

02 FEBRUARY 2022

FINAL REPORT

HUMAN RIGHTS IMPACT ASSESSMENT

MURANGA COUNTY, KENYA

KAKUZI PLC



IBIS

I FINAL REPORT

Human Rights Impact Assessment of Kakuzi Plc



For and on behalf of: Kakuzi Plc

Project Location: Makuyu, Kenya

Prepared by: Deborah Nyokabi, Collins Omondi, Louiza Kabiru, Belinda Ridley

Reviewed by: Belinda Ridley

IBIS Ref: 0493-1745

Signed by:

Signature in Final version

Position: Director

Date: 2 February 2022

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1. INTRODUCTION

1.1 BACKGROUND

IBIS Environmental Social Consulting East Africa Ltd (IBIS) was appointed by Kakuzi Plc in January 2021 to undertake a Human Rights Impact Assessment (HRIA) for its operations in Muranga South and Gatanga sub counties of Muranga County.

Kakuzi PLC is a Kenyan agricultural company which specializes in cultivation, processing and marketing of avocados, blueberries, macadamia, tea, livestock and commercial forestry on its 14,000 ha of land, located in Makuyu, Central Kenya. It was formed in 1906 and incorporated in Kenya in 1927. It has 1300 shareholders the largest of which, Camellia PLC, UK based company. Kakuzi and Camelia trade on the Nairobi and London Stock Exchange, respectively.

Kakuzi's head office and main operation is based in Makuyu and its tea estates are based in Nandi Hills. Its operations consist of the following:

- 960ha avocados
- 1,026 ha macadamias
- 10 ha blueberries
- 1,544 ha commercial forestry
- 4,387 heads of cattle
- 510 ha of tea estates

The Company is neighbored by 13 communities estimated at between 30,000-80,000 people. It is a large economic driver in Murang'a county where it currently employs about 2,800 across the operations. It also adopts an out-grower model in sourcing some of its produce whereby it engages small holder farmers, providing them with a consistent market for their produce. A large percentage of Kakuzi's produce is sold in the international market (Europe) to retail stores including Tesco, Sainsbury and Lidl. In order to access the international market Kakuzi has obtained different third party certifications including Rainforest Alliance, Global Gap and SMETA Audits.

Kakuzi has been in operation for nearly 100 years and faces a complex operating environment characterised by many of the challenges common to the agricultural sector in Kenya and in Africa more broadly including but not limited to:

- Legacy historical land disputes within and at its boundaries and complex stakeholder relations;
- Large, highly economically dependent workforce which changes its size, a large proportion of which is seasonal or short term contracts and resultant complex labour relations; and
- Vulnerability to climate and market dynamics and shocks affecting supply and demand for its produce.

It is within this context that the Company has over the past decade, received negative publicity due to concerns over possible human rights infringements that have been reported by local NGOs, media and advocacy groups including.

- Land legacy claims;
- Security and human rights issues; and
- Conflicts with outgrowers related to non-payments
- Gender based-violence and harassment; and,
- Environmental impacts related to planting of eucalyptus trees near water bodies.

These claims and the associated campaigns have escalated and become high profile on the national and international stage resulting in investigations by international advocacy groups and the Company's certifiers (Rainforest Alliance, UN Working Group on Human Rights and ETI) and a law suit against Kakuzi's parent company Camellia. This case was brought by a UK law firm Leigh-Day on behalf of 85 community claimants in the UK High Court and was settled out of court in February 2021. The situation has attracted stakeholder concern and reputation risks for the Company which have led to buyer boycotts in European Markets, becoming potentially material risks to its operations.

In response to the challenges raised by its stakeholders, Kakuzi committed to commission, amongst several other remedial actions and initiatives, this independent HRIA process (commissioned in late 2020). The goal of this HRIA being to assess the actual or potential human rights risks and impacts which may, or may not form the basis of concerns and allegations raised by communities and stakeholders, and to chart a way forward in designing and implementing appropriate remedial and corrective actions that will strengthen Kakuzi's corporate responsibility to respect human rights of its workers, neighbouring communities and other right-holders in line with **Pillar II and III of the United Nations Guiding Principles on Business and Human Rights (UNGPs)**.

1.2 AIM AND OBJECTIVES

The principle aim of the Kakuzi HRIA is to identify and assess in line with the **UNGPs Guiding Principle No 17**, any actual or potential adverse human rights impacts on right-holders with which Kakuzi may be involved in either through their own activities or indirectly through its business relationships.

It is also intended to assess the adequacy of the Kakuzi's Environmental & Social (E&S) Management System (ESMS) and the Company's operational capacity to address these impacts to a level which meets international human rights standards, and to identify key areas for improvement and strengthening of the team /management system and priority remedial actions.

Drawing from the **UNGPs Guiding Principles No. 17 – 24**, the Danish Institute for Human Rights (DIHR) and Gotzman (2019) the specific objectives of this HRIA are to:

- Contribute to effective Human Rights Due Diligence by determining the measures to address any adverse human rights impacts identified (through prevention, mitigation and remediation);
- Analyse the human rights implications of specific operational policy measures concerning business activities;
- Support in identification of gaps that hinder meaningful dialogue between Kakuzi, rights-holders and other relevant parties;
- Identify gaps or opportunities to enhance capacity building and learning for Kakuzi management, rights-holders etc;
- Enhance Kakuzi's accountability to respect human rights by documenting the actual and potential impacts that have been identified through the HRIA process and actions proposed to address these; and,
- Support in the process of building partnerships between business, rights-holders and other stakeholders such as developing joint actions to address cumulative impacts or legacy issues.

The Human Rights Impact Assessment (HRIA) is guided by the normative human rights framework set out in Annex 1.

1.3 DEFINITION OF KEY CONCEPTS

- **Human rights impact assessment** is as a process for systematically identifying actual or potential human rights impacts of a business operation or project on workers, communities and other right-holders; integrating and acting upon the findings of the assessment; tracking responses, and communicating how adverse impacts are addressed.¹
- **Actual human rights impacts** are defined in UNGPs as adverse impacts **that have already occurred or are occurring**. According to UNGPs, actual human rights impacts should be subject for **remediation**.² Actual human rights impacts are those that have been tried in court and those that have been alleged to have occurred but are yet to be investigated, adjudicated in a court of law or contested by the alleged perpetrator. Some allegations of human rights violations may not be reported to or filed with relevant authorities for investigation, prosecution or adjudication due legal and practical barriers to accessing justices that individuals and communities may face.³ An HRIA may thus identify actual human rights impacts based on allegations contested by the company commissioning the HRIA, and which may require third party adjudication by a court or other independent third party.⁴ For purposes of this HRIA, actual impact rights impact include allegations of human rights violations against Kakuzi or its employees that have been reported to the Company, Governmental and non-governmental organizations (NGOs), and have been fully investigated by the IBIS team.
- **Adverse human rights impact:** An “adverse human rights impact” occurs when an action removes or reduces the ability of an individual to enjoy his or her human rights
- **Potential human rights impacts** are adverse impacts that may occur in the future. Such impacts should be addressed through **prevention or mitigation**.⁵

¹ See OHCHR, et al, *Human Rights Translated: A Business Reference Guide* 2008; Commentary to UNGP Operational Principle 17 on Human Rights Due Diligence

² See commentary to UNGP Operational Principle 17 on Human Rights Due Diligence

³ See commentary to UNGP Operational Principle 26 on State Based Judicial Mechanisms

⁴ See commentary to UNGP Operational Principle 22 on Remediation and UNGP Pillar III on Access to Remedy in particular Principles 28 - 30 on Non State Based Grievance Mechanism and Principle 31 on Effectiveness Criteria for Non-Judicial Grievance Mechanisms

