

## **KAKUZI 2024 INDEPENDENT MONITOR REPORT REGARDING IMPLEMENTATION**

This is the second report from the Independent Monitor during the implementation phase of the Operational Level Grievance Mechanism (“OGM”) at Kakuzi Plc (“Kakuzi”), called SIKIKA. The public summary for the first report is [here](#).<sup>1</sup> The Independent Monitor has received excellent cooperation in preparing this assessment, and the OGM has embraced and actively sought suggestions made during the course of it. As described in the first report, the OGM operates according to two tiers: Tier 1 is managed by Kakuzi and addresses operational grievances occurring during normal business operations, and Tier 2 is an independent process for grievances involving allegations of severe human rights impacts that have been caused by, contributed to, or are directly linked with Kakuzi and/or its business partners. Triple R Alliance (“TRA”) has assisted in the design of the structure.<sup>2</sup>

The OGM continues to operate against a complex set of local dynamics. That includes disputes regarding land ownership, which fall outside the scope of the OGM but contribute to tensions with certain segments of surrounding communities, historical evictions that fall within the scope of the OGM, as well as an influx of some 1650 claims related to a security-related event from 2014. To the credit of Kakuzi and the OGM, the OGM has recruited highly qualified local experts for key functions and enlisted international experts to provide external advice. It is well-resourced, and supported by Kakuzi management. The investigations for Tier 2, involving serious human rights violations, are demonstrably thorough. The OGM’s files are fulsome and meticulous, reflecting careful consideration of claims. Both Tiers have received a steady stream of grievances, and are remediating negative impacts where they are found to exist. The OGM provides public reports that contain key metrics for both Tiers, and there have been substantial socialization efforts with the workforce and local churches. The OGM also has sought to address most of the specific suggestions from the Independent Monitor, as noted below. There is little question that the OGM is being implemented in good faith, continuing to mature and progressing despite ongoing complexities.

We do, however, continue to note certain areas where enhancement is appropriate. We acknowledge that some issues may be unavoidable. For instance, cases in Tier 2 continue to be

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<sup>1</sup> As referenced in that initial report, 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 in English and Kiswahili.

<sup>2</sup> A summary of SIKIKA’s processes, and the scope of Tier 1 and Tier 2, appears in the first Independent Monitor Report and 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>.

beset by significant delays, which can erode an OGM’s trust and confidence; at the same time, investigations involve gathering information from multiple stakeholders, will involve extensive and repeated engagement with claimants, and may include expert visits. In short, they take time, and delay simply may be a consequence of thoroughness - still, expectations perhaps can be more effectively managed at the outset of a claim to reduce ensuing frustrations. In addition, as is commonly true for OGMs, continued efforts to address fear of workplace retaliation for reporting grievances remains appropriate. That is particularly true in relation to contract workers, who have concerns that reporting claims will lead to non-renewal of their contracts.

Other suggested areas of enhancement reflect a continuation of current OGM efforts. For instance, we believe it is appropriate to conduct targeted socialization for villages on the estates, conduct further socialization for local communities around the key procedural aspects of the OGM, and continue to apply an expansive view of the evidence presented. We also note that the complex background, according to stakeholders interviewed, contribute to a level of distrust in Kakuzi - and by association the OGM – by certain segments of local communities. The distrust is amplified by an apparent lack of full understanding among claimants and community members related to two foundational principles: (1) that claims will be thoroughly investigated and evidence presented will be thoroughly reviewed, and the OGM does not provide financial remedy without evidence that remains credible following that scrutiny; and (2) the amount of compensation when awarded is benchmarked against local legal precedents, and not amounts rumored to have been distributed in connection with a 2021 settlement of claims brought in London. As a result, some of the stakeholders interviewed believe either that SIKIKA is not fair because their claims, after being tested, have not been sustained, or because the quantum of remedy is insufficient. Further efforts to manage expectations and explain the process when grievances are filed may help reduce those misconceptions, to some degree.

This report is based on an extensive review of documentary materials, a site visit during March 2024 and interviews with a wide range of relevant stakeholders, including claimants, OGM personnel, personnel at Kakuzi, entities in Kakuzi’s downstream value chain, counsel for claimants, local civil society organizations, and community representatives. 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>3</sup> Our evaluations of both tiers, and our recommendations, are detailed below.

## **I. Executive Summary**

*Background:* The OGM exists 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. That includes a Human Rights Policy and dedicated human rights webpage, a Human Rights Impact Assessment, a Human Rights Framework and Roadmap, as well as a Human Rights Action Plan for 2023/2024. The company continues to seek ways to improve its processes, and will update its Human Rights Policy (in part based on learnings from the OGM) and introduce a new Human Rights Defender Procedure and a DEI Policy. Those efforts are particularly important given continued reported tensions with certain local communities.

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<sup>3</sup> See Appendix 1.

