes of Tier 2



9. Monitoring, Evaluation and Reporting

The Grievance Officer for Tier 1 and the Legal-Administrative Assistant for Tier 2 will ensure that all relevant information about a pending case is entered into separate grievance registers and that all records, agreements, investigation reports and any other associated case materials are securely stored in the relevant grievance database. The Grievance Committee for Tier 1 and the Head of the IHRM for Tier 2 will at all times monitor the implementation of a resolution agreed upon with the complainant and/or with the community. Both for Tier 1 and Tier 2, there will be an evaluation with the complainant at the end of the procedure to discuss their satisfaction with the outcome as well as the SIKIKA process.

Reporting for Tier 1 and 2 cases will comprise separate lines of internal and external reporting, serving different purposes and audiences.

Internal reporting consists of:

- Two separate monthly reports (one for Tier 1 and another for Tier 2) that provide short summaries of every activity undertaken during that month, a summary of the case load, and a brief analysis of the (anonymized) grievance metrics, trends and key performance indicators (KPIs) for monitoring, evaluation and learning/grievance prevention purposes, and risk assessments leading to the development of mitigation strategies.
- A quarterly Tier 1 and Tier 2 grievance summary report that provides a high-level overview of (anonymized) grievance metrics, trends and KPIs and provides consolidated recommendations for grievance management and operational performance. This summary report shall be shared with Kakuzi, the Independent Monitor, and the Independent Human Rights Advisory Committee (IHRAC).

External reporting consists of:

- A quarterly Tier 1 and Tier 2 grievance summary report that provides a high-level overview of (anonymized) grievance metrics, trends and KPIs and provides consolidated recommendations for grievance management and operational performance. This report will be reviewed together with the Local Observer Panel and distributed to other relevant external stakeholders. This report will also be placed on Kakuzi's web site.
- A summary of the formal OGM monitoring report by the Independent Monitor on the functioning and effectiveness of SIKIKA (Tier 1 and 2) will be publicly disclosed on an annual basis for at least 2 years. These public reports will be prepared in English and Swahili (including in more graphic / visual forms) to facilitate ongoing dialogue with affected stakeholders about the effectiveness of the OGM.

10.SIKIKA Supports and Safeguards

'Do no harm' and 'informed consent' are two key principles of SIKIKA. The SIKIKA process shall do no harm in its efforts to provide or contribute to remedy. Specific procedures have therefore been developed for the Independent Human Rights Mechanism to undertake risk

assessments for all cases to assess whether there is a risk of retaliation, trauma or other adverse human rights impacts to complainants or witnesses. In addition, complainants and witnesses have the right to informed consent for their participation and involvement in all steps of the grievance process, which will be clearly explained to them during grievance registration.

SIKIKA can provide several supports and safeguards to complainants and witnesses, on a needs basis, which will be clearly explained during the first meeting/interview. These include general supports and safeguards, as well as additional support and safeguards for women, children and other individuals who may be more vulnerable to adverse impacts on their rights (see below).

Table 10.1 Overview of Potential Supports and Safeguards Available via SIKIKA (Tier 1 and 2)

Categories	Specific Measures
General support for accessibility	Civil society organization(s) and government agencies that enable access to SIKIKA (as opposed to being an access point). This includes organisations that offer support to children and persons with disabilities
Support for complainants	Independent legal representation at the grievance resolution stage as illustrated in the process flow diagram above (figure 8.3).
	Medical expertise
	Psychosocial support/counselling
	Transportation or logistical support
	Victim protection services
	Use of experts in interviewing children
	Interpreters (including sign language where needed)
General safeguards	Risk assessments
	Confidentiality
	Use of trusted representatives and intermediaries
	Prudence in the fact-finding process
	Protection of information
	Rapid response mechanism
Additional safeguards for women, children and vulnerable individuals	Gender sensitivity throughout SIKIKA
	Additional safeguards for grievances with allegations of violence against women
	Safeguards for interviewing women, children, and victims of trauma

11.Potential Outcomes and Remedies

The outcome of the Tier 1 and Tier 2 procedures will depend on availability and consideration of the evidence received and collected during the internal or independent investigation processes as well as the internal or independent determination that, on the balance of probabilities, a particular impact has actually occurred and is caused by, contributed to or directly linked to Kakuzi.