⁵ See commentary to UNGP Operational Principle 17 on Human Rights Due Diligence

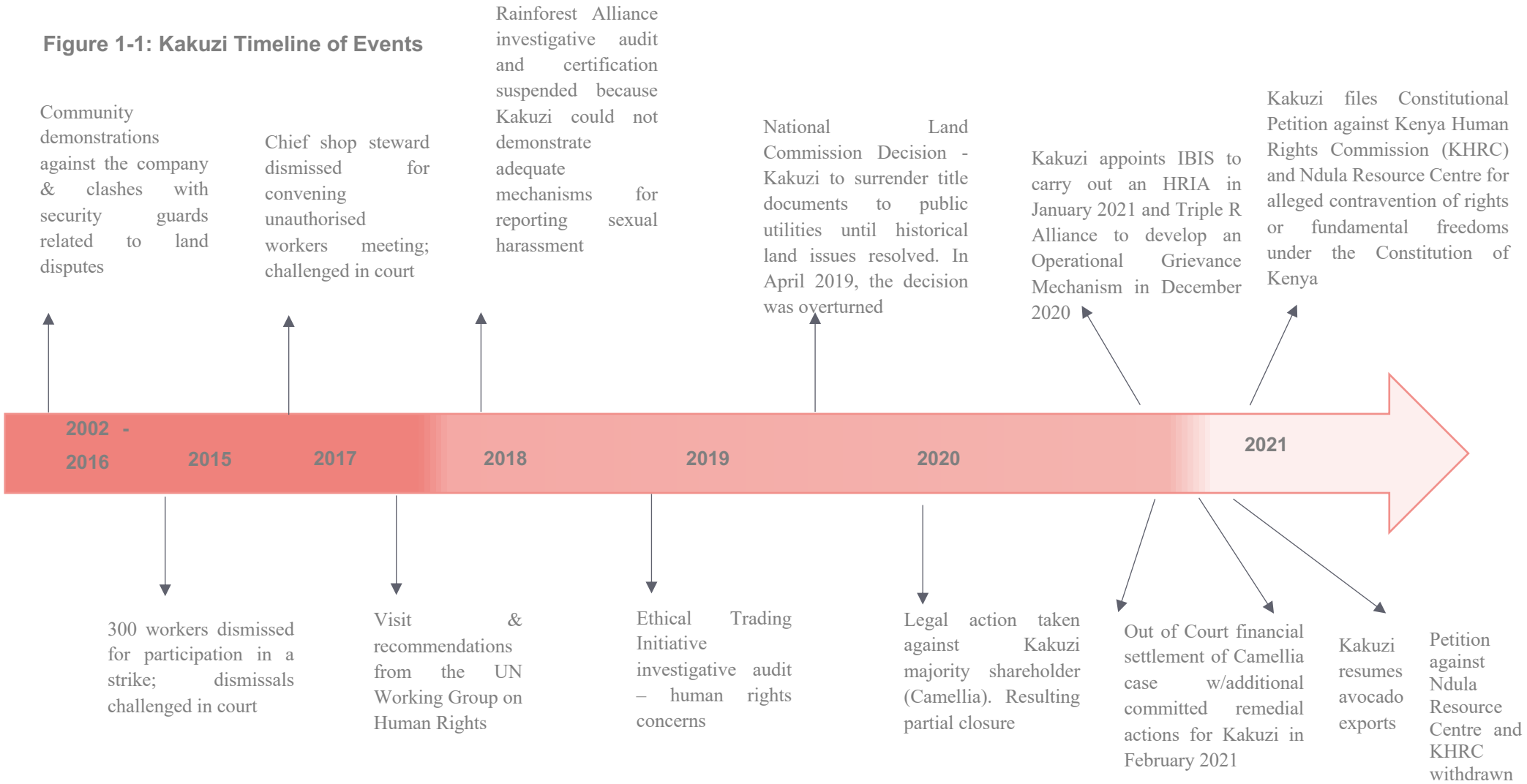
- Possible human rights impacts:** The UNGPs explicitly provide that, human rights impacts are categorised as either actual or potential. The UNGPs did not anticipate that Business and Human Rights practitioners would encounter some allegations of human rights violations which could not be fully investigated in a HRIA setting due to certain limitations such as survivors or victims' family's inability to participate in the HRIA or in the case of this HRIA, non-cooperation from key stakeholders who hold valuable information on alleged human rights violations. Due to this limitation, this HRIA the Consultants were unable to attribute certain human rights allegations as **actual human rights** impacts because a fully investigation could not be carried out. Based on the limited information received, the Consultants opted to introduce a new terminology to this HRIA which is, **possible human rights impacts**. The concept of **possible human rights impacts** means that based on a balance of probability, it is possible that an allegation may have occurred. The concept of **possible human rights impacts** has been used to refer to the Leigh-Day claims which could not be fully investigated by the Consultant;
- Human rights risks** are defined in UNGPs as risks that a company's operations pose on human rights of its workers, communities and other right-holders. This is separate from any business risks that involvement in adverse human rights impact may pose to the enterprise, although the two are increasingly related. Human rights risks are a company's potential adverse human rights impacts. A HRIA assesses a company's human rights risks and actual impacts.
- Prevention:** The prevention of adverse human rights impact refers to actions taken to ensure such impact does not occur.
- Remediation/remedy Remediation** and remedy refer to both the processes of providing remedy for an adverse human rights impact and the substantive outcomes that can counteract, or make good, the adverse impact. These outcomes may take a range of forms, such as apologies, restitution, rehabilitation, financial or non-financial compensation, and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition.
- Salient human rights:** The most salient human rights for a business enterprise are those that stand out as being most at risk. This will typically vary according to its sector and operating context. The Guiding Principles make clear that an enterprise should not focus exclusively on the most salient human rights issues and ignore others that might arise. But the most salient rights will logically be the ones on which it concentrates its primary efforts.
- Severe human rights impacts** are defined by the impact with reference to its scale, scope and irremediable character. This means that its gravity and the number of individuals that are or will be affected (for instance, from the delayed effects of environmental harm) will both be relevant considerations. "Irremediability" is the third relevant factor, used here to mean any limits on the ability to restore those affected to a situation at least the same as, or equivalent

to, their situation before the adverse impact. For these purposes, financial compensation is relevant only to the extent that it can provide for such restoration.

1.4 HISTORICAL TIMELINE OF EVENTS

Figure 1-1 presents a visual timeline of the events leading up to and surrounding human rights concerns and associated allegations made against Kakuzi. These events are elaborated in the following sections.

Figure 1-1: Kakuzi Timeline of Events



Key Events Impacting on Human Rights of Workers and Communities

- From the late 1990s to the present Kakuzi has been involved in land related disputes with the neighbouring communities affecting several parcels of land including LR 11674 and LR 10731. The disputes concern allegations of criminal trespass on Kakuzi land; denial of access to roads traversing Kakuzi property⁶; and disputed ownership claims over some parcels of land.⁷
- From 2002 to 2016, there have been sporadic public demonstrations held by a section of the local community against the company, some of which turned violent following confrontations between the community and Kakuzi guards. In some cases guards, community members and journalists were allegedly assaulted and injured with both sides of the dispute blaming each other for the injuries.⁸ Some members of the community were also arrested and prosecuted.
- Additionally, some of the Company's security guards have faced allegations of physical assault, wrongful death, sexual harassment, rape and defilement. The community alleged that these acts were committed by some of the guards while they were on duty guarding company property.
- Between 2015 and 2017 there are key events that have allegedly led to summary dismissal of workers under circumstances that were highly contested between the management and workers. On 26th May 2015, 300 workers at Horticulture East were summarily dismissed for gross misconduct for participating in a strike on 25th May 2015. Some of them were reinstated after they lodged their appeal through the company's internal disciplinary process. Others challenged their dismissal at the Employment and Labour Relations Court in *Kenya Plantation and Agriculture Workers Union v Kakuzi Limited ELRC Nairobi Cause No. 973 of 2015*.⁹ In July 2017 the then Chief Shop Steward Mr David Ndambuki was summarily dismissed after allegedly convening a workers meeting within working hours on Saturday 29 April 2017 at the

6 See *Kakuzi Ltd v County Government of Murang'a, County Commissioner, Murang'a County, The Inspector General of Police, Murang'a HC Petition No 8 of 2013* (Formerly Petition No 423 of 2014), *Kakuzi Ltd v County Government of Murang'a, County Commissioner, Murang'a County, The Inspector General of Police, Murang'a ELC Petition No 8 of 2018* (Formerly Petition No 8 of 2014), Consent Decree issued on 17th February 2021 in ELC Petition No. 8 of 2018 and Surveyor's Report on Public Road Traversing Kakuzi Limited Properties dated 28th May 2015.

7 See for example National Land Commission determination dated 7th February 2019 which was challenged in court by Kakuzi. See also *Republic v National Land Commission and 2 others Ex parte Kakuzi Judicial Review Application No. 94 of 2019*.

8 These include violent confrontation between Kakuzi guards and the community in Gathungururu village on 12th and 13th March 2002 over a disputed 70 acres parcel of land belonging to Kakuzi (See National Assembly, Official Report – 11 April 2002 at pages 12 -13); One of the widely reported incident involved confrontation between Kakuzi guards and parents, pupils, teacher at Gitito Secondary School over a boundary dispute in September 2016 (See Kenya: Journalists allegedly beaten by Kakuzi guards during students' protests against land grabbing; company response available at <https://www.business-humanrights.org/en/latest-news/kakuzi-response/>). Another similar confrontation involved the guards and residents of Kangangu and Mangoto following a dispute over access roads in 2014. (See <https://citizentv.co.ke/news/kakuzi-ltd-murang-a-county-brawl-over-access-of-roads-72975/>;) According to the company it is the community that entered Kakuzi boundary while the security guard remained within the boundary in all these incidents.

