

**KAKUZI 2023 INDEPENDENT MONITOR REPORT REGARDING  
IMPLEMENTATION: PUBLIC SUMMARY**

This is the first report from the Independent Monitor during the implementation phase of the Operational Level Grievance Mechanism (“OGM”) at Kakuzi Plc (“Kakuzi”). The OGM is called SIKIKA, which in Kishwahili means “to be heard.” Under the current Terms of Reference, the Independent Monitor is to provide annual reports regarding the implementation of the OGM, including assessments of the rigor of the OGM’s investigation and dispute-resolution process, the outcomes of the specific grievances received in terms of rights-compatibility, the adequacy, appropriateness and effectiveness of supports and safeguards for complainants and vulnerable groups, collective remedy options or programs that could deliver remedy more effectively and/or prevent future grievances, risks to effective OGM implementation and independence, and recommendations for improvements of the OGM process and outcomes. Under the Terms of Reference, the Independent Monitor will prepare an internal report, and a separate public summary of that report.

We note at the outset that the Independent Monitor has received excellent cooperation in preparing this assessment, and a welcome embrace of suggestions made during the course of it. Tier 1 of the OGM, which is managed by Kakuzi and addresses operational grievances occurring during normal business operations, has been operational since July 2021. Tier 2 of the OGM, which is an independent process for grievances involving allegations of severe human rights impacts that have been caused by, contributed to, or are directly linked with Kakuzi and/or its business partners, has been operating since April 2022 under a structure enhanced with the assistance of Triple R Alliance (“TRA”).<sup>1</sup>

The OGM is operating against a highly complex set of dynamics, including latent and longstanding tensions with certain segments of communities that surround the operation. In addition, Tiers 1 and 2 have faced a range of challenges, including – for Tier 2 - an influx of more than 1600 claims related to a security-related event from 2014. While adjustments and enhancements should be considered for certain areas, as discussed in detail below, the OGM has enlisted well-known experts to assist in key functions and provide external advice, is well-resourced and supported by Kakuzi management, Kakuzi’s board of directors, and an Independent Human Rights Advisory Committee (“IHRAC”), is receiving a steady stream of grievances, and is remediating negative impacts where they are found to exist. There is little question that it is being implemented in good faith.

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<sup>1</sup> A summary of SIKIKA’s processes, and the scope of Tier 1 and Tier 2, appears on the Kakuzi website at <https://www.kakuzi.co.ke/2021-operational-grievance-mechanism-sikika>, <https://www.kakuzi.co.ke/documents/normal/kakuzi%20operational%20grievance%20mechanism%20-%20s.pdf>, and <https://www.kakuzi.co.ke/sikika-process>. A schematic appears at Appendix 1.

This report is based on an extensive review of documentary materials, a site visit during January 2023, and interviews with a wide range of relevant stakeholders.<sup>2</sup> Pursuant to the Terms of Reference for the Independent Monitor, this report is provided to Kakuzi in full, and a public summary is being made available in English and Kiswahili.

## **I. Executive Summary**

*Background.* The OGM was created as part of a suite of efforts undertaken by the company to mitigate and prevent negative human rights impacts within the workforce and larger communities. Those efforts appear to be making progress. There is a perception among many stakeholders that Kakuzi has entered a new phase of openness and community engagement, and stakeholders noted that the efforts are making a difference on the ground. As Kakuzi is one of the first companies in the country to undertake such efforts, the work is commendable. However, there remain substantial tensions with certain segments of the local community, who remain frustrated over differing unresolved historical matters, which has contributed to some advising us that they have declined to access the mechanism out of lingering distrust.

The OGM was developed after extensive local stakeholder consultations, and its design is consistent with best practices for OGMs. It operates according to two distinct tiers – one addressing operational grievances, the other severe human rights claims. Both tiers are overseen by well-qualified professionals with impressive human rights backgrounds, and Tier 2 is supervised by an independent committee that includes the country’s former Attorney General and a member of the UN Human Rights Working Group for Business and Human Rights. The OGM encompasses all potential negative human rights impacts, and does not have a substantive limit or focus.

*Cases:* To date, in excess of 500 claims have been submitted to Tier 1, and over 1700 claims have been submitted to Tier 2. The cases for both tiers are tracked according to a variety of measures. Most of the claimants who have proceeded through Tier 1 have expressed satisfaction with the process. Satisfaction with Tier 2 is much lower, as most of the claims relate to an incident from 2014,<sup>3</sup> where after investigation, 95% have been dismissed for a lack of credible evidence.

*Context:* SIKIKA is being implemented against highly complex dynamics. Those include perceived historical, individual and collective injustices connected to Kakuzi involving land acquisition and usage issues, access issues,<sup>4</sup> environmental matters and other concerns; a recent

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<sup>2</sup> See Appendix 3.

<sup>3</sup> As we understand it, there was substantial damage to property by claimants reported, and after a few days, the demonstrations led to violence. The police deployed their riot squad. Further property damage took place, and after a few days, the police increased their presence. The police reportedly fired tear gas and warning shots in response to demonstrators throwing stones and blocking the highway which links Nairobi to the main towns of Meru, Nyeri and Nanyuki. The UK lawsuit filed and settled included 35 individuals who asserted injuries in connection with this event though the prospect of additional claimants very much remains.

<sup>4</sup> We note in particular questions related to access roads, which are being addressed by the company through a separate progressive measures program, which also formed part of the UK legal settlement. See <https://www.leighday.co.uk/news/news/2021-news/settlement-of-claims-against-camellia-plc-of-allegations-of-serious-human-rights-abuses-in-kenya/> (“The building of three new roads, two of which cross Kakuzi’s land, which will be accessible by motorable vehicle without any requirement to obtain a licence, thereby allowing the communities better access to local amenities and services.”)

legal settlement in the UK<sup>5</sup> in which some community members reportedly received compensation, leading others in the community to seek and sometimes expect the same outcomes without a full appreciation of the need for credible evidence or an understanding that the claims would be investigated; high levels of poverty and a lack of economic opportunities; a difficult relationship between Kakuzi and certain local civil society organizations; the fact that several thousand individuals live and work on Kakuzi property; courts that are not fully trusted by some community members; the sheer number of local communities, and their differing interests and relationships with Kakuzi, many of which are highly positive and others that may be less so; and unions that could be stronger. In particular, we have not investigated the factual merit of any grievances, including complaints submitted by groups (as opposed to individuals) that remain unresolved. We also believe some of those group complaints do not necessarily raise human rights-related grievances and some are otherwise beyond the mandate of the OGM, but are more appropriate for targeted community relations efforts by Kakuzi. We further understand that some of the group complaints may be simply the product of reasonable business-decisions that cannot be altered. Nonetheless, we have suggested that the company reexamine its position regarding some of the group complaints, as their lack of resolution creates underlying tensions with certain segments of the local communities in a manner that appears to impact use of and trust in the OGM.

*Preliminary Observations:* The OGM separates operational grievances (Tier 1) from more severe human rights grievances (Tier 2), and creates an independent process to receive, review and provide remedy for those severe grievances. It integrates substantial safeguards for claimants, while contemplating rights-compatible remediation. Tier 1 is substantially implemented, and receiving roughly 20 grievances per month. It is functioning largely as designed and to the satisfaction of most – though not all - claimants who have gone through the process. Tier 2 is still in its formative stage, and in some respects is operating with two functions: as a historical remedy program, seeking to investigate and address the some 1600 claims filed in relation to the 2014 incident, and an OGM that is receiving more recent and current claims of human rights abuses. Tier 2 is well resourced, attempts to adhere to its processes and largely acts consistent with its processes. Tier 2 conducts fulsome investigations into claims, scrutinizing the evidence claimants present. It is attentive to concerns about confidentiality and safety, and progressing toward completing the investigations and resolving the claims that have been filed. As Tier 2's staff are spending substantial time addressing the mass of 2014 claims, which appear to outnumber the total participants present at the historical event by a ratio of 5:1,<sup>6</sup> the roughly 106 non-2014 cases (and in particular cases allegedly occurring more recently) that have been filed have received perhaps less dedicated focus than if the 2014 cases were not present. While we believe the ongoing investigations should be completed for the remaining 2014 cases, we suggest the non-2014 cases – especially those allegedly occurring more recently - should be addressed on a priority basis, since there may be a better ability to take steps to prevent future harms, whether through policy changes, employee discipline, training or otherwise. Acknowledging that some claimants have admitted to participating in schemes to obtain false documentation, and medical

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<sup>5</sup> See Appendix 4.