In 2023, 223 claims were submitted to Tier 1, roughly the same amount as the prior two years, covering a range of issues. The overwhelming number of 2023 grievances were filed by men (154, versus 69 by women). Tier 2 has had a total of some 1810 complainants between April 2022, when Tier 2 of the OGM became operational, and December 31, 2023. Most of the claimants at Tier 2 are women. To date, some 930 claims have been dismissed, 5 have been provided monetary compensation, many others have received other forms of remedy (such as medical care, counseling and engagement with the state), and many other claims are still pending, awaiting the presentation of further evidence and information. Many of the documents presented by claimants have been found to be legitimate, though for some 80% of the individuals subjected to independent medical assessment, their claims were found to be false – generally, that they were not injured as claimed. In addition, a small number of total new cases – perhaps 6 – have been filed in 2024 at Tier 2.

In recent months, roughly half of the new cases, covering a wide variety of issues, have pertained to issues other than the 2014 incident, with 4 group complaints. Most of the cases come from within Kakuzi, with quite a few recent cases from Kangangu, which borders Kakuzi. Kangangu residents reported particular frustration with the Company and the OGM.<sup>4</sup>

SIKIKI itself is designed consistent with best practices for OGMs, and includes an extensive claims manual, forms to drive consistency and predictability, an independent process to receive, review and provide remedy for severe grievances, an appeals process, a range of tailored safeguards for claimants, and rights-compatible remediation. SIKIKI also has published two highly detailed public reports regarding the OGM, with detailed metrics and statistical breakdowns.<sup>5</sup>

Tier 1 and Tier 2 conduct investigations of claims that are raised, with Tier 2 employing full time a handful of professional investigators and a total staff of 10. Both Tier 1 and Tier 2 are attentive to concerns about confidentiality, safety and retaliation.

*Analysis:* At a high level, both tiers of the OGM continue to operate with integrity, dedication, and a seriousness of purpose. Consistent with the objectives of OGMs, as with last year, both tiers of the OGMs seem well known to employees and in local communities, grievances are relatively easy to lodge, the OGM is being utilized, affected stakeholders still generally 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. In regard to our recommendations last year, the OGM has largely addressed them:

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<sup>4</sup> Some of the frustration derives from a disagreement regarding access roads. Community members believe they are entitled to an additional access road. Kakuzi's position is that it has no obligation to provide further access roads for Kangangu. The community's land comes from private companies that were not related to Kakuzi, and when the land was subdivided, access roads were included by the private developer. Kakuzi then constructed an all-weather road on its own land that connects the community to the main road, although individuals in the community are seeking a road in a different location, in the middle of the farm (as opposed to a closer boundary road).

<sup>5</sup> See <https://www.kakuzi.co.ke/documents/normal/summary%20report%20of%20independent%20human%20rights.pdf>; <https://www.kakuzi.co.ke/documents/normal/status%20report%20of%20independent%20human%20right.pdf>.

<b>UNGP 22</b>	<b>Status</b>
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 to being “directly linked” to negative impacts, as they are contemplated under the UNGPs <sup>6</sup> in the context of remedy considerations, which will help enhance the OGM’s consistency and predictability.	The OGM Manual has been revised to include such guidance.
<b>UNGP 29</b>	
Clarifying the Manual to acknowledge that a claimant may refuse to consult a lawyer, and how that situation is addressed.	The OGM Manual has been revised to include such guidance. In addition, Tier 2’s Informed Consent Form makes it clear that claimants can be accompanied by counsel if they wish.
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 of evidence).	Tier 2 is actively considering its approach to situations where some evidence supports a claim, but the evidence does not reach the OGM’s threshold (a probability of the evidence). The approach will include non-financial components.
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.	During closeout meetings, claimants are advised about social and community programs, and feedback is sought from them about such programs. The OGM also has engaged with chiefs and other local leaders about community programs and development opportunities.
Engaging with chiefs and community leaders about potential additional bodies of evidence, where feasible.	Tier 2 has considered, to a greater extent, the recollections of witnesses, even where the recollections may not be wholly reliable.
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.	The OGM Manual has been revised to include such guidance.
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.	The OGM Manual has been revised consistent with the recommendation.
Considering means of enhancing the appearance of independence for Tier 2 surrounding its funding activities, such as having the IHRAC	This recommendation remains outstanding.

<sup>6</sup> UNGP 22 provides that where businesses “have caused or contributed to adverse impacts,” they should provide for or cooperate in their remediation