9 See Para 10 – 14 of the ruling issued by the court on 20th November 2015 in *Kenya Plantation and Agriculture Workers Union v Kakuzi Limited* [2015] eKLR

union office in Kitito located within the company premises and without authorization by the management. This action was contrary to company policy and the recognition agreement between the company and KPAWU. His dismissal was challenged by the union in *Kenya Plantation and Agriculture Workers Union v Kakuzi Limited Nairobi ELRC No. 881 of 2017*. According to Kakuzi, David Ndambuki was a financial beneficiary of the Leigh-Day settlement.

- In July 2018, the Company was amongst institutions that were visited by the United Nations Working Group on Business and Human Rights, during their country visit.¹⁰ While noting concerns around labour issues and poor relationship with the community, the working group made various recommendations including urging the Company to take steps to enhance its relationship with both its workforce and the surrounding communities.¹¹
- Kakuzi operations undergo regular environmental and social certification audits and are certified by among others Rainforest Alliance (RA), Ethical Trading Initiative (ETI), SMETA. The certification audits have largely found no major no-compliance issues warranting a withdrawal or suspension of certification. However in 2018 and 2019 two of the certification schemes commissioned investigation audits into the company following allegations of human rights violations lodged by human rights organisations.
- In August 2018, the Company underwent an investigation audit by Rainforest Alliance (RA) following complaints lodged with RA against the company relating to violation of workers' rights, sexual harassment, use of child labour, exposure of workers to harmful chemicals and lack of PPEs, and harassment of community members.¹²The complaints and the audit resulted in suspension of the certificate for its Makuyu Plantation from July 2018 to October 2019. The audit did not find any use of child labour but it highlighted concerns in a number of areas including: lack of adequate mechanisms for reporting sexual harassment, interference with union operations at the Company and hostile conduct by a manager during the investigation audit.¹³ According to Kakuzi, no further investigations were undertaken by RA to confirm the veracity of the claims made by the Auditor and no immediate 3-year suspension of Kakuzi was implemented by RA.

10 See Para 45 – 48 of the Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises – Visit to Kenya, A/HRC/41/43/Add.2, available at <https://www.ohchr.org/en/issues/business/pages/reports.aspx>; see also Statement at the end of visit to Kenya by the United Nations Working Group on Business and Human Rights, Nairobi, 11 July 2018, paras 21 – 24, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23356&LangID=E>;

11 see para 47 and 48 of the Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises – Visit to Kenya, A/HRC/41/43/Add.2

12 See page 3, section 1.1.; and 1.2. of the Rainforest Alliance Investigation Audit Report – Kakuzi PLC submitted by auditors on 21st August 2018.

13 See section 3, pages 6 – 14 and section 4, page 15 of the audit report.

Subsequent certification audit conducted on behalf of RA by Africert did not raise any major concerns save for minor non-compliance relating to environmental management and occupational health and safety.¹⁴ and the certificate was reinstated,

- Further, in August 2019, Ethical Trading Initiative commissioned Ethical Trading Services Africa to undertake an investigative audit into the Company following a complaint lodged by the Kenya Human Rights Commission. The audit findings highlighted concerns and made recommendations relating to conduct of security guards, workers' right to freedom of association, workers grievance handling, company disciplinary procedure, community grievance handling, handling of sexual harassment allegations raised externally, workers health and safety and contracting with outgrowers. The report also noted that the Company's policies and procedures were under review at the time of the investigation.
- In April 2019, the National Land Commission rendered a recommendation to the Company to surrender title documents to all public utilities within its footprint and recommended that all the Company's leases are not renewed until the historical land injustices are resolved. However, the leases were not up for renewal at the time of writing or at the time the NLC recommendation were made.
- In August 2019, Leigh-Day, a UK based law firm initiated legal action against UK firm Camellia, the majority shareholder of Kakuzi, on behalf of 85 Kenyans (at the time of writing) who accuse Kakuzi of the violations cited above (save for land related and environmental violations). The case resulted in partial consumer boycott with some of Kakuzi's customers suspending their dealings until the determination of the case;
- In January 2021, Kakuzi appointed IBIS to carry out an independent Human Rights Impact Assessment. In the same month, Kakuzi appointed Triple R Alliance to develop an operational level grievance mechanism (OGM)¹⁵. These initiatives supplemented several policy, governance and operational measures that the Company is currently implementing to address human rights related challenges arising from its operations. These include *inter alia*: recruitment of a human rights manager in 2021, establishment of an independent human rights advisory committee that will advise the Board on matters relating to human rights¹⁶, and adoption and

¹⁴ See pages 7 and 10 of the Rainforest Alliance Certification Audit Report submitted on 9/12/2019

¹⁵The OGM is part of the settlement reached between Camellia Plc and Leigh Day on behalf of the 85 claimants <https://www.leighday.co.uk/latest-updates/news/2021-news/settlement-of-claims-against-camellia-plc-of-allegations-of-serious-human-rights-abuses-in-kenya/>

¹⁶ See <https://www.kakuzi.co.ke/2021-kakuzi-plc-press-statement>

implementation of anti-sexual harassment policy and programme. These are discussed further in the following section.

- On 13 February 2021 Camellia Plc reached an out of court settlement with Leigh Day resulting in a financial settlement of Kes. 696 million. Other terms of the settlement agreement are: building of three new roads, two of which cut across Kakuzi's property, and the requirement for Kakuzi to employ ±30 predominantly female safety Marshalls on Kakuzi's farm to give visible reassurance to those accessing routes and in particular vulnerable women over the next three years. Finally, the requirement to establish a Technical Working Group to survey and properly demarcate over 150 acres of land which has been previously donated by Kakuzi.¹⁷
- Around March 2021, Kakuzi Plc filed a Constitutional Petition No E 072 of 2021 against Kenya Human Rights Commission (KHRC) and Ndula Resource Centre for alleged contravention of rights or fundamental freedoms under Art 25 (c), 35 (2), 47 (1) and 50 of the Constitution of Kenya.
- On 13 May 2021, it was reported in the media that Kakuzi resumed UK avocado exports.¹⁸
- On 30 June 2021 the petition against Ndula Resource Centre and KHRC was withdrawn. IBIS is aware that the two NGOs have labelled the case as a strategic lawsuit against public participation (SLAPP).

1.4.1 KAKUZI COMMITMENT TO REMEDIATION AND ADOPTING A HUMAN RIGHTS CENTRED APPROACH

IBIS engagement and interactions with Kakuzi corporate and operational management throughout the HRIA have demonstrated leadership which is fully committed to undergoing an independent diagnostic and remedial HRIA process, in the spirit of good practice standards, and to sharing the summary of findings of that process with their stakeholders.

The Management Team has been open to regular and frank feedback and dialogue during the HRIA, has provided all requested access to documentation and personnel for interviews, and clearly recognises the need to identify and drive structural and behavioural change within its operational management system and business culture, to address the root causes of any historical and current salient human rights risks and impacts that may be associated with its presence and business activities.

¹⁷ See <https://www.leighday.co.uk/latest-updates/news/2021-news/settlement-of-claims-against-camellia-plc-of-allegations-of-serious-human-rights-abuses-in-kenya/>

¹⁸ See <https://www.businessdailyafrica.com/bd/corporate/companies/kakuzi-uk-avocado-exports-after-rights-boycott-3398160>

Kakuzi has taken several steps both prior to and during the HRIA, (some of these required by the Camellia/Leigh-Day settlement agreement in the first quarter of 2021, others instigated under their own strategy prior or following that settlement) which reflect the Company's commitment to the process, including the below:

A note on progress: given the time that has passed since the fact finding mission for this HRIA, IBIS is aware that Kakuzi has made substantial progress on implementing several initiatives which are suggested as mitigations in this report. To ensure a true reflection of the situation on the ground, IBIS has engaged with Kakuzi Management team in October 2021 to receive a progress update. The HRIA Report and the Action plan will therefore note both status of the Kakuzi response and management measures at the time of the field fact finding mission but also indicate where significant progress has already been made.