<sup>6</sup> Of the some 1600 claims citing injuries connected to the 2014 incident, mathematically 80% or so should be false, considering that information reviewed indicates that up to 400 people attended the event, and several dozen reportedly were previously compensated as part of the UK settlement; practically, the number injured is likely lower, since the investigations undertaken and stakeholder interviews confirm that most who attended the 2014 event were not arrested or did not suffer a significant physical injury.

institutions have reported that many claimants were not treated at their facilities as the claimants maintained, we further suggest increased reliance on non-financial remedies for those 2014 cases that cannot be established as false - and in particular where the Head of the IHRM believes evidence is approaching a 50% threshold in terms of the applied burden of proof. Further, given that very substantial dismissal rates of the 2014 cases create concerns around external trust in the mechanism, we suggest the company consider undertaking a strategic approach to stakeholder engagement and referrals to Kakuzi community relations programs.

*Methodology.* The Independent Monitor team assessed the OGM through a comprehensive review of documents and extensive witness interviews, including interviews of claimants and community members. That information was considered against a template consisting of 36 indicators and 84 sub-indicators, which seek to translate UNGPs 22, 29 and 31 into an assessment framework.<sup>7</sup> Our evaluations of both tiers, and our recommendations, are detailed below.

*Analysis:* At a high level, both tiers of the OGM are operating with integrity, dedication, and a seriousness of purpose. While we have suggestions for improvements, they should not be construed to imply that either tier of the OGM is ineffective or faulty, particularly at the relatively early stages of their existence and given the complex local dynamics. To the contrary, consistent with the objectives of OGMs, both tiers of the OGMs are well known, grievances are relatively easy to lodge, the OGM is being utilized, most affected stakeholders appear comfortable lodging grievances, those grievances generally are addressed by the OGM in a constructive manner, and negative impacts that are identified generally are remediated through a human rights-compatible approach.

- **UNGP 22:**

- Observations: The OGM was established as one pathway of a larger ecosystem of remedy, without any substantive limitations. Tier 1 has received a wide variety of grievances, while most of the human rights cases in the early stage of Tier 2 have pertained to the 2014 incident. Remediation decisions for Tier 1 are developed by a Grievance Committee, while for Tier 2 remediation decisions are largely left to the discretion of the Head of the IHRM. In practice, remedy has included referrals to doctors, engagement with the state, changes to policies, repayment of wages, moving workers, and similar steps; for Tier 2, it has included compensation, though there are delays related to confirming that claimants have not already received compensation for the same harms. In addition, while stakeholder feedback was mixed overall, many claimants and community members remarked that SIKIKA provided an avenue to get in touch with the company to register concerns where no previous channel existed, and believed that SIKIKA was the sign of a “new” Kakuzi that is more open to community engagement and concerns.
- Recommendations: We recommend: developing guidance on the kinds of remediation that should be considered in different circumstances - that might include discussions of “causing and contributing” to negative impacts, as opposed

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<sup>7</sup> See Appendix 2.

to being “directly linked” to negative impacts, as they are contemplated under the UNGPs<sup>8</sup> in the context of remedy considerations, which will help enhance the OGM’s consistency and predictability.

- **UNGP 29:**

- Observations:

- Workers, suppliers and visitors can submit claims directly to the OGM, without first exhausting other avenues, and the available pathways are actively used. The OGM does not preclude access to alternative state-based processes, and we have seen no evidence that claimants have been discouraged from its use and/or encouraged to seek remedy through other channels instead of the OGM. The OGM’s procedures expressly contemplate addressing remediation for harms, and remediation has been applied in practice. For Tier 2, the quantum of financial compensation is tied to amounts the Head of the IHRM believes is equal to or greater than damages that could be obtained before Kenyan courts, with reference to a detailed and well-supported matrix developed by the Head of the IHRM and an outside law firm based on substantial legal research; however, claimants have reported disappointment that the amounts are not higher in light of community rumors surrounding amounts the plaintiffs in the UK litigation may have received. There is a binding agreement if claimants and the company reach agreements that involve monetary compensation. That process contemplates independent counsel for the claimant, and experienced pro bono counsel have been providing representation. While counsel have not conducted separate factual investigations into the underlying issues, they have expressed the belief that the OGM’s investigations are thorough and the process and outcomes are equitable.
    - Remedy is provided if the Head of the IHRM determines that the evidence more likely than not confirms alleged facts. In practice, even applying a generous analysis, it has been difficult for claimants alleging harms related to the 2014 incident to identify and present credible evidence. Much of the documentary evidence presented has been confirmed as false. Some of the institutions allegedly providing the treatment have disavowed the documentation and confirmed that they have no record of the claimant being treated in 2014, though sometimes their records do not go back to 2014. Some claimants have admitted procuring false documentation and that they were not injured, explained the scheme they pursued, and identified others who pursued the same scheme.<sup>9</sup> Others, after being told they must present medical evidence to support their claims, have simply not responded. In addition, most claimants’ witnesses reasonably have been found to lack substantial credibility for various reasons, including

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<sup>8</sup> UNGP 22 provides that where businesses “have caused or contributed to adverse impacts,” they should provide for or cooperate in their remediation

<sup>9</sup> In connection with OGMs involving other companies and operations, there have been reported concerns about individuals in local communities seeking to take advantage of potential claimants. That may occur, for instance, through seeking a fee for progressing a grievance by falsely alleging expertise or inside connections, or a commission for any successful outcome. We have not investigated that issue in relation to Kakuzi, but recommend that stakeholders are attentive to such circumstances.

recollections that differ from the claimants. As a result, without credible documentation, witnesses, or confirmation of treatment by an institution, 95% of the 2014 cases have not led to compensation being provided. That result is not surprising given the number of claims alleging harm from the 2014 incident versus the number of individuals that seemed to be present; many stakeholders indicated they were not surprised that most claims have been dismissed as false, and essentially every external stakeholder referenced the belief that false claims were being presented. However, given the evidentiary challenges and to build and maintain trust in the OGM, we suggest a graduated approach, with an increased emphasis on non-financial remediation and collective company-driven programs, to limit the feeling of an “all or nothing” outcome. That will be particularly important for claims that cannot affirmatively be shown as untrue, even if the total body of evidence does not establish a likelihood that the alleged facts are true.