maintain the ability to recommend to the board the staffing and salaries of Tier 2’s members.	
Developing further guidance regarding how the Head of the IHRM should evaluate evidence against the relevant burden of proof.	Additional relevant detail has been added to the OGM Manual.
<b>UNGP 31(a): Legitimate</b>	
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.	This is being addressed. All of the resolutions and letters provide for a right to appeal. Where claimants lack specific evidence that is noted during closeout meetings and in letters given to claimants.
Continuing socialization efforts around the independence of Tier 2.	There have been extensive socialization efforts over the past year. This includes visits to 8 churches (involving 770 attendees) where the OGM was discussed, and a tent was constructed outside the church for claimants to come forward afterwards. In addition, the OGM had an “Awareness Week” involving more than 1000 employees at 9 locations. As part of these efforts, independence is extensively discussed. Additional efforts might be considered.
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.	Tier 2 actively seeks feedback from claimants on potential non-financial remedies, and shares information on non-financial remedies with claimants and their lawyers to assist them in making relevant requests. Claimants have suggested programs such as improving access roads, facilitating school fees, improving school facilities, and free medical aid through clinics. Consistent with that, more claimants now are seeking non-financial remedies, particularly in group and collective complaints, and where there is a lack of medical evidence to support claimed injuries. For instance, SIKIKA 2 has provided school fees, and engaged with the Kenya Wildlife Service around wild monkeys that live in or near Kakuzi and that raid local private farms.
Reviewing and actively seeking to learn about collective grievances, and ensuring outcomes are equitable and rights-compatible.	There are now 9 group or collective grievances, encompassing 110 complaints. Most relate to claimed forced evictions, while one also relates to a resettlement and a claim that Kakuzi failed to fulfill certain contractual obligations, and another includes to a claim that Kakuzi provided insufficient acreage related to a resettlement. These cases now are being jointly handled by Tiers 1 and 2. Progressing them to conclusion is recommended.
<b>UNGP 31(b): Accessible</b>	
Continued socialization efforts around the OGM, including in more remote communities.	There have been substantial community engagement and outreach efforts, including

	through public barazas, churches and distribution of merchandise that advertise SIKIKA. Discussions on how to seek and receive grievances from remote areas are still being discussed. Additional recommendations are below.
Continuing efforts to solicit claims from heads of departments.	Tier 1 has proactively engaged with supervisors and employees regarding 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.).	Tiers 1 and 2 are attentive to retaliation concerns and actively considering approaches. However, significant additional recommendations are below.
Bolstering confidentiality in sharing information between Tier 2 and Tier 1, documenting consent to contact witnesses, and anticipating public security requests.	Additional documents have been created for Tier 2 regarding confidentiality, including a witness confidentiality agreement and consent by claimants to contact witnesses. The OGM Manual also has been amended to include extensive discussions regarding engagement with public security.
<b>UNGP 31(c): Predictable</b>	
Continued reinforcement and socialization about the OGM’s processes.	As noted above, there have been in-depth community engagements and socialization, including an “Awareness Week” and enlisting the assistance of local religious leaders.
Amending the OGM Manual and relevant processes to make clear that appeals of claims deemed illegitimate can be lodged.	The OGM Manual has been revised accordingly.
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.	The resourcing of Tier 2 has not changed since last year. However, the number of 2014-related cases has slowed, and substantial efforts are being directed toward non-2014 cases.
For Tier 2, documenting in the file when translations of documents and decisions have been provided (or obtain translations of those documents).	Each decision has a declaration noting that the decision has been translated into a language readily understood by the claimant, and the claimant signs to affirm that they understand the translation.
Considering additional steps to make the OGM’s processes known, such as through FAQs or town halls.	In addition to socialization efforts, Tier 2 has updated brochures that outline the mandate and process, as well as access points. These also appear on cards that are handed out, along with t-shirts that have the telephone number for the OGM, key chains, and other merchandise. It also

	has created a simplified version of the most recent report on progress of the OGM that is awaiting printing and will be distributed.
<b>UNGP 31(d): Equitable</b>	
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	Tier 1 has developed closeout forms and a letter detailing the outcome, analysis and next steps. Close out forms also have been developed for Tier 2, and close out meetings are undertaken and documented.
<b>UNGP 31(e): Transparent</b>	
Continued communication with claimants while their cases remain under investigation and consideration, and an approach to address individuals who are part of group claims.	SIKIKI 2 now notifies members of groups associated with collective claims about outcomes, not just the representatives. It also periodically engages with claimants throughout the process, while claims are pending, through telephone and SMS.
Tier 1 should consider publishing additional metrics and indicative information about the functioning of the OGM.	The public reports from SIKIKI include detailed metrics about Tier 1, as well as Tier 2.
<b>UNGP 31(f): Rights-compatible</b>	
As before (UNGP 22), 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.	Addressed per above.
Seeking means of engaging with local NGOs for information related to improving the OGM.	SIKIKI 2 has engaged with leading local NGOs for information regarding the OGM, as demonstrated by their correspondence.
<b>UNGP 31(g): Source of Continuous Learning</b>	
Document that feedback has been sought from OGM participants.	SIKIKI 2 has created a feedback form and diary, and claimant feedback is continuously sought at each stage of the process.
Continue to consider how the patterns of complaints and their resolution may inform changes to the mechanism, including in relation to socialization.	Both OGMs actively track a range of metrics to identify potential patterns and trends. These have led to further identifiable actions, such as in relation to child welfare in local villages.
<b>UNGP 31(h): Based on Engagement and Dialogue</b>	
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).	Feedback is being sought and used as a source for improvement. The OGM also shares information with Kakuzi about issues and trends, to assist in the company's programmatic improvements.