- Establishment of an Independent Human Rights Advisory Committee which is headed by the former Attorney General of Kenya, Prof Githu Muigai, Kenyan corporate communications businesswoman, philanthropist Gina Din Kariuki; former Independent Policing Oversight Authority (IPOA) Board Member Grace Madoka, former Finlays Kenya Legal and HR Director Dr Brenda Achieng, and Kakuzi Plc non-executive independent director Andrew Ndegwa.
- Appointment of a Non-Executive Board Member to oversee the implementation of key human rights mitigation or management measures;
- Recruitment of a female, Kenyan Gender and Human Rights Manager who has been tasked to develop, coordinate and implement a Human Rights Road Map including good practice aligned human rights-centred initiatives of the Company including Human Rights and Anti-Sexual Harassment Policy development and dissemination, and roll out of human rights and GBVH education and awareness for employees and communities, steps to address human rights focus in the Company security management system, and implementation support to the OGM;
- Development of the operational grievance mechanism (OGM) by independent international human rights and OGM specialists, Triple R Alliance; and
- Commissioning of Employee Satisfaction Survey.
- Human rights training for managers and security guards in 2019 conducted by Kenya National Commission on Human Rights, the state agency responsible for monitoring realization of human rights in Kenya.

Where possible IBIS provides comments in the report and action plan on the completeness and adequacy of these various management measures in relation to addressing salient human rights issues faced by the Company.

1.4.2 THE OPERATIONAL GRIEVANCE MECHANISM (OGM)

Kakuzi commissioned specialist firm Triple R Alliance and commenced with a process to develop an Operational Grievance Mechanism (OGM) in October 2020, with the aim of providing a platform through which grievances can be received, investigated and addressed in a systemic and transparent manner.

The design and implementation of an effective grievance mechanism is a key recommendation of this HRIA. An OGM is considered the most critical tool in a Company's management system for managing its stakeholder risks and more specifically for receiving and transparently addressing complaints and concerns which may reveal actual or potential human rights risks and impacts on workers, communities and other right-holders of the Company's operations and activities. The OGM development process, its purpose and status is described in more detail below.

The OGM was created to receive concerns from neighbouring communities, employees, Kakuzi out growers and other relevant stakeholders. It is structured in two Tiers.

- **Tier 1:** for receiving and handling grievances about operational impacts, e.g. employment, health and safety or other issues that can be handled and resolved internally; and,
- **Tier 2:** for grievances that concern allegations of severe human rights impacts that have been caused by, contributed to or directly linked with Kakuzi and/or its (sub)contractors. For Tier 2, Kakuzi is in the process of establishing an Independent Human Rights Mechanism with a special mandate, procedures, supports and safeguards to review complaints about severe human rights impacts and provide remedy to victims of such impacts. Four independent prominent and senior Kenyan figures in business/civil society who are leaders in relevant professional fields have been identified and are being interviewed to Chair this independent mechanism.

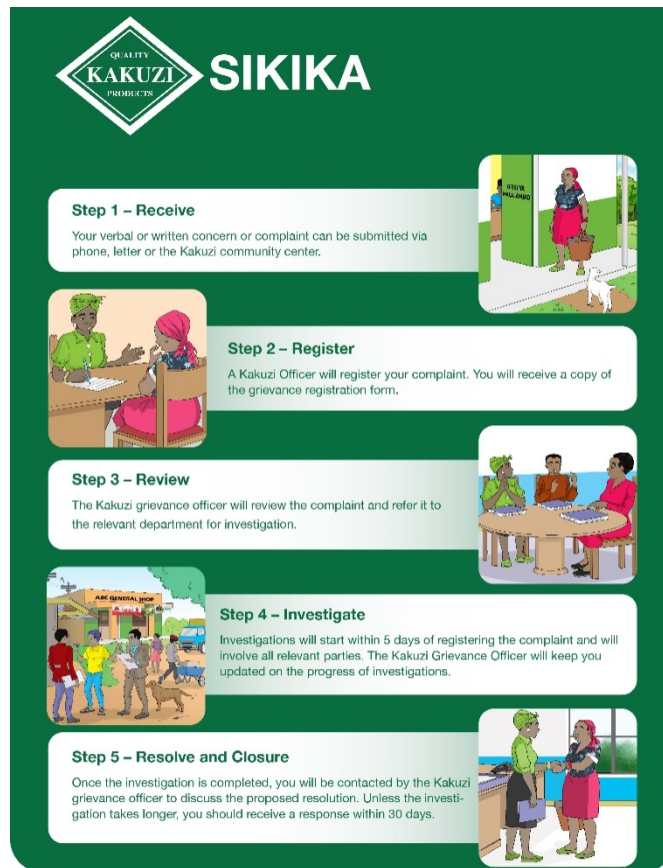
A standard operating procedure for Tier 1 has already been designed and completed using a fully participatory process, communicated and validated with authority and other key stakeholders and is in the process of being validated through consultation meetings at the level of communities.

A manual with guidance for Tier 2 is under development.

The OGM process broadly follows several key steps including: receiving and logging grievances in the system vis several 'access points', acknowledging receipt within a committed timeframe, 'triaging' to categorize grievances by severity of issue and directing them into the correct Tier of the process for appropriate handling and response including escalation to Tier 2 and an independent investigation and adjudication in severe cases.

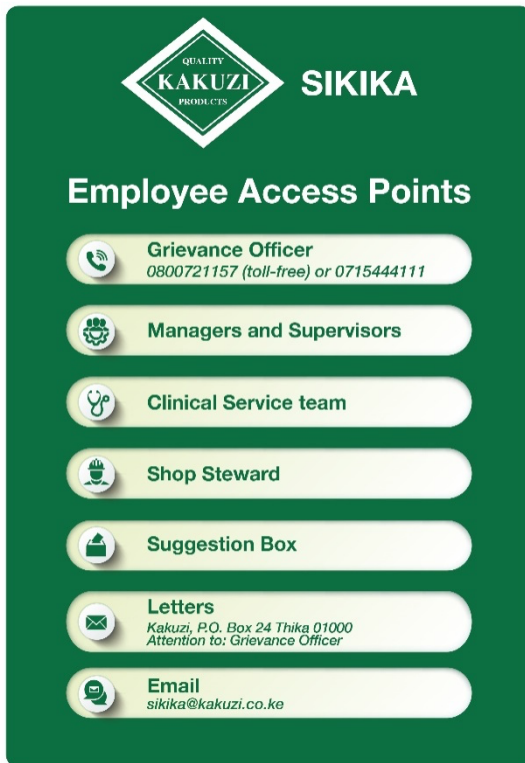
The OGM has been given the Swahili name 'Sikika' meaning 'To Be Heard'. The process is illustrated in Figure 1-2 and Figure 1-2. These posters and leaflets explaining the OGM in an accessible format in both English and Swahili are being widely displayed and disseminated around the site, shared during stakeholder validations and in communities themselves, a Grievance Officer has been appointed and Grievance Office established at the Company HQ.

Figure 1-2, Figure 1-3 and Figure 1-4: Sikika (OGM) Process and Employee and Community Access Points



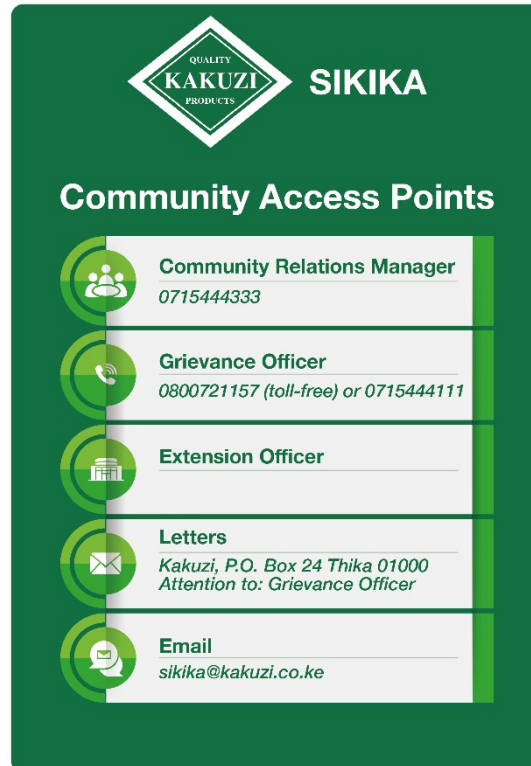
Your views matter to us and we welcome you to visit our Sikika office at Kakuzi Main Office, or call us on 0715444111 or 0800721157 (toll-free). Or email us on sikika@kakuzi.co.ke

At the time of writing this report (October 2021) the OGM (in its pilot phase since May 2021) had received over 100 grievances of which 5, received via the SHARP programme, have been categorized as Tier 2. The majority of grievances received related to wages or minor complaints concerning colleagues or supervisors.