- Despite the expertise and experience of the Head of the IHRM, and while the evidence in the grievances lodged thus far is often clear, there is limited instruction in the OGM Manual as to how she should balance the probabilities of any given case.<sup>10</sup> In addition, we note that Tier 2 states that the OGM should prioritize non-financial compensation over financial compensation, though in practice the Head of the IHRM evaluates remedy on a case by case basis without emphasizing one form of remedy over another. In a similar vein, although the OGM Manual states that cases are dismissed if they cannot exceed a 50% threshold of probability, in fact the Head of the IHRM has authorized non-financial remedies, such as counseling or training, regardless of whether she is satisfied that the burden of proof is met. It will be important to build on that approach, as engagement for OGMs should occur on two levels – evaluation of the specific grievance filed, and dialogue around the underlying concerns that may be motivating the grievance. Although an inquiry may conclude that the request for compensation lacks credible supporting evidence, at least for some claimants Tier 2 can consider alternative remediation approaches to provide some level of assistance.
  - Finally, while we have no concerns about the independence of Tier 2, which has many built-in safeguards, given the adjudicative nature of Tier 2 and the importance of the independence of the Head of the IHRM, we note that Kakuzi pays the salaries of the Tier 2 participants.
- Recommendations: We recommend: clarifying the Manual to acknowledge that a claimant may refuse to consult a lawyer, and how that situation is addressed; making clear that remedy will be considered on a graduated basis depending on the relative merit of the claims being submitted, rather than giving the impression of an “all or nothing model” reliant on financial compensation, and consider ways to supplement non-financial remedies (particularly for claims with some modicum

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<sup>10</sup> We do understand that the investigation team has criteria that they use to evaluate whether the evidence meets the relevant threshold.

of evidence); providing all claimants at least with assistance in accessing community and other social programs, and engage with relevant local community leaders about potential collective programs since access to credible evidence regarding the 2014 incident has proven difficult; engaging with chiefs and community leaders about potential additional bodies of evidence, where feasible; developing additional guidance as to how claims should be considered and evaluated under the standard of proof that has been established, which can help bolster the perceived fairness, legitimacy and predictability of the mechanism; amending the OGM Manual regarding non-financial compensation to make clear that the Head of the IHRM may prioritize financial or non-financial compensation, to match the current practice; considering means of enhancing the appearance of independence for Tier 2 surrounding its funding activities, such as having the IHRAC maintain the ability to recommend to the board the staffing and salaries of Tier 2's members; and developing further guidance regarding how the Head of the IHRM should evaluate evidence against the relevant burden of proof.

- **UNGP 31(a): Legitimate**

- Observations:

- There are elements of independence and accountability built into the OGM's procedures, and they are respected in practice. Most obviously, they prominently feature an independent process with Tier 2 and the involvement of the Head of the IHRM, a very well-respected attorney and former judge, and the oversight of the IHRAC. Both tiers also have an appeals process, and the governance structures clearly define appropriate roles and responsibilities. However, Tier 1 – being operationally focused – is not independent, and the lack of independence has created a level of cynicism with some potentially affected stakeholders. There also is a perception among some stakeholders that Tier 2 is not truly independent, as it was established by the company. While the appeals process has been used for Tier 2, it has not been used for Tier 1, even by claimants who have disagreed with the outcomes of their grievances.
    - There have been more than 2000 grievances filed across both tiers since July 2021, signifying at least some level of trust in the mechanism. While most of Tier 2's claims relate to the 2014 incident, there have been roughly 106 non-2014 claims submitted addressing a range of serious human rights issues. For Tier 1, most claimants report satisfaction with the process; most claimants are not satisfied with Tier 2, likely because of their disappointment with not receiving remedy and perhaps lack of full appreciation that their claims will be investigated. Some of the collective grievances, which also generate distrust, might be reconsidered by the OGM – such as one case involving relocation compensation - and the OGM might affirmatively seek out some group complaints that have not

yet been lodged.<sup>11</sup> Others may be outside the scope of the OGM, but we encourage the company to consider approaches to address them.

- The OGM is attentive to safety concerns for claimants and witnesses, and takes active steps in that regard. There is a separate entrance to access the office for Tier 1, and mechanisms for anonymous reporting. Tier 2 is located off-site in an office building among other businesses, without signage to indicate its purpose. The OGM Manual places a premium on claimant safety, and internal and external stakeholders generally did not believe that individuals were refraining from accessing the mechanism because of safety concerns.
- Recommendations: We recommend: that the OGM consider increased socialization of the governance and structure of Tier 1 and means of enhancing awareness of Tier 1's appeals mechanism through references in letters sent to claimants, forms and other steps; continuing socialization efforts around the independence of Tier 2; considering approaches to further generate satisfaction and trust even in those situations where claimants have not met the burden of proof, such as the graduated approach to remedy and additional collective programmatic approaches; and reviewing and actively seeking to learn about collective grievances, and ensuring outcomes are equitable and rights-compatible.
- **UNGP 31(b): Accessible**
  - Observations:
    - The OGM has undergone extensive promotional efforts, as every member of the workforce has been trained on the OGM, there have been numerous community meetings about it, there are relevant infographic posters in every office and throughout the operation, along with SIKIKA key chains, PPE referencing SIKIKA, and other measures.<sup>12</sup> A "SIKIKA Week" is planned for the summer. Most interviewees believed affected stakeholders were aware of the OGM and how to report claims, however, a few community members and leaders suggested the mechanism was not well known in their communities, providing opportunities for enhanced socialization.
    - There are numerous channels to lodge grievances, including in person, through a hotline, using email, contacting the Grievance Officer, and contacting a supervisor. Referrals also have been made from health clinics (including in relation to domestic violence), from local chiefs, from priests, from village elders and from government agencies. Tier 1 is also planning to actively solicit claims from Heads of Departments as a means of further generating potential claims, and we have provided further suggestions for consideration.
    - Barriers to claims, such as illiteracy, the lack of telephones, and safety, have been considered and addressed through the presence of the multiple

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<sup>11</sup> To the extent that Kakuzi believes that collective complaints are inappropriate for the OGM, it may wish to address such cases through other process, including its engagement with local communities.

<sup>12</sup> See Appendix 5.



reporting channels, permitting anonymous claims and the offsite Tier 2. Many of the key staff who can receive claims are women. The ability to appoint expert advisors likewise is helpful in this respect, and Tier 2 is considering how Zoom can be used for claimants no longer in the area.

- The OGM’s procedures and Manual strongly prohibit retaliation against individuals because they lodged grievances. The Head of the IHRM also undertakes risk assessments to identify potential safety and retaliation concerns, and can investigate claims of potential retaliation. While no claims of retaliation have been lodged, some affected stakeholders expressed concerns that filing grievances may lead to workplace retaliation. This reportedly has led some claimants not to file grievances about PPE, or to file one grievance but not a second for fear of repercussions associated with being perceived as a serial complainer. Some stakeholders reported that they had heard managers telling employees that the managers will know if you file grievances, and there would be job impacts. The number of anonymous grievances could be attributed, in part, to this concern. We also caution the OGM to pay attention to potential community retaliation against claimants, where employee disciplinary actions are contemplated. In a related vein, OGM personnel and the company take confidentiality seriously, and the OGM procedures to respect confidentiality are generally followed. We do suggest that before a case is transferred from Tier 2 (a confidential process) to Tier 1 (where the company may learn the identity of the claimant), consent is obtained and documented. Likewise, we suggest that consent is explicitly obtained and documented before contacting witnesses a claimant lists (although that may be implicitly understood from the claimant’s listing witnesses who can support their claims). Finally, while there have not been instances where allegations of criminal activity have been shared with or sought by the police, it may be prudent to consider trying to negotiate with the police an MOU that addresses how and when evidence of potential crimes will be shared.<sup>13</sup>
- Recommendations: We suggest: continued socialization efforts around the OGM, including in more remote communities; continuing efforts to solicit claims from heads of departments, and considering locating grievance offices in remote communities impacted by the company (or periodic travel by grievance personnel to accept and provide feedback on claims); developing a strategic and immediate program to address potential fears of retaliation for reporting, including in the workforce and, if possible, in local communities (e.g., communications, training supervisors and managers, “bystander training “(e.g., training individuals to report issues they see involving other people, who may be reluctant to speak-up themselves), asking claimants about retaliation concerns, tracking employment status, promoting objective workplace and hiring practices and tracking potential retaliation concerns, etc.); bolstering confidentiality in sharing information

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<sup>13</sup> We understand that, to date, the police have not been responsive to engagement from the Head of the IHRM.

between Tier 2 and Tier 1, documenting consent to contact witnesses, and anticipating public security requests.