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

- **UNGP 22<sup>7</sup>:**
  - Observations: The OGM continues to operate as one pathway in a larger ecosystem of remedy, without any substantive limitations. Tier 1 continues to receive a wide variety of grievances. Increasingly, Tier 2 is receiving grievances unrelated to the 2014 incident. Remedy continues to include referrals to doctors, engagement with state agencies, changes to policies, repayment of wages, moving workers, time off, and similar steps; for Tier 2, it has included compensation, medical fees, and engagement with the state. In addition, while stakeholder feedback was mixed overall, many claimants and community members remarked that SIKIKA was a positive development and signaled an important avenue to engage with the company.
  
- **UNGP 29:**
  - Observations:
    - The observations in last year’s report have not changed, including access to the OGM without first exhausting other avenues, not precluding access to alternative state-based processes, and for Tier 2, tying the quantum of financial compensation to amounts consistent with damages that could be obtained before Kenyan courts, with reference to a detailed and well-supported matrix. The matrix might be refreshed, however, to account for legal developments and OGM learnings.
    - The OGM continues to find that most of the 2014 claims, and indeed claims unrelated to 2014, lack sufficient supporting evidence to satisfy the burden of proof. Although Tier 2 has considered a wider variety of evidence, including claims from potentially biased and unreliable witnesses, the outcomes have not materially changed. In particular, medical examinations have not supported the claims being advanced, as some 80% of independent medical exams determine that the claims presented are false. As a result, the overwhelming majority of cases have not led to compensation being provided. Tier 2 is actively considering how to address claims that cannot affirmatively be shown as untrue, or where some evidence exists, even if the total body of evidence does not establish a likelihood that the alleged facts are true.
    - Tier 2 also involves an active appeals process, as some 19 cases have been appealed. In most, the decision of the Independent Human Rights Mechanism (IHRM) is affirmed, though in at least one instance the quantum of remedy was ordered increased by the appeals judge.
    - As in last year’s report, while we have no concerns about the independence of Tier 2 given its built-in safeguards, given its adjudicative nature and the importance of the independence of the Head of the IHRM, Kakuzi pays the salaries of the Tier 2 participants and sets Tier 2’s budget.
  - Recommendations<sup>8</sup>: We recommend: updating the compensation matrix in light of any new precedents, experience in administering the OGM and feedback from

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<sup>7</sup> UNGP 22 provides that where businesses “have caused or contributed to adverse impacts,” they should provide for or cooperate in their remediation

<sup>8</sup> While some recommendations may be applicable to multiple indicators, we seek to limit duplication in the recommendations in this summary.



claimants and the retired judge who handles appeals; considering means of enhancing the appearance of independence for Tier 2 surrounding its funding activities, such as having the Independent Human Rights Advisory Committee (IHRAC) maintain the ability to recommend to the board the staffing and salaries of Tier 2's members; continuing to view evidence presented expansively and providing greater transparency surrounding the evaluation of evidence; and finalizing and implementing the approach to cases where the claim cannot be disproven or where some evidence exists to support it (though the evidence does not establish a likelihood that the claim is true).

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

- Observations: The observations in last year's report have not materially changed.
  - There are elements of independence and accountability built into the OGM's procedures, and they are respected in practice, with the caveat that Tier 1 – being operationally focused – is not independent. There have been some 19 appeals of Tier 2 determinations, and 6 appeals of Tier 1 determinations. However, as the OGM has continued to mature, we believe oversight of Tier 1 within Kakuzi management should be reconsidered. In particular, we believe Kakuzi should consider having the head of Tier 1 report to Human Resources given the role Human Resources should play in addressing potential retaliation concerns. We also note that the governance structure does not contemplate how the head of Tier 1 might consider operational claims directly or indirectly involving her supervisor.
  - There have been more than 3000 grievances filed across both tiers since July 2021 (when Tier 1 of the OGM became operational), signifying a level of trust in the mechanism. The OGM has initiated new processes to address collective grievances and group claims, which was highlighted last year. New environmental claims indicate that the OGM is being considered for a wide array of potential concerns. More women are accessing Tier 2 than men, but more men are accessing Tier 1 than women, for reasons that are not fully clear.
  - Tier 1 reports that most claimants are satisfied with the process, which aligns with stakeholder interviews. The situation is more mixed for Tier 2, as some claimants believe that the OGM was responsive to their concerns, evaluated their claims, conducted thorough and credible investigations, and approached remediation in a collaborative manner. Outside pro bono counsel had a similar view. In contrast, local civil society organizations had mixed reports. Most claimants who submitted grievances with the hope or expectation of obtaining financial compensation believed their evidence should have been credited and/or that compensation amounts should have been higher.
  - The OGM has elected to review 9 collective or group grievances involving 110 complainants, though stakeholders remain frustrated that they have not resolved.
  - The OGM is attentive to physical safety concerns for claimants and witnesses, and takes active steps in that regard.