Employee Access Points

- Grievance Officer**
0800721157 (toll-free) or 0715444111
- Managers and Supervisors**
- Clinical Service team**
- Shop Steward**
- Suggestion Box**
- Letters**
Kakuzi, P.O. Box 24 Thika 01000
Attention to: Grievance Officer
- Email**
sikika@kakuzi.co.ke



Community Access Points

- Community Relations Manager**
0715444333
- Grievance Officer**
0800721157 (toll-free) or 0715444111
- Extension Officer**
- Letters**
Kakuzi, P.O. Box 24 Thika 01000
Attention to: Grievance Officer
- Email**
sikika@kakuzi.co.ke

1.5 REPORT STRUCTURE

The HRIA Report is structured as follows:

- Summary Key Findings and Recommendations
- The HRIA Process
- Detailed Assessment Findings, Conclusions and Recommendations:
 - Security and Human Rights;
 - Gender Equality and Women's Empowerment;
 - Labour Rights;
 - Land and Human Rights.
- Annexes.

2. SUMMARY OF KEY FINDINGS

This section provides an executive summary of the key findings of the HRIA process in terms of salient human rights risks and impacts and the recommendations in each case. Each area is elaborated further in the main body of the assessment in Sections 4, 5, 6 and 7.

2.1 SALIENT HUMAN RIGHTS RISKS AND IMPACT FOCUS AREAS

The scoping exercise identified four key areas of potential salient human rights risk and impact in relation to Kakuzi's operations. These are illustrated in Figure 2-1.

Figure 2-1: Human Rights Risks and Impacts

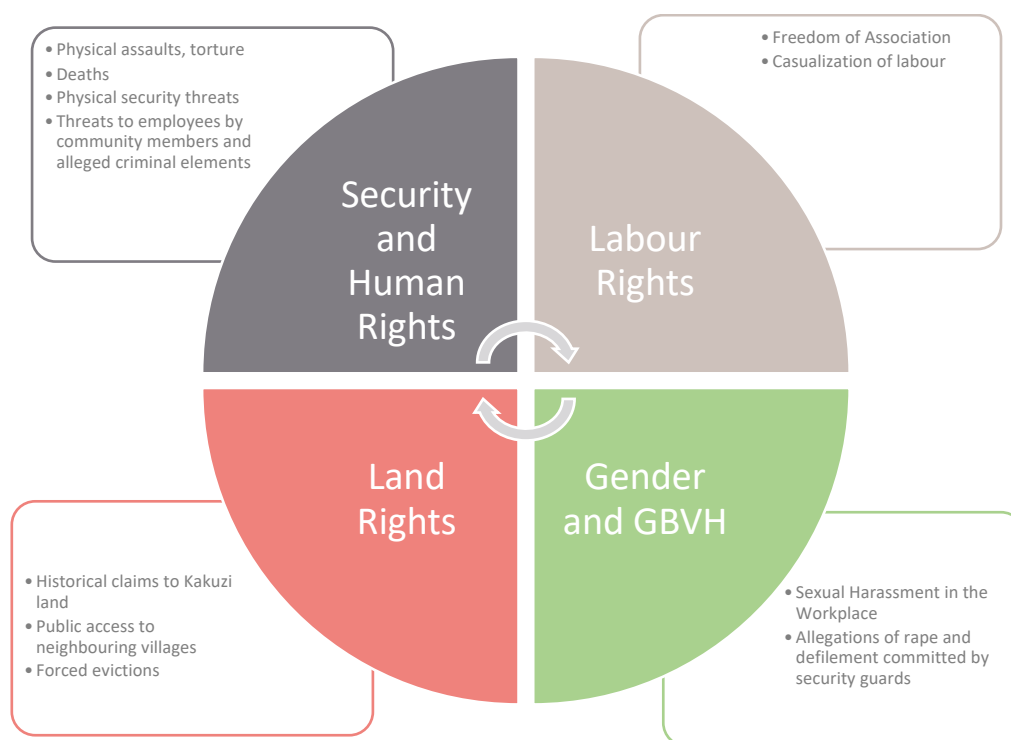


Table 2-1: Summary Key Findings for Each Focus Area

FOCUS AREA	FINDINGS	RECOMMENDATIONS
Security and Human Rights	<p>Actual or potential salient human rights risks and impacts assessed in this area include:</p> <ul style="list-style-type: none"> • Possible: Excessive use of force and physical assaults reportedly perpetrated by security guards against members of the community • Potential: Physical threats to safety of female security guards • Potential: Threats to employees by community and members and alleged criminal elements <p>The Company security guards have been the subject of nearly 70 allegations of assault, torture and wrongful deaths from 2011 to 2020. These allegations were the subject of a court case brought by a UK based law firm Leigh Day on behalf of claimants in UK High Court which was settled out of court in early 2021. The patterns drawn from the review of the allegations are:</p> <ul style="list-style-type: none"> • Majority of the concerns involve alleged assaults that have been committed against members of the community and two journalists; • Alleged assaults have also been perpetrated against Kakuzi employees. Five employees who are part of the Leigh-Day claimants allege that they were assaulted on claims that they are trespassing, while fetching firewood and two claims of theft; • A review of the 37 assault allegations reveals that the possible cause of excessive use of force by the security guards may relate to claims by the 	<ul style="list-style-type: none"> • Carry out a comprehensive human rights centred STRA that identifies the security related risks that impact on the Company's operations and how these can be addressed in a holistic manner by including the neighbouring communities as key stakeholders in the management of security. Specifically, the STRA should: identify new security related risks posed by the gender balance of security personnel and the allocation of postings/duties; clearly identify the historical weakness or gaps in the current security management system which may influence practices including how the security department interacts with the neighbouring community. The STRA should support Kakuzi in developing appropriate management systems commensurate to the risk exposure of the Company and that are embedded in human rights; and tackling the root causes of the increased criminal activity targeted at certain Kakuzi business units and focused on collaboration with communities and key stakeholders to assess these risks; and, • Develop a human rights centred Security Management Plan (SMP) that is designed to guide Kakuzi on how to manage its security and human rights risks. The SMP should define Kakuzi's approach to good practice aligned security management including working closely with the neighbouring community to mitigate and manage security risks such as organised criminal activity. The SMP should incorporate the

guards that community members / employees were involved in theft, trespass into Kakuzi property, and use of Kakuzi's natural resources such as fishing in the dam and fetching firewood, and guards were carrying out their duties to protect Company property;

- A review of the allegations show that during community protests (2014 and 2016), it is alleged that some community members were physically assaulted by some Kakuzi security guards. A video from K24, a local media house shows individuals in green uniform identified as Kakuzi security guards, allegedly assaulting school children during the 2016 protests; and,
- Out of the 383 employees who have been dismissed from Kakuzi since 2012, only 12 were dismissed for allegations of assault. A review of the timelines of dismissal of employees reveals that no security guard was subjected to disciplinary action for the September 2014 reported assaults on community members who were protesting, and neither was any security guard reportedly subjected to any disciplinary sanctions for the assault on the two journalists in 2016.
- The HRIA has established reasonable cause to believe that there has been a pattern of use of excessive force by some Kakuzi security personnel, but no adequate comprehensive proactive remediation process appears to have been initiated by the Company prior to the anonymity orders coming into force in late 2020. The Company has made attempts to identify perpetrators and remediate these concerns since then, however, lack of credible and accessible channels for community to report these allegations to the Company, lack of trust between the Kakuzi on the one hand and alleged victims of assaults and

OGM as important early warning tool It should include and or refer to key policies including: use of force, ethics and human rights policies, etc.

- **To remedy the concerns related to past alleged human rights concerns, IBIS proposes:**
 - **Seek in good faith to engage, collaborate and build partnerships** with reputable local human rights and women's rights organizations with the aim of enhancing the Company's human rights programme and possibly supporting Kakuzi develop survivor centred remediation mechanisms in the spirit of the UNGPs; Via the OGM to proactively investigate concerns reported by community members and employees related to possible human rights violations such as physical assault and GBV which may have been committed by some of its employees; and,
 -

non-governmental organizations representing them has undermined the ability of the company to achieve this.

IBIS recognises that Kakuzi is operating in an inherently challenging environment and faces a range of physical security threats including:

- Access roads and settlements across and located on Kakuzi land allowing criminal elements to penetrate and commit theft and other crimes;
- Legacy land and other issues have created a climate of tension between Kakuzi and communities increasing risk or likelihood of theft/crime or assault/altercation; and,
- Organised theft of avocado due to the establishment of a number of packhouses in the area.

Security guards and Company guards themselves reportedly often face threats to their personal safety whilst on duty at the hands of criminal elements and community members.

In an attempt to respond to these challenges and reduce risk of altercations and infringements between community/security the Company has implemented several management initiatives including:

- Training of security guards on human rights
- Revised security code of conduct
- Revoking of orders issued to security guards to arrest individuals suspected of carrying out criminal acts on Company property
- Introducing gender balance amongst security workforce (led by findings

of EITIs study)

- Devolving the security function to the departmental heads.