Based on the outcome of the investigation and determination process, Kakuzi for Tier 1 and the Head of the IHRM for Tier 2 may decide to award a particular type of remedy, a combination of remedies, or not to award remedy. Potential types of remedy include apology, commitment to non-repetition, rehabilitation (e.g. through medical, psycho-social or other social support services), restoration through in-kind or non-financial compensation (e.g. business development, educational or agricultural support), or financial compensation.[4] Financial compensation will only be awarded by SIKIKA in specific cases, where the evidentiary threshold has been met and where financial awards are considered an appropriate remedy considering the nature of the damage or harm. The amount of any financial award will be assessed in accordance with Kenyan law and values.

Punitive sanctions are outside the mandate of SIKIKA, but the Head of the IHRM may recommend that a case be referred for punitive sanctions by the State (e.g. criminal prosecution) or for workplace sanctions by Kakuzi through its disciplinary procedures (e.g. dismissal of an employee who has been found to be in breach of the company's internal procedures or policies). In all cases where punitive sanctions are considered, the Independent Human Rights Mechanism will conduct a risk assessment to ensure that the complainant or witnesses(es) are not at risk of retaliation or additional human rights impacts prior to making any referral.

Remedies aim to provide individualized reparations and support to complainants whose complaints have met the evidentiary threshold. In exceptional cases, 'collective remedy' in the form of a community project (e.g. small-scale infrastructure development or agricultural support) may be considered to facilitate the sustainable development of local communities. The final remedy options are always discussed between the complainant and Kakuzi Grievance Officer (for Tier 1) or the Head of the IHRM (for Tier 2), following the determination. The remedies will be implemented either by Kakuzi itself or in partnership with specialized (third-party) service providers.

The aim of SIKIKA is to provide access to remedy for those impacted by Kakuzi's operations or business relationships by offering an easily accessible, robust and transparent process of fact finding and using respectful dialogue to reach mutually-agreed outcomes. SIKIKA's robust procedures are designed to provide all participating stakeholders a fair process and reasonable opportunities to present their case, providing appropriate safeguards and supports where needed. Where a complainant remains unsatisfied with the outcome, they are always free to use alternative remedy pathways, including those available under the Kenya Victim Protection Act (2019).

[4] See also United Nations Guiding Principles, Article 25 (Commentary).

12.Public Awareness

The existence of SIKIKA (and its key components and procedures) has been widely disseminated in two different public awareness campaigns before the launch of Tier 1 and Tier 2. These public awareness activities have targeted the following stakeholders in particular:

- Communities in 10 locations and 25 sub-locations adjacent to the Kakuzi area of operations;
- Relevant national and county government departments and agencies in Murang'a County and Nairobi;
- Civil society organizations in Murang'a county, Nairobi and its environs;
- Kakuzi and contractors' staff.

Regular, ongoing stakeholder engagement by Kakuzi staff as well as members of the Independent Human Rights Mechanism will continue to raise awareness of SIKIKA and report on the types of grievances received and measures taken by Kakuzi as a process of continuous learning.

The public awareness campaign and other engagement activities have explained that the SIKIKA process has been designed in order to maximize access for all bona fide complainants who have a genuine operational and/or human rights-related grievance. It deserves mention here that persons who knowingly submit a false or fraudulent grievance through the SIKIKA process (or organizations who encourage people to do so) should realize that they risk contributing to intra-community tensions and are making it more difficult for bona fide complainants to have their cases reviewed within the agreed deadlines.

Finally, it has been communicated that all grievances received will be thoroughly investigated, where needed independently assessed, and always responded to in order to ensure that people's right of access to remedy is respected at all times.

13.Feedback and Information

For Tier 1 (*Kakuzi-managed* component of SIKIKA), please contact:

- Ms. Stella Wangechi, Human Rights Manager, Kakuzi Plc.
- Kakuzi Plc, P. O. Box 24, Thika 01000, Murang'a County, Kenya
- For information on Tier 1, e-mail: swangechi@kakuzi.co.ke
- For any grievances, e-mail: sikika@kakuzi.co.ke

For Tier 2 (*independent* component of SIKIKA), please contact:

- Ms. Violet Mavisi, Head of the Independent Human Rights Grievance Mechanism (IHRM)
- Independent Human Rights Grievance Mechanism (IHRM), P.O. Box 6206, Thika 01000
- For information on Tier 2, e-mail: head@sikikatwo.co.ke
- Only for grievances on severe human rights impacts, e-mail: complaints@sikikatwo.co.ke