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

- Observations:

- For both Tiers 1 and 2, the OGM has detailed implementing procedures. For Tier 2, addressing potential severe human rights impacts, those are supplemented by an impressive set of forms to ensure consistency, and a checklist on the inside cover of each file to confirm that the OGM's processes are carried out in practice. There are clear and simple infographic posters for Tier 1 and Tier 2 that have been published widely, including in the grievance offices themselves, which contain information about the OGM's primary structure, processes, timelines and key steps. The posters appear in multiple languages to help explain the processes further. Interviews and case files indicate that these steps have largely been followed in practice, including how cases are considered and addressed, and the various roles and responsibilities within the OGM. We also understand that claimants are apprised about the OGM's processes at the outset of a case, in addition to their being publicly available. However, while the OGM is well-known and it appears potentially affected stakeholders understand how to access it, and the process post-filing is explained and appears on the infographic posters, the post-filing process remains misunderstood. In addition, while most of the relevant forms and documents related to Tier 2 are in English, many claimants are illiterate and/or cannot read English. In each case, OGM personnel translate the forms orally and explain their meaning in a language the claimant can understand, but the OGM may wish to have some of the forms translated or at least document in the file each time the documents are orally explained or translated. Further, although the OGM Manual addresses in depth cases that are illegitimate, allowing for dismissal at the triage stage, the OGM's approach to early dismissals is not clearly explained in public facing documents and could be communicated in a more robust manner; to that end, the company should consider providing more details about how grievances are considered, such as through FAQs or town halls. Also regarding the Manual, the OGM's processes do not state that there is a right to appeal cases deemed illegitimate, but we understand that in practice all claimants have that right, and the Manual should be revised accordingly. Finally, while Tier 1 has adhered to its relevant deadlines, we note some of the delays associated with Tier 2 have created frustrations for claimants, leading some claimants to state that would not access the OGM again.
    - Tier 1 and Tier 2 are staffed separately, allowing for better and more tailored resourcing evaluations. Tier 1's staff are able to capably address grievances that are filed within the relatively short (30 days) indicative timeframe, and it is overseen by the Gender and Human Rights Manager, a highly experienced and deeply sophisticated human rights professional

with a civil society background. Tier 2's resources have swelled dramatically since it came into being, and now has 10 personnel (the Head of the IHRM, 4 investigators, 3 legal assistants, a data manager, and a receptionist to help coordinate claimant interviews and attendance). Each of Tier 2's representatives are highly qualified for their roles, and the team has a good gender balance. While the costs associated with Tier 2 are significant, IHRAC and Kakuzi board members expressed full support for the resources needed to support the OGM. Nonetheless, the massive volume of claims has impaired the predictability of the OGM, as addressing the 1600 claims require substantial resources, impacting the ability of the OGM to investigate the roughly 106 other claims, some of which are more recent. While the 1600 claims should be investigated and brought to conclusion in an orderly, effective and rights-compatible manner, we suggest that the expert attention of the Head of the IHRM perhaps balance toward serious contemporaneous human rights abuses. That may necessitate additional resources, at least on a temporary basis.

- The OGM's processes are intentionally flexible, and allow for adjustments depending on the needs of claimants and the facts of each case.
- As a general matter, the OGM tracks cases against its indicative timeline and core processes, and follows its processes as contemplated.

- Recommendations: We recommend: continued reinforcement and socialization about the OGM's processes; amending the OGM Manual and relevant processes to make clear that appeals of claims deemed illegitimate can be lodged; considering the resourcing of Tier 2 to allow the OGM's leaders to focus on allegations of more recent negative impacts, while bringing the 2014 (and other older) cases to orderly resolution; for Tier 2, documenting in the file when translations of documents and decisions have been provided (or obtain translations of those documents); considering additional steps to make the OGM's processes known, such as through FAQs or town halls.

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

- Observations:

- Under Tier 1, many of the claims involve joint fact-finding, and thus claimants are apprised of the results in real time, in a participatory manner. For Tier 2, each claimant is advised of the relevant investigatory facts. In some instances for Tier 1, claimants have not understood the outcome of the OGM's analyses. Written communications might be written in simpler language, but we encourage Tier 1 to invite each claimant to a meeting where the status can be explained, documenting that such an invitation and/or meeting took place. At that meeting, the OGM might specifically ask claimants whether they have any additional information that might assist in understanding or validating their claim, or otherwise explain the status.
- For Tier 2, claimants have been referred to counselors, medical professionals and outside lawyers. Claimants advise that those experiences

involving independent counsel have been positive for most claimants, who have relied on the lawyers for advice in understanding their rights and options, and assistance with the process. There are pathways for victims to seek compensation under Kenyan law related to victim assistance, and while courts also are open for claims, concerns have been expressed about the reliability of and confidence in the courts and that Kakuzi may seek the dismissal of historical claims based on statute of limitations and similar legal grounds.

- Recommendations: We recommend: considering closeout meetings with Tier 1 participants (to the extent they are not always done), and documenting those meetings, to ensure they understand the status and whether additional information would be helpful. We also suggest that Kakuzi carefully consider all relevant factors before seeking to rely on statute of limitations or other legal, non-fact based defenses, to the extent claimants wish to file historical cases with courts.
- **UNGP 31(e): Transparent**
  - Observations:
    - For Tier 1, claimants generally are invited to participate with fact finders who are considering their claims; they thus have real time understanding of how their claims are progressing. For Tier 2, the process contemplates that the Head of the IHRM will communicate the outcomes of any fact finding with the claimant, before any decision on remedy is rendered. We understand that practice typically is being followed. The OGM should consider notifying members of groups associated with collective claims about outcomes, and not just the representatives, and providing periodic updates to claimants when there are delays in the process.
    - A great deal of data is collected regarding both Tier 1 and Tier 2. That includes detailed information about the nature of claims filed, the reporting mechanisms being utilized, which plantation is involved, the duration for each step in the process, and the outcomes of the grievance. The mechanism also tracks whether the claimants accept the process and outcomes. Most of that information is made public as to Tier 2, including in a lengthy and detailed report on the progress of the OGM. While a great deal of information also is tracked regarding Tier 1, there is some public reporting on it in the 2021 Kakuzi sustainability report that appears on the company's website. While that information is positive, given the amount of data that Tier 1 collects and tracks, it might consider making more of that information public in the spirit of transparency.
    - Regarding Tier 1, management is actively engaged, and receives monthly reports on the OGM's progress, including descriptions of each claim filed, along with relevant metrics for the month. Kakuzi's board of directors also receives periodic reporting. For Tier 2, the IHRAC receives monthly written reports on the OGM, the number of cases filed, the progress of existing cases, and there are quarterly meetings to discuss the OGM. Information about Tier 2 also is shared with the board of Kakuzi. Both

Tier 1 and Tier 2 report regular engagement with each other to discuss trends, patterns and issues, and enable changes to policies and practices at Kakuzi.

- Recommendations: We recommend: continued communication with claimants while their cases remain under investigation and consideration, and an approach to address individuals who are part of group claims; and Tier 1 should consider publishing additional metrics and indicative information about the functioning of the OGM.
- **UNGP 31(f): Rights-compatible**
  - Observations:
    - Remedies are considered and provided to try to restore individuals to their pre-harm states, consistent with principles of compensation, rehabilitation, satisfaction, restitution and/or guarantees of non-repetition. Under both tiers of the OGM, remediation is tailored to the needs of individual claimants. For Tier 1, it has included restitution, such as the payment of lost wages; rehabilitation through access to counseling and other services; satisfaction, including apologies; and steps to prevent recurrence through trainings, policy adjustments, employment actions and other such activities. Tier 2 contemplates a similar array of measures, including educational or agricultural support, literacy training, and other tailored resolutions, though fewer cases have proceeded to completion. Claimants generally felt supported and respected in the process and that the OGM was responsive to their requests, though there are expected complaints from claimants who requested remedy and did not receive what they asked for. Nor is there anything in the design of the OGM, nor how it functions, that prohibit individuals from pursuing claims through other channels and claimants are informed of their rights to pursue cases through other channels; to the contrary, the OGM Manual provides that claimants are to be informed about their rights to pursue their case through the appeals mechanism or the legal system if they disagree with the outcome.
    - Certain stakeholders failed to fully understand (and thus expressed concern around) the manner in which investigations and fact-finding were conducted within Tier 1. Specifically, they expressed concerns that Tier 1 is not independent, not appreciating that it is designed to serve as a management-driven mechanism, and that it does not conduct full-blown investigations, not appreciating that by its nature it conducts joint fact-finding. They also appeared to evidence a lack of understanding of the reasons for OGM decisions or the content of OGM letters. For Tier 2, there were some concerns about an overreliance on medical documentation, but the investigations themselves appear thorough and expertly performed. While some claimants have been satisfied with the Tier 2 outcomes, most expressed frustration that their claims were not deemed valid or that the compensation amounts were lower than hoped. While outside pro bono counsel have considered the process and outcomes to be fair, and local chiefs and community leaders generally were positive about the OGM and the outcomes (though not

always), certain local civil society organizations are highly critical with concerns that should be taken into account for process improvements through direct engagement, if possible.