These measures had not at the time of field fact finding been fully successful in addressing the situation, and reported data at the time suggested security incidents had increased rather than decreasing, meaning potential for residual human rights risks and impacts remain. Evidence suggests this is because of (but not limited to) the following:

- Security guards may have historically received training similar to public security forces. This training was delivered by individuals who were former police officers or army officers. Kakuzi security guards undergo 'special task training', given to security guards who are manning stations with high incidences of threat or potential risk to the business. It was not clear from interviews what this special task training involves.
- Kakuzi in 2018 started training their security guards on security and human rights and this training was delivered by a Business and Human Rights Specialist. Since the training was initiated in 2018, Leigh-Day documented 21 allegations of assaults against members of the community. Whilst Kakuzi proactively introduced this training on human rights, the allegations documented by the Law Firm may indicate that training alone was previously inadequate to cause behaviour change among the security personnel. Since mid-2020 however, when Kakuzi overhauled their security system, there have been no security related human rights concerns reported against Kakuzi security personnel;

	<ul style="list-style-type: none"> • Kakuzi security guards pre-2020 were reportedly given the mandate to detain suspects. These instructions are documented in the Post Orders for Kakuzi Security Guards. Detention of suspects is understood by IBIS to no longer be mandated since the revision of the Security Management System in 2021; and, • Kakuzi had in May yet to develop a comprehensive human rights centred security risk and threats assessment (STRA) or security management plan that supports the Company to identify, evaluate and prioritise risks & likely security responses; understand & respond to community related concerns e.g. access for use of Company natural resources (firewood) or use of the Kakuzi roads; determine appropriate security arrangements and information mitigation plans and project related resources (number of security guards, adequate training of security guards, etc). • Given its challenging operating context without developing, implementing and monitoring an effective-human rights centered SRTA and security management plan, Kakuzi may continue to experience security and human rights risks. 	
Gender & Gender Based Violence and Harassment	<p>Actual or potential salient human rights risks and Impacts assessed in this area include:</p> <ul style="list-style-type: none"> • Possible: Sexual Harassment in the Workplace • Possible: Allegations of rape and attempted rape documented in the Leigh-Day case summary • Potential: Allegations of rape and defilement committed by Kakuzi security guards. 	<p>At policy level: To promote gender equality and women’s empowerment in the workplace:</p> <ul style="list-style-type: none"> • Carry out a gender responsive assessment of all company policies especially HR policies and procurement policies to assess whether there may be provisions that may implicitly promote some form of discrimination; <p>At procedural level:</p>

Literature illustrates a high-risk context for GBVH in commercial agriculture in Kenya and in East Africa which, disproportionately affects women, is widespread and can be termed as pervasive.

The Company has been the subject of several allegations of GBVH against employees in the workplace, reportedly perpetrated by security guards and other employees. These are both historical and current and documented in the following sources:

- Primary: Four (4) Testimonials given directly to IBIS during the HRIA engagements – four cases alleging sexual harassment at the hands of employees or Company managers.
- Secondary: Testimonials as part of Leigh Day case against Camellia PLC – 11 out of 80 claimants alleging human rights abuses on the part of Kakuzi were alleged incidences of sexual violence;
- Secondary: 3 allegations (in 2010 and 2011) reported by Rainforest Alliance and ETI. One of these allegations of rape was investigated by the Directorate of Criminal Investigations (DCI) and the survivor reportedly indicated that she had not been raped.

The HRIA has established reasonable cause to believe that there are past and continued GBVH incidents and associated actual and potential human rights impacts at Kakuzi due to the following:

- GBVH may have adverse impacts on individuals including impacting on their right to health which has a bearing on their physical, mental and

- Develop gender responsive action plan for Kakuzi including key initiatives such as:
 - Review effectiveness and enhance the SHARP Programme as a GBVH risk management and response programme, some of the elements of this should include:
 - Review the reporting channels and ensure that the hotline numbers are in the custody of a fully independent organization or institution. The custodians of the hotline numbers should be trained on how to engage GBVH survivors in a sensitive and human manner when recording concerns. They should work with mobile service providers to ensure that the caller identification is not visible to the custodians of the hotline numbers. Free consent should be sought by the custodians in recording personal information of the complainants, this information may include name of the complainant, department of employment, telephone number, etc;
 - Identify a pool of managers and employees (e.g the Public Health Supervisors) from each of the departments who can act as investigators of sexual harassment cases reported internally. The pool of investigators should be provided specialised training on human rights based investigations including techniques on the integration of survivor centred approaches in

sexual & reproductive health.

- IBIS is aware of twelve female survivors of rape allegedly committed by some Kakuzi employees (documented by Leigh-Day) and four female survivors of sexual harassment in the workplace (reported directly to IBIS). At a global level, incidences of GBVH are underreported and this primarily stems from fear of reprisals, stigma associated with sexual purity of women, or lack of faith in the criminal justice system.
- The same 12 female survivors represented by Leigh-Day may have received a financial compensation as part of the Kes. 696m settlement. This financial compensation however does not meet the UN GPs requirements of access to remedy. The alleged perpetrators have yet to be identified and for criminal justice processes to commence. Additionally, IBIS was informed by a key informant from the community that the settlement process did not include any measures to enhance the right to health of these female survivors especially on their mental health. IBIS observed that without adequate remediation measures being out in place by a multi-stakeholder team, these survivors may not be able to receive justice;
- Although the number of cases reported to IBIS are low, a clear pattern was drawn indicating that female employees who have fixed term contracts (FTCs) are unwilling to report concerns or incidents to the Kakuzi management because they fear that their contracts will not be renewed. There is a risk that concerns of sexual harassment may be underreported and this may be an indicator that the SHARP programme is not yet fully effective or trusted by employees as a safe channel for sharing grievances or for reporting sexual misconduct; and,

these types of investigations. IBIS recommends that Kakuzi work with the National Gender and Human Rights Commission (NGEC) to conduct these trainings;

- Conduct regular workplace safety risk assessment to identify locations within the plantation that may expose employees to human rights risks such as physical assaults and GBVH by either employees of the Company or criminal elements from the neighbouring community (can be undertaken within the STRA process);
- Consider partnering with organizations e.g. Nairobi Women Gender Violence and Recovery Center (GVMC) or other NGOs currently active in the delivery of GBVH training across the agri sector in Kenya to conduct specialised training on psychosocial support to all medical staff and the Public Health Team. Kakuzi may consider extending this type of training to medical officials in the neighbouring health centres who may be the first point of call by GBVH survivors from neighbouring communities;
- Identify male and female GBVH Champions from each of the departments and from each of the worker camps who can support the Company to engage at local level with employees on issues of GBVH and also act as possible channels of reporting such grievances;
- Invoke a zero-tolerance stance regarding complaints of

- IBIS noted that there were two allegations of rape that were investigated by the local police. In one of the cases, a female complainant from the neighbouring community claimed that she was raped as she went to fetch water in an area that neighbours the Company's boundaries. The matter was reported to the assistant chief in the area and later to the police. The claimant claimed that the assistant chief persuaded her and her husband not to pursue the matter. This matter was taken up by the Directorate of Criminal Investigation (DCI) who investigated the matter. The DCI took statements from the claimant, the assistant chief and the claimant's husband. The claimant then denied the rape had occurred. The claimant's husband indicated that the rape allegation was false and that he had allegedly been warned by a Kakuzi manager to inform his wife to stop trespassing to the Kakuzi forest. The conclusion of the investigation by the DCI was that the allegation was 'baseless'.

IBIS cannot and does not seek to further investigate or attempt to verify any of the above allegations in the scope of an HRIA and will not report or disclose any detailed information in respect of each in order to protect the identities and safety of claimants and alleged perpetrators. Where relevant (e.g. new cases) IBIS may, with the written consent of the survivors, refer the allegations to the requisite Tier of the OGM for resolution.

Kakuzi has taken several steps as a business to demonstrate its commitment to address any actual or potential human rights risks and impacts relating to GBVH including:

- Proactively and appropriately handled two cases of concerns or alleged

GBVH reported internally. This would include a review of the HR management of disciplinary process to ensure that alleged perpetrators are held accountable, and the sanctions implemented are used to deter others from committing such acts; and,

- Review the recruitment process for seasonal workers and ensure that the process is as transparent as possible including ensuring that those whose contracts are not renewed due to GBVH concerns are provided an opportunity to make formal complaints via the SHARP Programme.

