

STATUS REPORT OF THE INDEPENDENT HUMAN RIGHTS MECHANISM (SIKIKA 2)

1ST AUGUST 2022 TO 30TH APRIL 2023



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This report is produced to satisfy the requirements of an Operational Grievance Mechanism (OGM). All the content herein, including images, and reports, are accurate to the best of the SIKIKA 2 teams knowledge and as captured during the interactions with the various parties. Any inaccuracies should be brought to the attention of the Head of Independent Human Rights Mechanism for consideration. The report is not intended for commercial use, and no commercial rights or financial/otherwise royalties can accrue from mention/image in the report.

ACRYONYMS

CSR	Corporate Social Responsibility
FFT	Fact Finding Team
IHRAC	Independent Human Rights Advisory Committee
IM	Independent Monitor
IHRM	Independent Human Rights Mechanism
LAO	Legal and Administrative Office
NGO	Non-Governmental Organisation
OGM	Operational Grievance Mechanism
PLC	(in relation to Kakuzi) Public Limited Company
SGBV	Sexual and Gender based Violence
UNGP	United Nations Guiding Principle

DEFINITION OF TERMS

Ad-hoc cases	These are cases which were first registered at SIKIKA Tier 1 at Kakuzi Plc and transferred to SIKIKA 2 at SIKIKA Tier 2's inception for processing.
Deferred Decisions	These are cases where the Head of SIKIKA 2 has already written the decision, but the complainant has not availed themselves to SIKIKA 2 to receive the decision despite being summoned. These decisions are not read in the absence of the complainant and the file is not closed until the complainant avails himself/herself for the reading out of the decision.
FFT Stage	Files at this stage are either undergoing the verification of medical documents, pending independent medical assessment, pending further statements, or site visits by investigators.
Finalized cases	These are files in which the complainant has been compensated and the file has been closed; or the decision of the Head-IHRM has been read out to the complainant and the complainant decided not to appeal; or where the decision of the Appeal judge has been read out.
Grievance Register	This is a register in which every grievance is entered into. The register captures the file number, name, contacts, age and gender of the complainant and other details such as brief description of the grievance, the year of incident, and the various dates on which the file got to any of the SIKIKA 2 stages. This is different from the other register used to record just the names and phone numbers of complainants .
LAO Stage	Files at this stage are either pending witnesses or documents or under review by the Legal Administrative Officer before they are forwarded to Triage, or files referred back by the Head- SIKIKA 2 to LAO with instructions.
Pending Appeal	File sent to the Appeals Panel and have not been finalized.
Pending Decision	This means that the file has gone through all the stages and is now being reviewed by the Head of SIKIKA 2 for final determination and recommendations.
Pending further action by complainants (suspended):	The files are open and still undergoing SIKIKA 2 processes. These files are waiting for more information/ witnesses /documents from the complainant and the complainant no longer avails himself/herself to provide the Information/documents and/or witnesses as required either at the Legal Assistants stage or Fact-Finding Stage.
'Period Under Review' or 'Reporting Period'	The period of SIKIKA 2 operations which this report analyzes i.e 1 st August 2022 to 30 th April 2023
Registered and Processed Complainants	These are registered complainants who have recorded grievances and opened files. This entails recording of the Grievance Registration Form and other forms such as Informed Consent; and also recording statements and providing witnesses and supporting documents. These complaints are entered into our Grievance Register.
Registered and Inactive Complainants	Persons who have been entered into SIKIKA 2's register. This entails recording of names and phone numbers. At this point no file has been opened and no complainant has a file number as the complainants have not returned back despite numerous follow-up.
Referral Cases	These are the 174 ad-hoc cases which were referred to SIKIKA Tier 2 from SIKIKA Tier 1 at SIKIKA Tier 2's inception, or files subsequently referred to SIKIKA Tier 2 from SIKIKA Tier 1.

FOREWORD

While conducting their operations, businesses may commit human rights violations, mainly because of the adverse impacts that may arise. As a result, a global standard has been developed that requires companies to respect human rights, prevent the commission of human rights violations, mitigate adverse effects of their operations, and provide remedies where human rights have been breached. Although States have the primary responsibility to uphold, promote and respect human rights, the global standard on human rights for business places a duty on the business to also uphold, protect and respect human rights. The standard forms the first comprehensive guidance for companies to report on respecting human rights. This standard is referred to as the UN Guiding Principles on Business and Human Rights (hereinafter the UNGPs). The UNGPs encourages that for businesses to meet their responsibility to provide remediation, they should develop and implement Operational Grievance Mechanisms (OGMs).

It is against this background that Kakuzi developed and is implementing an Operational Grievance Mechanism locally referred to as SIKIKA. SIKIKA is a Swahili word meaning 'to be heard'. SIKIKA is comprised of two Tiers; SIKIKA Tier 1 is an internal mechanism that handles 'operational' impacts that occur during the ordinary course of business operations that can best be handled and resolved internally and by Kakuzi's management. Such impacts include employment and labour relations issues. SIKIKA Tier 2 is an external mechanism that handles grievances that raise severe human rights allegations that have been caused, contributed by or directly linked with operations of the company. The overall objective of SIKIKA 2 is to independently investigate allegations and provide remedy. The desired outcome is to fortify relationships with stakeholders.

Tier 1 and 2 of SIKIKA are subject to oversight by an Independent Monitor whose mandate is to provide annual reports regarding the implementation of SIKIKA, including assessments of the rigor of 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 implementation and independence, and recommendations for improvements of the process and outcomes.