- The OGM and IHRAC include experts who can determine and advise on remediation, the Head of the IHRM has sought expert guidance in developing a quantum matrix, and the OGM has received extensive input from TRA and others regarding the OGM's policies and procedures, and more recently Human Level is being consulted regarding the reinforcement of Kakuzi's policy and procedures for human rights defenders.
- Recommendations: We recommend: as before, developing guidance as to what remediation may be appropriate in different common circumstances, and that remedy determinations consider other forms of non-financial compensation as a supplement to financial remediation; and seeking means of engaging with local NGOs for information related to improving the OGM.
- **UNGP 31(g): Source of Continuous Learning**
  - Observations:
    - Both tiers of the OGM actively engage with claimants during and at the end of their engagements, though documenting the engagements is recommended. Based on the feedback, Tier 2 has changed several steps in the process, such as consolidating forms and how information is delivered. Meetings with external stakeholders, such as community leaders and chiefs, also continues to occur.
    - Both Tier 1 and Tier 2 actively consider a range of different patterns in the claims that are being filed, including the nature of the claims, the location from which the claims arose, the year of the underlying incident, the gender of the claimants, and other factors. This has led to a change in certain policies and practices, and confirmation of certain emphases (such as an active desire for women to lodge concerns). Most notably, multiple interviewees indicated that the existence of the OGM has led to behavioral changes in the workplace and in the communities, as increased consciousness of certain issues, such as sexual harassment, has led to greater sensitivities about the use of terms that are offensive or language that may be deemed aggressive. However, further analysis of the patterns of reporting, such as a study of the avenues of reporting and the reasons for the number of anonymous reports, may yield additional insights. That could result in altering the current posters, additional socialization, developing other pathways of reporting, evaluation of retaliation concerns, and other issues. Collecting data on the tenure of claimants also may help with targeted education and promotion efforts, depending on the demographics of claimants coming forward.
    - To date, Tier 1 and Tier 2 track several process and timing-related metrics. For instance, Tier 1 tracks the type of case, the thematic area for the case, the manner in which the claim was raised, the number of cases filed by month, and whether the claimants were satisfied with the process. Tier 2 tracks the average resolution time as measured against the target time, the average time

to investigate, average time to response, and average time to closure, as well as the percentage of claimants who are satisfied with the process and the outcome. Both Tier 1 and Tier 2 examine these metrics to enhance their overall effectiveness.

- Recommendations: We recommend that: the OGM document that feedback has been sought from OGM participants; and continue to consider how the patterns of complaints and their resolution may inform changes to the mechanism, including in relation to socialization.
- **UNGP 31(h): Based on Engagement and Dialogue**
  - Observations:
    - Feedback is actively sought from claimants and external stakeholders, and the OGM was developed following consultation with numerous community members, chiefs, claimant representatives, and others. While Tier 1 resolves claims through joint fact finding and solutions derived through dialogue, Tier 2 remains in its early stages. However, for both tiers, the large number of claims in which individuals have sought monetary compensation has led the OGM to often veer toward a more adjudicative role, as OGM personnel must analyze the merit of the claims and whether compensation is in fact owed. While the responses are often perceived as “yes” or “no,” as referenced above, it is important to consciously build on the approaches already being taken to gain an understanding both of the specifics of the complaint and underlying concerns and perceived harms that contribute to a decision to submit the grievance. Even where the facts do not support a grievance, dialogue should yield additional detail around the claimant’s individual circumstances, which can result in potential tailored remediation under the graduated approach referenced above, and focused community programs and collective strategies.
  - Recommendations: We recommend: both tiers continue to collect claimant feedback from claimants and external stakeholders, including a round of community consultations in relation to collective approaches related to the 2014 claims (per above); and consciously employ a philosophy of dialogue on two levels, to address the specifics of the grievance and underlying concerns the claimant may hold, and better enable tailored and effective remedy.