For GBVH concerns related to actual and potential impacts and risks:

- Seek external mediation to engage and work in good faith with Ndula Resource Centre to ensure that survivors of alleged human rights concerns reportedly perpetrated by Kakuzi employees receive psychosocial support and this should be done without the identification of these survivors by Kakuzi. Kakuzi may work with the GVRC to engage Ndula to provide such services to those survivors willing to attend such sessions;
- The OGM once validated should then be refreshed/be communicated to neighbouring communities at an agreed frequency to explain how they can report concerns related to GBVH to Kakuzi for further investigation. It should be clear that community members can report anonymously and measures provided to demonstrate that Company will protect complaints

GBVH since 2018.

- Developed in 2018, communicated and recently revised (2020) a good practice aligned Anti-Sexual Harassment Policy which outlines and offers a robust set of reporting channels procedures depending on preference (without any hierarchy).
- Created and implemented Sexual Harassment Awareness and Reporting Programme (SHARP) anchored in the Anti-Sexual Harassment Policy. Implementation is supported by regular training on SHARP purpose and use, and an SHARP awareness week.
- Created dedicated functional roles/channels for the receipt of and sensitive handling of GBVH related complaints or allegations including, Clinical Services Team, Gender Committee.
- Recruited a dedicated Human Rights and Gender Manager in early 2021,
- Currently undertaking additional employee awareness/sensitization training on GBVH.

Notwithstanding these efforts by Kakuzi to mainstream management initiatives to tackle GBVH within the workplace, the HRIA engagements pointed to evidence of:

- Continued and potentially underreported /undocumented incidence of GBVH.
- Low usage of the SHARP channel for reporting.
- A mistrust amongst some employees of the SHARP programme as an independent mechanism for reporting on GBVH – perception /concern that cases via what's app go direct to the managers.

who feel at risk of retaliation by alleged perpetrators.

	<ul style="list-style-type: none"> • A widespread climate of fear of reporting or raising complaints (in general and specifically in relation to GBVH) in case of non-renewal of contracts or other forms of reprisal. 	
Labour Rights	<p>Actual or potential salient human rights risks and Impacts assessed in this area include:</p> <ul style="list-style-type: none"> • Potential: Casualisation of Labour and impact on human rights • Potential: Impediments to Freedom of Association <p>Casualization of Labour</p> <p>Workforce data reflects that, employees on short Fixed Term Contracts (FTCs) being continuously renewed comprise 78% of Kakuzi’s work force.</p> <p>The use of rolling short FTCs, especially where supply and demand dynamics mean a fluctuating number of seasonal workers are required, means these workers do not enjoy the same benefits as permanent workers. This reduces the commercial and other risks to the employer of a large permanent workforce. This effect, known as ‘Casualisation of labour’ is common across the agricultural sector in Kenya and, under Kenya law is not a material non-compliance, however it creates a level of job insecurity which renders FTC employees economically vulnerable, and can manifest in a climate of mistrust between workers and employers.</p> <p>Kakuzi has recorded grievances in relation to the relatively large proportion of</p>	<p>To enhance practical enjoyment of human rights including freedom of association and the right to organize and collective bargaining:</p> <p>Adopt the following remedial measures:</p> <ul style="list-style-type: none"> • Review recruitment policy for workers on fixed term contract with a view to: <ul style="list-style-type: none"> • Eliminate reliance of short Fixed Term Contract employees in areas of work that are not seasonal in nature, particularly where the contractual relationship lasts more than 6 months. • Limit the number of times a contract is renewed before the workers is employed on permanent terms or longer-term contract. • Provide policy direction and training to supervisors and managers on human rights risks inherent in fixed term contract and appropriate measures to mitigate such risks. • Rebuild trust and the Company relationship with the union membership and leadership at the enterprise level. To achieve this Kakuzi can adopt remedial measures at two distinct levels: <ul style="list-style-type: none"> ○ Formulating an Industrial Relations Strategy and

short term FTCs and has faced several labour disputes and litigations relating to unfair termination and summary dismissal claims (21). It has also in the recent past faced tense labour relations relating to alleged impediments to freedom of association – namely the dismissal of shop steward in 2017, dismissal of striking workers in 2015 and related to this the reported perception amongst some workers that management is subtly hostile to union membership and union activities at enterprise level.

The HRIA has established reasonable cause to believe that there are potential human rights risks linked to use of short Fixed-Term Contracts because:

- The wide use of short FTCs especially where there is little senior management level policy control and oversight of recruitment and renewal creates an enabling environment for human rights impacts such as sexual harassment and sexual exploitation; discrimination; lack of job security based on the contracting period and inability to predict whether the contracts will be renewed after the four-month period;
- The heightened risk of employment insecurity for FTCs workers who face limited obstacles to arbitrary non-renewal of contracts by their line managers or supervisors and considering the limited alternative employment prospects in the labour market in Murang'a county, FTC workers are in unenviable position where many of them may be constrained to choose to compromise the rights and freedoms at work in order to keep their source of income. This may explain the real or perceived fear of reprisals and a culture of silence that was evident

overarching policy that articulates the company's Industrial Relations Framework. In support of this framework review and update related policies relevant to the Industrial Relations approach e.g. Recruitment policy, dispute resolution (disciplinary and grievances), training of line managers and shop stewards, etc. The review of disciplinary policy and procedures affecting shop stewards and union members involved in disputes with management should be done with a view to enhancing the independence and impartiality of management led disciplinary processes. The disciplinary hearing panels should include an impartial chairman and an external observer where appropriate.

- Formulating an employee/employer communication, participation and engagement policy with a framework of multiple mechanisms for employee participation including green areas, social task teams, survey's, mentoring groups, employee bulletins, Wellness task teams, etc comprising of nominated employee representatives by the employees (irrespective of Trade union affiliation) and on a rotational basis. These will encourage participation, communication and gradually build trust between employees and management.
- It is recommended that an external facilitator /Industrial relations specialist be contracted to facilitate and support the implementation of the abovementioned.

during HRIA engagements, and that has been documented by other organizations including certification auditors.

Freedom of Association

At Kakuzi workers are in principle able to enjoy the right to freedom of association and the right to organize and collectively bargain which are protected by law as well as by the recognition agreement that Kakuzi signed with the Kenya Plantation and Agricultural Workers Union (KPAWU) in June 2011. The Company has also regularly engaged the Union in the negotiations of collective bargaining agreements (CBA) with the latest agreement running from January 2020 to December 2021.

In a workers satisfaction survey commissioned by the company published in March 2021, majority of unionisable employees expressed satisfaction with several union related matters.

However, in practice the situation may be perceived differently, and contradicting perspectives appear to exist amongst workers. While responses made by workers to the Employee Satisfaction Survey illustrate freedom of association *is not impeded* Kakuzi, permanent employees engaged during this HRIA process have raised outstanding grievances related to freedom of association.

Three pivotal incidents that appear to influence some workers perception that there is not full enjoyment of the right to freedom of association at Kakuzi are:

- The dismissal of a chief shop steward in 2017;
- The dismissal of striking workers in 2015; and,
- The closure of the local KPAWU office in Makuyu and the termination of

- The Company may also assign an officer competent in industrial relations and human rights to manage relationship between the company and the union.
- In conjunction' with KPAWU and ILO Kenya Office conduct joint training for all senior managers and shop stewards on ILO principles on freedom of association and the right to organize emphasizing on the rights and obligations of each party.

the local KPAWU representative by the Secretary-General of KPAWU.

A review of documentation provided by the Company shows that the proportion of unionized workers is extremely low. Managers reported that the proportion of unionized workforce has rarely reached 50% since resumption of unionization in 2011. Moreover, as shown in the table below, statistics provided to IBIS by Kakuzi indicate that in the first six months of 2021, the proportion of unionized workforce was highest in the month of February 2021 when 12% of the workforce was unionized.

The Company attributes the extremely low union membership to reluctance by workers to join the union arguing that some of them do not see any value in union membership. However, some workers and shop stewards attributed the state of affairs partly to perceived direct or indirect acts of intimidation or harassment by the Company. The three pivotal incidents listed above are considered to have influenced this perspective.

The HRIA review of evidence and apparently contradicting perspectives communicated by workers to different independent parties (satisfaction survey and HRIA) has suggested that company as a duty bearer may not have created an environment which gives its workers full confidence that union membership is welcomed. Instead, it may have created an environment where a culture of fear of reprisal, whether real or imagined, prevails, fuelled by a highly antagonistic relationship between its managers and shop stewards. The state of affairs seems to have been linked to the past action related to union activities that the management has taken. This underscores the need for management to focus on rebuilding trust and its relationship with the union membership and

leadership at enterprise level as it engages with branch level union leadership.