- Recommendations: We recommend: developing a procedure for grievances involving management, such that there is a limit to perceived conflicts; reconsidering the governance of Tier 1, including whether it should report to Human Resources as efforts to address fears of retaliation are developed and implemented; considering gender-based reasons for reporting or not reporting claims, at both tiers; evaluating the reasons for the drop in 2024 cases, and responding as appropriate; and continuing to progress group claims, and seeking resolution as rapidly as feasible.
  
- **UNGP 31(b): Accessible**
  - Observations:
    - The OGM has undergone extensive promotional efforts. Every member of the workforce has been trained on the OGM. There have been numerous community meetings about it, including meetings at 8 churches last year and a SIKIKA “Awareness Week” among employees. The OGM has created merchandise, including key chains and t-shirts, and other items to advertise its presence. Stakeholders also reported that they knew how to access the OGM from some of these promotional efforts, including from the posters and the phone numbers for SIKIKA that exist on the back of PPE. There has been limited socialization in villages, specifically.
    - Further socialization efforts might include metrics and anonymized representative cases, along with specific steps and considerations associated with the OGM, including how evidence will be evaluated, the time it takes to conduct investigations, and how the quantum will be measured. Socialization efforts might seek to counter reports of individuals seeking fees to register cases with false promise of success.
    - Socialization also might target villages on Kakuzi, and seek to leverage community leaders, such as religious figures and others with moral authority, to help echo key messages about respectful treatment and positive behaviors.
    - As noted last year, there are numerous channels to lodge grievances, including in person, through a hotline, using email, contacting the Grievance Officer, and contacting a supervisor. While Tier 1 has actively sought claims from the workforce, additional steps can be taken with Heads of Departments to drive active leadership, including through KPIs tied to job performance. Stakeholders also suggested increasing the number of community liaison officers, and lodging two in the community centers. The OGM also may consider roundtables among different workforce demographics.
    - Many barriers to claims, such as illiteracy, the lack of telephones, and safety, have been considered and addressed through the presence of the multiple reporting channels and permitting anonymous claims. Tier 2 also is located offsite and generally provides transportation costs to claimants that come to the office. Many of the key staff who can receive claims are women. However, we note that children may not always be closely supervised in local villages, particularly during the day. As a vulnerable population subject to potential exploitation and abuse, it is important to actively consider how claims involving children might be identified, in addition to prophylactic measures preventing such attacks in the first place.

- While Tier 1 is located at Kakuzi’s main offices, there is a separate door where claimants can enter without being seen by management – however, that door appears to be closed most of the time. In addition, the OGM has not yet taken steps to establish access points in more remote communities.
  - The OGM is attentive to preventing retaliation. However, there remains a strong concern that claimants are not filing grievances out of a fear of workplace retaliation, including reports about explicit and implicit threats from supervisors in the field. In addition, while the OGM is attentive to confidentiality, OGM personnel noted that when investigations are conducted, confidentiality is at risk.
- Recommendations: We suggest: making greater uses of metrics and representative cases during socialization efforts; including in community-related socialization efforts the specific steps and considerations associated with the OGM; conducting focused socialization in villages, leveraging community leaders, and making a dedicated effort to identify risks of exploitation of children in the villages; including in community-facing socialization steps to counter individuals taking advantage of potential claimants, and charging fees with promises of positive outcomes; considering the qualifications and backgrounds of community liaison officers, and perhaps locating them in community centers; considering conducting roundtables among different workforce demographics, such as female workers, or younger employees, to gain insights into workplace concerns; keeping both doors to Tier 1 open; establishing access points in more remote communities; undertaking a concerted and thorough assessment to address fears of workplace retaliation, likely in coordination with Human Resources, with steps that may include: making support for reporting workplace concerns a formal part of job descriptions for every manager and supervisors, such that it is one qualification that will be considered in promotion decisions and performance evaluations; actively include the Estate Managers and head of operations in discussions about how managers can support a speak-up culture generally, and access to the OGM specifically; take visible steps to reassure affected stakeholders that Kakuzi will not take negative actions against individuals for good faith reporting, and will seek to prevent retaliation; additional transparency around objective employment and hiring criteria; while hiring decisions are made by committee, provide greater scrutiny around negative management reports for workers who report, and in particular seeking to ascertain whether there is supporting evidence to justify the negative report; train supervisors and managers on the company’s anti-retaliation policy, and consider integrating “bystander” training for managers and employees; at least for Tier 1, inquire whether claimants are concerned about potential retaliation, encourage them to return if they feel retaliated against, and track their employment for potential instances of retaliation (such as a reassignment of tasks, a change in schedules or shifts, or contracts not being renewed in a way different from the prior pattern), with which Human Resources may assist; adopt processes to protect witnesses against retaliation; and consider steps to bolster confidentiality during investigations, such as alternative investigative approaches that seek to gather information indirectly, making greater use of non-financial remedies

such as transfers, and/or engaging with claimants possible approaches to gather information while protecting their identities.