March 2023

# APPENDIX 1

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

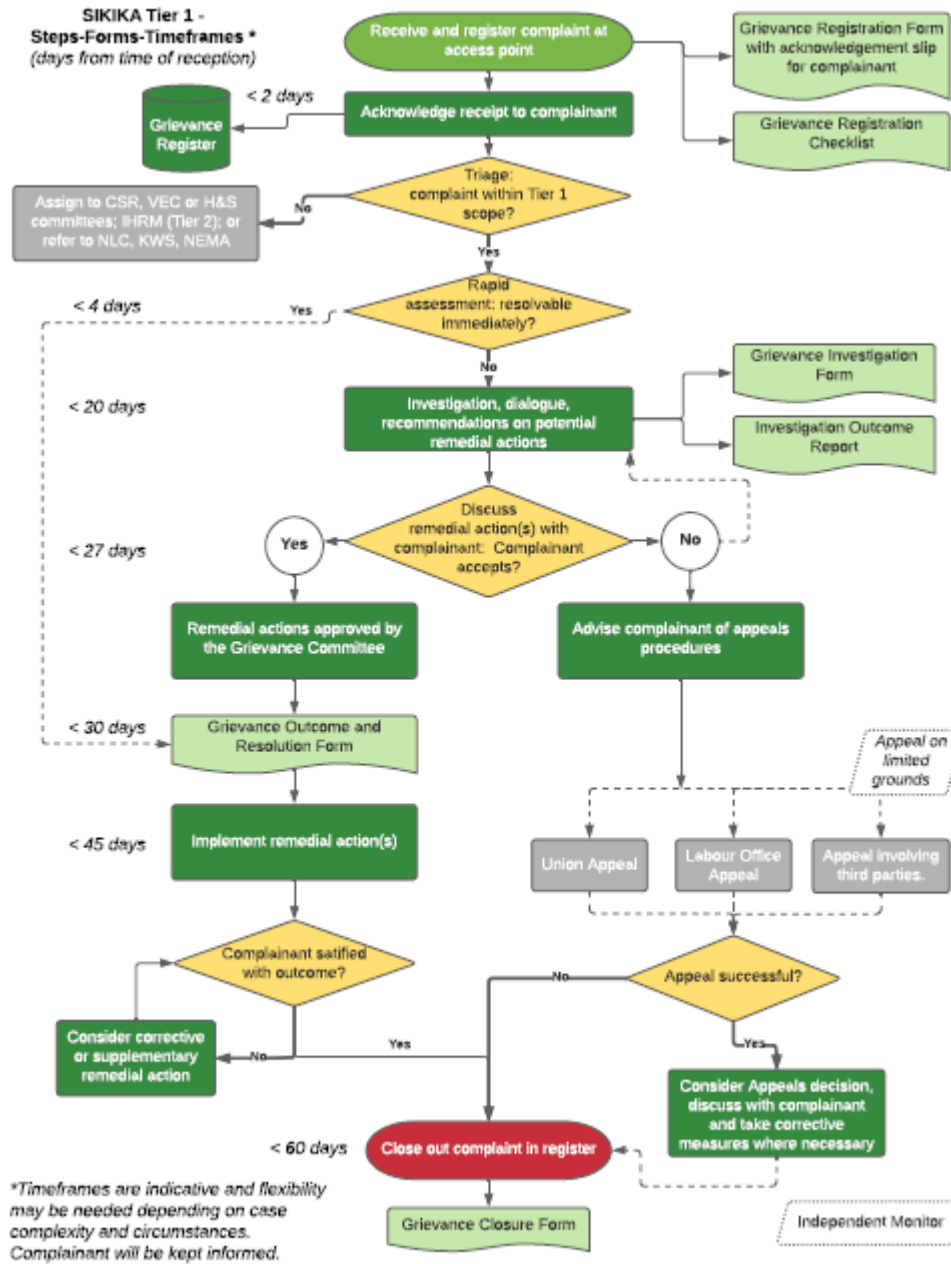
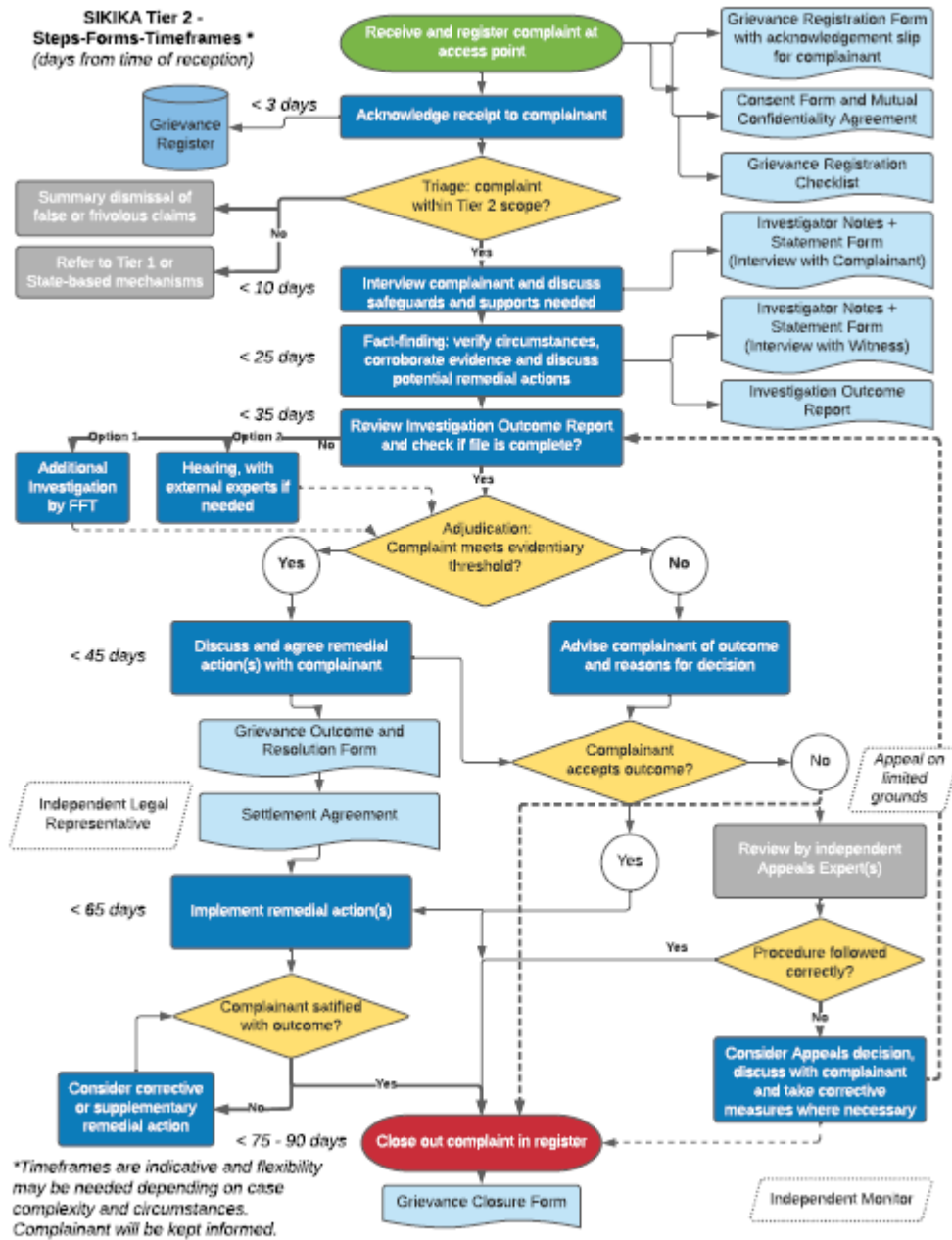




Figure 8.3 Detailed Grievance Process Steps, Forms and Indicative Timeframes of Tier 2



## APPENDIX 2

### Assessment Template: Indicators, Tests and Evidence

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

##### Introduction

To assist in evaluating the Operational Level Grievance Mechanism (OGM), we have prepared the following assessment template. The template consists of certain indicators, assessment tests, and the type of evidence to review for each test. The indicators themselves were designed to correlate to the UN Guiding Principles on Business and Human Rights (UNGPs), and in particular UNGP 31, relating to the effectiveness criteria for non-judicial grievance mechanisms. In developing the indicators, we considered the UN Guiding Principles Assurance Guidance,<sup>14</sup> Shift's Doing Business with Respect for Human Rights Guide,<sup>15</sup> CSR Europe's Management of Complaints Assessment Results,<sup>16</sup> the International Commission of Jurist's Effective Operational-level Grievance Mechanisms,<sup>17</sup> assessment resources associated with leading multi-stakeholder initiatives,<sup>18</sup> and the indicators used for other grievance mechanism evaluation exercises. We also conferred with Triple R Alliance (TRA), and reviewed indicators that TRA and its expert personnel have developed and used.

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

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

##### Assessment Template: Indicators, Tests and Evidence

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<sup>14</sup> [https://www.ungpreporting.org/assurance/#:~:text=The%20UNGP%20Assurance%20Guidance%20is,among%20other%20non%2Dfinancial\)%20reporting.](https://www.ungpreporting.org/assurance/#:~:text=The%20UNGP%20Assurance%20Guidance%20is,among%20other%20non%2Dfinancial)%20reporting.)

<sup>15</sup> <https://shiftproject.org/resource/doing-business-with-respect-for-human-rights/>

<sup>16</sup> <https://static1.squarespace.com/static/5df776f6866c14507f2df68a/t/5e666810b7c6ef5fcd9bf296/1583769622168/MOC-A+Report.pdf>

<sup>17</sup> <https://www.icj.org/wp-content/uploads/2019/11/Universal-Grievance-Mechanisms-Publications-Reports-Thematic-reports-2019-ENG.pdf>

<sup>18</sup> See <https://www.voluntaryprinciples.org/resource/auditing-implementation-of-the-voluntary-principles-on-security-and-human-rights/>; <https://globalnetworkinitiative.org/wp-content/uploads/2018/08/Implementation-Guidelines-for-the-GNI-Principles.pdf>; <https://www.fairlabor.org/accountability/assessments/>.