A review of HR management systems shows several good practices being implemented by the Company for proactive management and response to labour risks including:

- Regular meetings between shop stewards and management are held every four months
- Company regularly signs biannual CBA with the union
- Members of the health and safety committee and first aiders undergo regular health and safety training
- Company undertakes Occupational Safety and Health Risk Assessment
- Company maintains register of occupational accidents by division.
- Company undergoes health and safety audits.
- Health and safety committees conduct investigations into occupational health and safety incidents and recommends corrective action.
- Company maintains register of disciplinary cases and workers grievances.
- Fixed term contract workers are recruited at divisional level by their managers and supervisors
- In addition in recent months, following hiring of a new Shop Steward, union membership and participation has increased several fold.

However, gaps and residual human rights risks still remain:

- Perceived climate of fear/mistrust of management reported by some workers which may be a minority view point: Engagement with workers originally interviewed for the HRIA revealed mistrust of management

and concern that any performance issues or registering a complaint against management, would result in their dismissal or in the non-renewal of their contracts. **It is important to note**, these claims were not substantiated by the independent employee satisfaction survey conducted for Kakuzi or by any findings by IBIS pointing to actual cases of dismissal on these grounds. This therefore must be understood as based on perception amongst some of the workforce which may be influencing broader attitudes and never the less should be further investigated and addressed.

Land Rights

Actual or potential salient human rights risks and Impacts assessed in this area include:

- **Potential:** Historical Displacement of Land Rights on Kakuzi land
 - Right to Property
 - Right to Housing

Right to Property: The HRIA found that there are several potential claims for violations of the right to property arising from outstanding land tenure disputes between the company and a section of community including farmers groups, former employees, squatters, and several public institutions located within the company's land.

Right to Housing: The HRIA found that there are potential risks of forced evictions for communities and institutions residing on land held by the company since they lack security of tenure. The legitimacy of their tenure claim to the land is also disputed.

- **Develop a Land acquisition and displacement policy and procedure.** This is a policy and operational plan on land leasing and tenure management that complies with Kenyan law, good practice and human rights principles for responsible investment in land as reflected in international human rights standards. In particular, the policy should provide guidance on managing evictions and undertaking future land acquisitions in line with human rights standards and best practices including IFC PS5, General Comment No. 7 (1997) (CESCR) and Basic Principles and Guidelines on Development-Based Evictions and Displacement;
- **Develop and implement Stakeholder Engagement Strategy** with the affected community and human rights defenders with a focus on legacy land issues which should include policy and steps for providing security of tenure to beneficiaries of land donations;

The HRIA has established reasonable cause to believe that there are potential human rights risks and impacts because:

- A section of the community claims part of Kakuzi land as their ancestral land that was allegedly forcefully taken away from them and allocated to Kakuzi during the colonial era;
- Community members of Gaichanjiru claim at least 500 acres and other outstanding compensation from the Company based on alleged failure by the company to fully implement terms of a land exchange agreement between the Company and the community signed in 1986;
- Several former employees of the Company and squatters who are beneficiaries of land donated by Kakuzi have also been involved in land ownership dispute with the Company. These include Gathungururu Self-help Group, Gachangi Group Self-Help Group and Kakuzi Development Association; and,
- The neighbouring communities allege that several public institutions that have been built on Kakuzi land do not have land titles.

The Company has engaged in extensive efforts both via legal and non-legal channels in an attempt to resolve and remediate these grievances/land related disputes including through establishing elements of a management system focused on addressing land related risks including:

- Process for ensuring all necessary land titles and land and environmental permits are in place
- CLO's appointed who are based within the communities to provide linkage between the company and the community

- **Develop a human rights-centred broad Company level Stakeholder Engagement Strategy (with participation of stakeholders)** that aims to rebuild trust in the relationship between Kakuzi and its neighbouring communities. The stakeholder engagement strategy should articulate how the Company has identified, and will engage using appropriate tools and methods with each identified group, how this process will interact with the of the OGM, and how the parties will work collaboratively to identify and manage human rights related risks.
- **Social Investment Strategy:** Stakeholder Engagement process should feed into the participatory design of the annual social investment programme for Kakuzi. This should be based on engagement at the level of beneficiaries as well as leadership, and where possible look for 'win-win' opportunities for community owned and led initiatives which focus strategically on finding solutions for addressing key areas of concern/community grievances and which are most likely to mutually benefit the Company and the communities in order to increase their successful uptake and sustainability.

Operational intervention on Legacy Land

- Identify legacy land issues that are solvable through dialogue and based on human rights standards, with affected groups with the aim of finding mutually agreeable solutions while

- Ongoing engagement by CLO with historically land aggrieved parties
- Establishing (in early 2021) a stakeholder engagement and issues tracker within the Company data management system ('SID' or Social Issues Database) which allows for issues/incidents picked up at specific hot-spots around the site to be logged and reviewed and reported at HOD level every month, any recurring patterns analysed and fed-back into stakeholder engagement planning and activities on the ground.
- Establishing an operational level grievance mechanism that will streamline how grievances including land related grievances are received and handled/responded to internally.

IBIS observe that land related human rights risks and impacts (in particular legacy issues) even with the best intentions of the Company are inherent to its operating context and therefore may remain very difficult to unlock and or fully mitigate due to their complex history and intractable nature of disputes.

IBIS also observed that the land issues may be the root cause of the acrimonious relationship between the Company and its neighbouring community. As is noted in the prior, the concerns that have been documented by Leigh-Day and revolve around allegations of members of the communities trying to access Kakuzi property, to allegedly cross through the property to their villages or access the natural resources found in the Company. It may be perceived that the breakdown in the relationship between the Company and the communities, is exposing Kakuzi by feeding and perpetuating community actions such as protests and criminal activity e.g. organised theft of avocado. This situation has led the Company to react in order to protect its property at all costs, and this may

acknowledging that other issues may not be solvable to the satisfaction of all parties involved without involvement of the local courts;

- Ensure that the operational grievance mechanism (OGM) that is being developed provides for adequate and transparent pathways for receiving and addressing land related grievance;
- Undertake an audit of all past land transactions with the affected community groups with a view to establish potential gaps in the land transactions and taking appropriate remedial action. This should include providing restitution or just compensation where appropriate; and,
- Adopt a conciliatory position and proactive engagement with HRDs and affected communities. In particular, reconsider, the use of legal system as a strategy for engaging the comity and HRDs engaged in land rights advocacy.

have led to actual or the potential for severe human rights impacts.

Trust and Social License to Operate

Kakuzi's management system is missing several key policy level and procedural tools which may serve to strengthen its social license to operate going forward.

- **Land Acquisition and Displacement**

A coherent and well-articulated good practice led policy and documented approach to land acquisition and displacement and the avoidance or handling of evictions for Kakuzi is not in place.

- **Stakeholder Strategy and Engagement**

Kakuzi has yet to develop a robust and human rights centred approach to engaging proactively and in good faith with its community-based stakeholders to re-establish, strengthen and maintain its social license to operate. The approach to stakeholder management appears, until recently to have been reactive in nature and the potential for amicably resolving land related disputes is severely hampered by lack of trust.

Strategic Social Investment

In most cases, stakeholder engagement is undertaken under the auspices of the Company's CSR programme through which the company engages in social investments in education, health, rural infrastructure and other community

projects. The CSR programme is run by a CSR manager assisted by a CSR committee comprising all divisional managers. The committee meets quarterly to consider and approve requests for support channelled by the community through the CSR manager, his assistants or divisional managers. The community requests may be conveyed by school heads, local leaders including village elders, chiefs and members of county assembly (MCA). There is an annual CSR budget and quarterly CSR Board Reports.

Some of the initiatives that have been supported by the company include:

- Community beehive project for Kakuzi Hills Self Help Group. The company supported the community to produce, process and sell honey.
- Provision of water to Kinyangi community and Robero community. This included digging boreholes and provision of piped water.
- Rehabilitation of Kahuruko-Sunset Road in Ithanga.¹⁹

While the CSR programme is welcomed by the community, it has not in its current form managed to assuage community grievances towards the Company. This may be attributed to several factors:

1. The CSR programme is top down and philanthropic in nature and not underpinned by a strategic approach to stakeholder engagement, working to target address wider community human rights grievances

¹⁹ See

relating to land, GBHV and security through its interventions.

2. Further, as acknowledged in the UNGPs, CSR does not in of itself necessarily address a company's minimum human rights obligation to **respect** human rights - a fundamental duty imposed on it by UNGPs.
3. While the CSR committee undertakes needs assessments and engages community through their local administrators, school administrators and local political leadership, some local administrators and community members call for more direct engagement with actual beneficiaries of the projects in order to encourage a more bottom up, community led or community owned approach to CSR in support of deeper trust building with the community.