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

- Observations:

- While Tiers 1 and 2 have had detailed implementing procedures, most of our suggestions from last year have been implemented, including in connection with documented translations, amending the OGM manual regarding the appeal of claims found to be vexatious or frivolous, and greater transparency around the OGM's processes. Both Tiers are supported by an impressive set of forms to drive consistency, and a checklist on the inside cover of each file (for Tier 2) 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. In particular, a close review of the case files reveals that for Tier 2, the Head of the IHRM studiously adheres to the stated processes; the claimant files are thorough, complete, and consistent with the OGM's requirements. They demonstrate a high-level of process-related predictability, showing that Tier 2 operates against its design.
- It appears that while potentially affected stakeholders understand how to access the OGM, and claimants are apprised about the OGM's processes at the outset of a case, multiple claimants reported a continued lack of understanding about the process once a claim is filed. Further, where the police are investigating a case that is connected to a grievance, it often creates undue delay.
- Both Tiers are well resourced and overseen by highly qualified experts. Tier 1's staff are able to capably address grievances that are filed within the relatively short (30 days) indicative timeframe. Tier 2 has 10 personnel, each of whom is highly qualified, with a good gender balance. While cases take significant time to progress and finalize, that appears to be the result of a thorough investigation and the involvement of multiple stakeholders, which can slow down the process at various points. We note some uncorroborated reports that Tier 2 personnel have been "rude," though those reports are not consistent with our own observations.
- The OGM's processes are intentionally flexible, and allow for adjustments depending on the needs of claimants and the facts of each case. Indeed, over the past year, the OGM adjusted to allow group or community claims to be jointly addressed by Tiers 1 and 2. The OGM also is considering issuing an advisory opinion to Kakuzi on land-related matters; although land issues are outside the scope of the OGM, and land-related disputes may be pending before other bodies, the opinion would essentially memorialize the information the OGM has gathered in the process of evaluating parallel claims. It also continues to adjust the forms used to drive further improvements and consistency.
- As discussed last year, the OGM closely tracks its cases, including for Tier 1 against the indicative timelines in its processes.

- Recommendations: We recommend: considering a two-track process for cases being investigated by the police to avoid unnecessary delay.
- **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. Despite closeout meetings, in which outcomes and further information requests are conveyed, in some instances Tier 1 claimants still claimed they did not understand the outcome of the OGM's analyses.
    - As discussed last year, Tier 2 claimants have been referred to counselors, medical professionals and outside lawyers. Claimants still generally view their experiences with counsel as positive, and the responses from counsel have also indicated smooth working relationships.
  - Recommendations: We recommend: continuing to be mindful of explanations to Tier 1 participants regarding the conclusion of their claims, in light of stated lack of understanding; and when suggesting counsel for claimants, Tier 2 might encourage the attorneys to engage with their clients and provide information in a manner sensitive to concluding cases.
- **UNGP 31(e): Transparent**
  - Observations:
    - Our observations last year in terms of notification remain true for both Tiers. Consistent with our recommendation, the OGM now notifies group members and not just representatives for the groups, and Tier 2 provides periodic notifications to claimants regarding the status of their claims.
    - Both Tiers collect substantial data about the types of cases, the channels being used for filing, where the claimants are from, the dates of the alleged incidents, outcomes, and other factors. Tier 2 publishes lengthy and detailed reports that include such data, covering both Tiers.
    - As with last year, for Tier 1, management receives monthly reports on the OGM's progress, including descriptions of each claim filed, along with relevant metrics for the month; the board of directors also receives periodic reporting. For Tier 2, the IHRAC receives detailed monthly written reports containing key data, metrics and trends, and there are quarterly meetings to discuss the OGM. Information about Tier 2 also is shared with the board of Kakuzi. Tier 1 and Tier 2 regularly engage 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.

- **UNGP 31(f): Rights-compatible**

- Observations:

- The OGM was also designed to provide equitable and rights compatible remedies after considering evidence and engaging with claimants. Under both tiers of the OGM, remediation is tailored to the needs of individual claimants, as explained in detail in last year's report. Our recommendations from last year regarding further guidance were adopted.
    - There are mixed responses in terms of perceived fairness. Most Tier 1 participants report being treated fairly. Many stakeholders, including counsel for Tier 2 representatives and (from his written decisions) the retired appeals court judge who oversees Tier 2 appeals, believe the process and quantum of remedy is fair. Local civil society organizations and community representatives had mixed responses. Tier 2 participants seeking compensation are frustrated that their evidence does not withstand scrutiny, or that the amount of compensation is unduly low – which they construe as unfair.
    - Questions have arisen about one parent agreeing to compensation on behalf of an injured child where the other parent cannot be found.

- Recommendations: We recommend: developing a process to address situations where only one parent can be found, in terms of authorizing the resolution of claims.