<b>GUIDING PRINCIPLE 22</b>	Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.	
<b>INDICATOR</b>	<b>EVIDENCE RELATED TO INDICATOR</b>	<b>EVIDENCE REVIEWED</b>
The OGM was established by the company as one pathway to remediate adverse human rights impacts which it has caused or to which it has contributed.	<ul style="list-style-type: none"> <li>• The OGM's formation documents, or other information, identifies that the company established the OGM to remediate negative human rights impacts to which the company is connected.</li> <li>• Where individuals have been harmed at least in part due to actions, decisions or omissions of the company, there is evidence that the OGM has provided, contributed to or otherwise assisted in enabling remediation.</li> </ul>	<ul style="list-style-type: none"> <li>• Review the OGM's formation documents or other materials consistent with its formation to identify the purposes for which it was created.</li> <li>• Review 5 or more grievance files to identify intake forms and investigative reports to determine (i) whether the company reasonably determined that it did or did not cause or contribute to negative impact,<sup>19</sup> and (ii) if so, how remediation was determined.</li> <li>• Interview (a) OGM personnel and (b) 3 or more claimants in which remedy was provided to confirm: (i) that the OGM in fact evaluated grievances, (ii) that there was a negative impact and the company reasonably caused or contributed to it, (iii) the OGM discussed remediation approaches with claimants, and (iv) that remediation was provided.</li> </ul>
<b>GUIDING PRINCIPLE 29</b>	To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.	
<b>INDICATOR</b>	<b>EVIDENCE RELATED TO INDICATOR</b>	<b>EVIDENCE REVIEWED</b>
Individuals who believe they have been adversely impacted by the company are able to access the OGM directly to raise their concerns, without first seeking other means of recourse.	<ul style="list-style-type: none"> <li>• OGM procedures allow access to any individual or group potentially adversely impacted by the company's actions, decisions or omissions.</li> <li>• There is no evidence that the OGM requires that groups directly at risk of human rights impacts due to the company's actions, decisions or omissions ("affected individuals") file grievances through third parties or alternative processes.</li> <li>• There is no evidence that the OGM requires "exhaustion" of alternative pathways of remediation.</li> <li>• There is evidence of individuals or groups raising complaints to the OGM directly.</li> </ul>	<ul style="list-style-type: none"> <li>• Confirm the total number of grievances filed, to validate usage of the OGM.</li> <li>• Review the OGM terms of reference to confirm that they allow any individual or group to file claims without first seeking other means of recourse.</li> <li>• Interview (a) OGM personnel and (b) 3 or more claimants to confirm that claims have been filed immediately and directly without first seeking other means of recourse.</li> </ul>

<sup>19</sup> Cause in this sense is whether the company's activities on their own without other stakeholders were sufficient to cause a negative human rights impact. OHCHR Letter to Banktrack (2017), pg. 5. Contribution generally occurs in one of two ways: (1) via a third party, or (2) when acting in conjunction with another entity. The first type of contribution occurs when business takes an action or decision that "creates strong incentives for the third party to abuse human rights" or "where a company facilitates or enables such abuse." OECD Guidance, at 70; The UN Guiding Principles on Business and Human Rights and conflict affected areas: obligations and business responsibilities, at 973. In the second type, contribution can take place when a business activity leads to negative collective or cumulative impacts, such as drawing water from a well with other businesses that leaves little left for local residents or farmers (collective) or a relatively minor impact that over time leads to a significant impact (cumulative). IBA Guidance (2016), at pg. 20-21.

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

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

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

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

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



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

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

	<p>context that is relevant to understand the actions taken, (c) examples of remedy for any particularly severe impacts with which the company has been involved are included (subject to legitimate legal or other constraints as recognized under Reporting Principle G of the UN Guiding Principles Reporting Framework), and (d) the examples provided are balanced and broadly representative of the company's performance.</p> <ul style="list-style-type: none"> <li>• (a) Assessments of the OGM, including by the Independent Monitor, are made public in a form that fairly represents the findings, and (b) any lessons or recommendations from the review have been or are being implemented, or the decision not to implement them has been clearly explained.</li> </ul>	<p>OGM's implementation and (ii) it is used as part of public reporting.</p> <ul style="list-style-type: none"> <li>• (a) Review any publicly reported cases or anecdotes about the OGM, (b) review data and (c) conduct interviews of OGM personnel (and relevant claimants if needed) to confirm: (i) the accuracy of OGM disclosures, and (ii) that they are representative of the cases or issues before the OGM and/or the OGM's performance.</li> <li>• Cases of severe negative impacts are disclosed consistent with Reporting Principle G of the UN Guiding Principles reporting Framework and are accurate, subject to reasonable constraints.</li> <li>• The OGM makes public (i) its metrics and KPIs, along with (ii) relevant substantive information, (iii) as well as lessons learned and how they have been integrated, in order to allow stakeholders to evaluate the performance of the OGM.</li> </ul>
The OGM provides internal reporting consistent with relevant international reporting standards under the UNGPs.	<ul style="list-style-type: none"> <li>• There is (a) regular internal reporting to key internal individuals, including OGM administrators, the company and others connected to or overseeing the OGM, (b) that includes relevant metrics, as well as substantive information (such as case studies, survey results, and stakeholder reports), sufficient to evaluate the OGM against UNGP 31 in its implementation.</li> </ul>	<ul style="list-style-type: none"> <li>• Review documentation confirming the regular internal reporting of information about the OGM's operations to individuals overseeing the OGM, which includes relevant metrics and data relevant to OGM KPIs, as well as substantive issues, concerns, or patterns, which permits effective oversight of the OGM.</li> </ul>
<b>GUIDING PRINCIPLE 31(F)</b>	<b>Rights-compatible:</b> ensuring that outcomes and remedies accord with internationally recognized human rights	
<b>INDICATOR</b>	<b>EVIDENCE RELATED TO INDICATOR</b>	<b>EVIDENCE REVIEWED</b>
The OGM was designed to provide, and does provide, outcomes and remedies consistent with international norms, as appropriately applied in the local context.	<ul style="list-style-type: none"> <li>• There is evidence that the OGM was designed to provide (and does provide) remedies aimed at restoring affected individuals to the status preceding the harm that was done, through restitution, compensation, rehabilitation, satisfaction, and/or guarantees of non-repetition.<sup>20</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Review the design of the OGM to identify contemplated remedies, and validate that the design is consistent with restoration, through restitution, compensation, rehabilitation, satisfaction, and/or guarantees of non-repetition.</li> <li>• Review 5 or more case files to identify the nature of remedy provided, and evaluate that remedy against international human rights standards.</li> </ul>

<sup>20</sup> **Restitution** is intended to restore, to the extent possible, whatever has been lost (position in the community, property, liberty, etc.), and restore the victim to the state preceding the harm that took place. **Compensation** is appropriate in those cases where damage can be economically assessed. These cases include: "(a) Physical or mental harm; (b) Lost opportunities, including employment, education, and social benefits; (c) Material damages and loss of earnings, including loss of earning potential; (d) Moral damage; and (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services." Compensation can take the form of money or other fungible trade-offs. **Rehabilitation** covers medical or psychological care and social or legal services needed to restore the victim. **Satisfaction** includes such measures as a cessation of the violations; an acknowledgment of the harm done, including verification of the facts and public disclosure of the truth; public apologies from those responsible, including acceptance of responsibility; and sanctions against those responsible for the harm. **Guarantees of non-repetition** include a number of measures to prevent further abuses. These include investigation into crimes that result in human rights violations, and prosecution for those responsible for causing harm, while respecting the right to a fair trial. Changes in policies, procedures, laws, and oversight may also be necessary to ensure non-repetition.

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

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

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

## **APPENDIX 3**

### **Sources of Information**

#### Interviews

- Lloyd Lipsett and Luc Zandvliet, TRA
- Kakuzi Management, OGM staff, OGM Board of Directors Members
- Male and female claimants and community members (names withheld), individually and in group and community meetings
- Community and Youth Leaders
- Local chiefs
- Clinic personnel
- External legal advisors
- Representatives of IHRAC
- Representatives of local civil society organizations
- Local community organizers

#### Documents and Sources Reviewed

- Triple R Alliance, Kakuzi Operational Grievance Mechanism Progress Report #2 (June 2022)
- Kakuzi company reports, policies and procedures
- Multiple reports and press releases from Kenya Human Rights Commission related to Kakuzi, including “The People vs. Kakuzi PLC,” “Kakuzi comes after its biggest critics,” and “Heavy price for Kakuzi’s egregious human rights violations.”
- Summary Report of Independent Human Rights Mechanism
- News articles and press releases from Leigh Day
- US Department of State, 2021 Country Report on Human Rights Practices: Kenya
- Kenya National Action Plan on Business and Human Rights
- Human Rights Watch, World Report 2023: Kenya
- Human Rights Watch, “I Had Nowhere to Go,” Violence Against Women and Girls During the COVID-19 Pandemic in Kenya
- Amnesty International, Kenya (2021)
- Freedom House, Kenya Country Profile
- UNICEF, Kenya Situation Reports (2022)
- Danish Institute for Human Rights, Human Rights and Business Country Guide: Kenya
- International Commission of Jurists, Effective Operational-level Grievance Mechanisms
- SHIFT, Human Rights Reporting and Assurance Framework
- Ergon, Access to remedy - operational grievance mechanisms: An issues paper for ETI
- Mark Wielga & James Harrison, Assessing the Effectiveness of Non-State-Based Grievance Mechanisms in Providing Access to Remedy for Rightsholders: A Case Study of the Roundtable on Sustainable Palm Oil
- Emma Wilson and Emma Blackmore, Dispute or Dialogue? Community perspectives on company-led grievance mechanisms

- Accountability Framework Initiative, Operational Guidance on Remediation and Access to Remedy
- IFC, Addressing Grievances from Project-Affected Communities
- CAO Ombudsman, A Guide to Designing and Implementing Grievance Mechanisms for Development Projects
- Verite, Evaluating the Effectiveness of Grievance Mechanisms
- UNICEF, Discussion Paper: Operational-level grievance mechanisms fit for children
- Prof. Dr. Stefan Zagelmeyer, et al., Non-state based non-judicial grievance mechanisms (NSBGM): An exploratory analysis
- Caroline Rees, Piloting Principles for Effective Company-Stakeholder Grievance Mechanisms: A Report of Lessons Learned
- UN Human Rights Working Group report (July 18, 2017) (regarding effective remedy)
- BSR, Grievance Mechanisms in the Dutch Hard Coal Supply Chain
- BSR, In Search of Justice
- Damiano de Felice, Measuring the effectiveness of grievance mechanisms: Between key performance indicators and engagement with affected stakeholders
- ICMM, Handling and Resolving Local-Level Concerns and Grievances: Human Rights in the Mining and Metals Sector
- Mining Association of Canada, Site-Level Grievance and Community Response Mechanisms: A Practical Design and Implementation Guide for the Resource Development Industry
- IPIECA, Worker grievance mechanisms
- UN Women, Kenya Fact Sheet.
- UN Women, Global Database on Violence Against Women, Kenya.
- Individual OGM case files.



## **APPENDIX 4**

### **Background**

Kakuzi is a Kenya-based agricultural company with a plantation in central Kenya, whose products include avocados, tea, pineapples, and macadamia nuts. In October 2020, the UK law firm Leigh Day issued a press release stating that it was representing 79 individuals in a group action against Kakuzi's parent, Camellia Plc, and other companies in the Camellia group for alleged human rights violations at Kakuzi. According to the press release, the individuals alleged abuses by security personnel at Kakuzi from 2009 to 2020, and included killings, rape, physical assaults, and false imprisonment and other forms of abuse. The press release stated that the attacks are part of a pattern of violence and intimidation over the years.<sup>21</sup>

In February 2021, the parties announced a settlement of the case. The publicly reported terms included:

- Monetary compensation for 79 individuals;
- Building three new roads, two of which cross Kakuzi's land, which will be accessible by motor vehicle and will allow communities better access to local amenities and services;
- Employing some 30 female safety marshals;
- Establishing a working group to survey and demarcate over 150 acres of land previously donated by Kakuzi;
- Funding charcoal kilns and access to firewood so local communities can produce and sell sustainable charcoal for their own income generation over the next three years;
- Constructing and providing staff at two social centers for community meetings at Kananga and Munyu; and
- Designing and implementing a human rights defenders policy

Further the parties agreed that Kakuzi will develop and implement an OGM "to allow any other allegations of human rights abuses to be resolved fairly and quickly without need to go to court." The OGM was not intended to be limited to security-related claims, or claims that arose historically, but would form Kakuzi's OGM on a prospective basis.

The settlement contemplated that TRA would "review, guide and oversee the OGM," and that Independent Monitor will observe and report on the OGM. The reported goal is to implement the OGM within 12 to 18 months.<sup>22</sup>

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<sup>21</sup> See Camellia Plc faces legal claim in London for alleged systemic human rights abuses by its Kenyan subsidiary (Oct. 11, 2020), *available at* <https://www.leighday.co.uk/latest-updates/news/2020-news/camellia-plc-faces-legal-claim-in-london-for-alleged-systemic-human-rights-abuses-by-its-kenyan-subsiary/>.

<sup>22</sup> See Settlement of Claims against Camellia Plc of allegations of serious human rights abuses in Kenya, Feb. 14, 2021, *available at* <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/>.

## APPENDIX 5

**QUALITY KAKUZI PRODUCTS SIKIKA**

**Step 1 – Receive**  
Your verbal or written concern or complaint can be submitted via phone, letter or the Kakuzi community center.

**Step 2 – Register**  
A Kakuzi Officer will register your complaint. You will receive a copy of the grievance registration form.

**Step 3 – Review**  
The Kakuzi grievance officer will review the complaint and refer it to the relevant department for investigation.

**Step 4 – Investigate**  
Investigations will start within 5 days of registering the complaint and will involve all relevant parties. The Kakuzi Grievance Officer will keep you updated on the progress of investigations.

**Step 5 – Resolve and Closure**  
Once the investigation is completed, you will be contacted by the Kakuzi grievance officer to discuss the proposed resolution. Unless the investigation takes longer, you should receive a response within 30 days.

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](mailto:sikika@kakuzi.co.ke)

**QUALITY KAKUZI PRODUCTS SIKIKA**

**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](mailto:sikika@kakuzi.co.ke)

**QUALITY KAKUZI PRODUCTS SIKIKA**

**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](mailto:sikika@kakuzi.co.ke)

**QUALITY KAKUZI PRODUCTS SIKIKA**

**Hatua ya 1 – Kwamukira Mateta/makaya**  
Mateta/makaya no mamukirio na njira ya thimu, marua kana matwarwo ofisi-ini ya Kakuzi Community Center.

**Hatua ya 2 – Wandikithia mabuku-ini**  
Thutha wa Afasa wa Kakuzi kwamukira mateta na kumandika mabuku-ini kana mibambo-ini ya kambuni, ukaheo formu ya mateta maku yinjirire mateta/makaya maku wega.

**Hatua ya 3 – Gutamburukia Mateta**  
Afasa wa Kakuzi uria urugamirire mateta agathuthuria mateta maku na agatamburukia mateta mocio kuzi hongwe iria ciagifire njiru mathuthurio guku kambuni-ini.

**Hatua ya 4 – Uthuthuria wa mateta**  
Uthuthuria wa mateta ukambirira mbere wa thiku ithano itathirite kuuma mateta mamukirio. Uthuthuria ucio wagirirwo kuhutia andu ariya othe makoniani na uhoro ucio. Afasa wa Kakuzi niagukara agikumerythagia haru uthuthuria ucio ukinyirite.

**Hatua ya 5 – Kihonia na gutirira mateta**  
Uthuthuria wathira, afasa uria urugamirire mateta agagukiririra maumirira ma uthuthuria ohamwe na kihonia kila makaya maku. Mbere wa thiku 30 ithirite, niwagirirwo uho maumirira ma makaya maku no gukorirwo uthuthuria ukibatara kahinda karaya gukira thiku icio ciagifirwo.

Mawoni maku nimabata kuri ithui. Nitwakwamukira obici-ini itu ya Sikika -Kakuzi wabici nene, kana utuhurire thimu 0800721157 (itari mahiri) / 0715444111. Kana rurenda-ini rwitu rwa [sikika@kakuzi.co.ke](mailto:sikika@kakuzi.co.ke)