- **UNGP 31(g): Source of Continuous Learning**

- Observations:

- Our recommendations from last year were adopted and our observations have not materially changed. Both tiers of the OGM actively engage with claimants during and at the end of their engagements. In particular, Tier 2 keeps claimants apprised of their claims, and seeks feedback, recorded in a "feedback diary." 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.
    - As with last year, both Tiers actively consider a range of different patterns in the claims that are being filed. This has led to a change in certain policies and practices, and will help inform amendments to the Human Rights Policy this year. Based on one anecdote that was relayed, OGM personnel might consider educating participants in disciplinary hearings about mental health issues, to identify treatment opportunities where there are unusual changes in workplace patterns (such as attendance).
    - Both Tiers track numerous metrics and KPIs, as with last year, honing them to identify information sources that can help benefit the OGM.

- Recommendations: We recommend: continuing to consider how the patterns of complaints and their resolution may inform changes to the mechanism, including in relation to socialization; and considering additional human rights training, particularly around mental health issues, for Human Resources, disciplinary panels and others.

- **UNGP 31(h): Based on Engagement and Dialogue**
  - Observations:
    - As with last year, 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. This past year, the OGM has engaged extensively with claimants about its processes and steps for improvement, and there has been engagement with local NGOs, including Ndula Resource Centre and community representatives. Tier 2 has engaged in public barazas with local chiefs, and conducted 8 church visits and formalized its feedback loop.
    - Tier 1 continues to resolve disputes through dialogue and joint fact finding, though both Tiers still play a largely adjudicative role. As noted above, tier 2 is developing an approach for claims that have some evidence but less than the burden of proof, which is still being finalized.

April 2024

## APPENDIX 1

### Assessment Template: Indicators, Tests and Evidence

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

##### Introduction

To assist in evaluating the Operational Level Grievance Mechanism (OGM), we have prepared the following assessment template. The template consists of certain indicators, assessment tests, and the type of evidence to review for each test. The indicators themselves were designed to correlate to the UN Guiding Principles on Business and Human Rights (UNGPs), and in particular UNGP 31, relating to the effectiveness criteria for non-judicial grievance mechanisms. In developing the indicators, we considered the UN Guiding Principles Assurance Guidance,<sup>9</sup> Shift's Doing Business with Respect for Human Rights Guide,<sup>10</sup> CSR Europe's Management of Complaints Assessment Results,<sup>11</sup> the International Commission of Jurist's Effective Operational-level Grievance Mechanisms,<sup>12</sup> assessment resources associated with leading multi-stakeholder initiatives,<sup>13</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.

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<sup>9</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>10</sup> <https://shiftproject.org/resource/doing-business-with-respect-for-human-rights/>

<sup>11</sup> <https://static1.squarespace.com/static/5df776f6866c14507f2df68a/t/5e666810b7c6ef5fcd9bf296/1583769622168/MOC-A+Report.pdf>

<sup>12</sup> <https://www.icj.org/wp-content/uploads/2019/11/Universal-Grievance-Mechanisms-Publications-Reports-Thematic-reports-2019-ENG.pdf>

<sup>13</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/>.



## Appendix 1

### Assessment Template: Indicators, Tests and Evidence

GUIDING PRINCIPLE 22	Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.	
INDICATOR	EVIDENCE RELATED TO INDICATOR	EVIDENCE REVIEWED
The OGM was established by the company as one pathway to remediate adverse human rights impacts which it has caused or to which it has contributed.	<ul style="list-style-type: none"> <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>14</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>
GUIDING PRINCIPLE 29	To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.	
INDICATOR	EVIDENCE RELATED TO INDICATOR	EVIDENCE REVIEWED
Individuals who believe they have been adversely impacted by the company are able to access the OGM directly to raise their concerns, without first seeking other means of recourse.	<ul style="list-style-type: none"> <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> </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>14</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.

	<ul style="list-style-type: none"> <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>	
The OGM is designed to directly address remediation for any harms caused or contributed to by the company.	<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>
The OGM does not impair access to other pathways to remediation (e.g., judicial or non-judicial accountability mechanisms).	<ul style="list-style-type: none"> <li>• OGM procedures specifically address non-hindrances 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-hindrances 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>
<b>GUIDING PRINCIPLE 31(A)</b>	<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.	
<b>INDICATOR</b>	<b>EVIDENCE RELATED TO INDICATOR</b>	<b>EVIDENCE REVIEWED</b>
The OGM was designed to include elements of independence and accountability, including those that prevent parties to the grievance from interfering with its fair conduct.	<ul style="list-style-type: none"> <li>• OGM procedures specifically address accountability and independence, including conflicts of interest.</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>
The OGM is perceived as fair and legitimate by affected individuals and the local community.	<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</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> </ul>

	<p>regarding (a) its independence, (b) its handling of claims, (c) the steps taken to resolve grievances, or (d) its outcomes.</p> <ul style="list-style-type: none"> <li>• There is no evidence that affected individuals believe the OGM will fail to engage with them respectfully while handling complaints.</li> <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>	<ul style="list-style-type: none"> <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 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.</li> </ul>
<p>Reasonable efforts are taken to ensure the safety and security of individuals who access the mechanism.</p>	<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>
<p><b>GUIDING PRINCIPLE 31(B)</b></p>	<p><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.</p>	
<p><b>INDICATOR</b></p>	<p><b>EVIDENCE RELATED TO INDICATOR</b></p>	<p><b>EVIDENCE REVIEWED</b></p>
<p>The OGM has been promoted to individuals and communities where affected individuals are likely to learn of it, in a manner that accounts for local culture, literacy, language and need, with information sufficiently widely disseminated to reach</p>	<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</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> </ul>

<p>materially all potential adversely impacted stakeholders.</p>	<p>reside or work, or other locations designed to alert affected individuals to the OGM.</p> <ul style="list-style-type: none"> <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 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> <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</li> </ul>

		populations to confirm that they are unaware of affected individuals being unable or deterred from accessing the OGM because of its location or hours.
The OGM has a process to provide reasonable assistance for affected individuals to effectively access the OGM, if needed.	<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> <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, (c) steps to address issues that raise severe human rights impacts or represent significant disputes, and (d) recorded outcomes reflecting the reasoning, information or evidence relied upon, and remedy provided.</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> <li>• There is evidence of consistency in outcomes in cases with significant similarities, and a lack of arbitrariness in decisions and outcomes.</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, (iii) how severe human rights impacts or significant disputes will be treated in the OGM, and (iv) the memorialization of decisions.</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 and outcomes, (vi) proposed remediation is developed through engagement and collaboration with claimants, and (vii) remediation is compatible with human rights standards.</li> <li>• Review 3 or more case files to identify the process that was filed and the outcomes, and consistency with OGM procedures.</li> <li>• Review 3 or more case files with similar allegations to identify outcome consistencies or inconsistencies.</li> </ul>

<p>The material steps in accessing and seeking remedy under the OGM, as well as potential outcomes and indicative time frames, have been communicated to affected individuals in a manner they could easily understand.</p>	<ul style="list-style-type: none"> <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 limitations on the remedy that the process can provide.</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>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</li> </ul>

		<p>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.</p> <ul style="list-style-type: none"> <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>
The OGM maintained sufficient flexibility to adapt its processes to situations as needed to respect rights, including those of vulnerable populations or groups requiring assistance to access the OGM.	<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 procedures are implemented in practice, with specific examples where it has occurred.</li> </ul>
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	<ul style="list-style-type: none"> <li>• There is evidence that all claimants and affected individuals have access to at</li> </ul>	<ul style="list-style-type: none"> <li>• (a) Interview OGM personnel, and (b) engage with local experts, to confirm that</li> </ul>

<p>individuals about alternative pathways to remedy.</p>	<p>least one alternative judicial or non-judicial pathway to remedy besides the OGM, which is perceived as credible and fair.</p> <ul style="list-style-type: none"> <li>• There is evidence that the OGM provides potential claimants with information about other pathways inside or outside the company.</li> </ul>	<p>alternative pathways exist for remedy that (i) are reasonably trusted and (ii) do not impose undue barriers on claimants.</p> <ul style="list-style-type: none"> <li>• Review OGM procedures and documentation to confirm that claimants receive information about alternative remedy pathways.</li> </ul>
<p>The OGM (Tier 2) will provide claimants access to independent expert advice as required (including in relation to severe impacts and in connection with settlement agreements).</p>	<ul style="list-style-type: none"> <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 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.</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 (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.</li> </ul>
<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> <li>• There is evidence that claimants are advised that they can challenge outcomes with which they disagree.</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, understand how they were addressed, and confirm that claimants were advised they could challenge OGM decisions.</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></p>	<p><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>	
<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 provide, and provides in practice, regular updates to</p>	<ul style="list-style-type: none"> <li>• A process exists to provide claimants with periodic updates regarding their claims</li> </ul>	<ul style="list-style-type: none"> <li>• Review the OGM procedures to identify how they contemplate providing claimants with</li> </ul>



<p>claimants about the status and progress of their claims.</p>	<p>from the time of their submission until resolution.</p> <ul style="list-style-type: none"> <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>	<p>updates about their claims, throughout the process.</p> <ul style="list-style-type: none"> <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 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.</li> <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>	<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 OGM's implementation and (ii) it is used as part of public reporting.</li> <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>
<p>The OGM provides internal reporting consistent with relevant international reporting standards under the UNGPs.</p>	<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>
<p><b>GUIDING PRINCIPLE 31(F)</b></p>	<p><b>Rights-compatible:</b> ensuring that outcomes and remedies accord with internationally recognized human rights</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 provide, and does provide, outcomes and remedies consistent with international norms, as appropriately applied in the local context.</p>	<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>15</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>
<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>

<sup>15</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.

<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.	
<b>INDICATOR</b>	<b>EVIDENCE RELATED TO INDICATOR</b>	<b>EVIDENCE REVIEWED</b>
<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 individuals, their representatives, and community groups about the grievance process and outcomes, with their perspectives integrated.</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 evidence that the feedback was integrated into the design.</li> </ul>	<ul style="list-style-type: none"> <li>• Review (i) any consultation plans for the design of the OGM, and (ii) documentation reflecting stakeholder consultation in the design of the mechanism.</li> <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>