During the period under review, the Independent Monitor provided his first report regarding SIKIKA's implementation. The report analyzed both Tier 1 and Tier 2 and recommended several measures to improve its operations. SIKIKA has implemented some of the Independent Monitor's recommendations and continues to implement all the remaining recommendations. SIKIKA has leveraged on the expertise and guidance of the Independent Monitor to identify lessons and measures to prevent future grievances.

This Performance Status Report is the second report to be released by SIKIKA 2, but comes at a time when the OGM has been evaluated by an Independent Monitor.

The first Report was for the period between 24th February 2022 and 31st July 2022. This Second Report reviews the activities of SIKIKA for the period between 1st August 2022 and 30th April 2023. Following the evaluation by the Independent Monitor, SIKIKA has embarked on an implementation plan for the recommendations by the Independent Monitor. The implementation Plan is shared herein.

SIKIKA 2 began its operations on 24th February 2022. Since then it has registered 1,773 complainants (1,599 new complainants also referred to as '2022 complainants', and 174 ad-hoc complainants. SIKIKA 2 has processed 1258 of these files and total of 515 complainants registered are inactive.

The design and implementation of SIKIKA 2 is aligned to the Constitution of Kenya, national laws, Kenya's National Action Plan on Business and Human Rights and international human rights standards, including the International Bill of Rights and the UN Guiding Principles on Business and Human Rights (UNGPs).

More specifically, SIKIKA is designed to meet the effectiveness criteria outlined in Principle 31 of the UNGPs, i.e. legitimacy, accessibility, predictability, equitability, transparency, rights-compatibility, a source of continuous learning, and based on engagement and dialogue.

(Rtd) Lady Justice Mavis Violet
Head – SIKIKA 2

CHAPTER 1. INTRODUCTION

PREFACE

The Operational Grievance Mechanism of Kakuzi PLC consists of two processes, each with its own procedure. SIKIKA 1 is a company-managed process for grievances that concern 'operational' impacts that may occur during ordinary business operations that can best be handled and resolved by Kakuzi staff. SIKIKA 2 is an independent body with a unique mandate, procedures, support and safeguards to review allegations about severe human rights impacts and provide remedy to victims of such if proven. SIKIKA 2 was developed to receive, investigate and address complaints arising from severe human rights impacts. SIKIKA's overall scope is to address any grievance raised by affected stakeholders and their representatives relating to adverse impacts that Kakuzi has allegedly caused, contributed to, or is directly linked to through its operations and business relationships and to provide access to remedies for those impacted and to strengthen relationships with all stakeholders.

The working of the OGM is guided by the UNGP 31 Effectiveness Criteria of UNGPS. SIKIKA operations are also guided by a publicly available Operational Guidance Manual. The Guidance Manual is aligned with the UN Guiding Principles on Business and Human Rights (UNGPs) and International human rights standards, including the International Bill of Rights. The Guidance Manual outlines a framework of the governance, procedures, safeguards and potential remedies to enhance transparency and accountability in grievance handling. This Manual is continuously reviewed as practical experiences and best practices are reflected upon.

EFFECTIVENESS CRITERIA

In conducting its operations, the SIKIKA 2 is guided by Principle 31 of the UNGPs, which outlines effectiveness criteria for grievance mechanisms. SIKIKA 2 reflects on the requirements by internalizing the description of each step and asking questions that assist in meeting each description as outlined below:

Table 1: Criteria under Principle 31 of the UNGPs

NO.	UNGP	Description of the UNGP
	Legitimate	OGMs enabling trust from the stakeholder groups for whose use they are intended and being accountable for the fair conduct of their grievance processes.
	Accessible	OGMs being known to all stakeholder groups for their intended use and providing adequate assistance for those who may face particular barriers to access.
	Predictable	OGMs providing clear and known procedure with an indicative time frame for each stage and clarity on the types of process and outcomes available and means of monitoring implementation.
	Equitable	OGMs 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.
	Transparent	OGMs keeping parties to a grievance informed about their progress and providing sufficient information about their performance to build confidence in their effectiveness and meet any public interest at stake.
	Rights- Compatible	OGMs ensuring that outcomes and remedies accord with internationally recognized human rights.
	Source of Continuous Learning	OGMs drawing on relevant measures to identify lessons for improving their mechanisms and prevent future grievances and harm.
	Based on Engagement and Dialogue	OGMs consulting the stakeholder groups for whose use they are intended on their design and performance and focusing on dialogue to address and resolve grievances.

MANDATE OF SIKIKA 2

- To facilitate access to remedy for bona fide grievances about severe human rights impacts caused by, contributed to, or directly linked with Kakuzi's operations and business relationships.
- To ensure that safeguards and supports are provided to any complainants that raise severe human rights allegations.
- To collect and compile the information and evidence in an impartial, thorough and rights-respecting manner.
- To provide recommendations to Kakuzi and the Independent Human Rights Advisory Committee (IHRAC) for unresolved complaints and grievance prevention.
- To independently investigate allegations of retaliation.
- To provide oversight to SIKIKA 1 grievance handling process and make recommendations thereon.



CHAPTER 2. GRIEVANCE MANAGEMENT AT SIKIKA

This Chapter provides information on how SIKIKA has handled grievances in terms of types of stakeholders and their complaints, investigations conducted, types of outcomes and remedy provided during the reporting period.

2.1 AN OVERVIEW OF SIKIKA 1

SIKIKA 2 collaborates closely with SIKIKA 1 and carries out some oversight role over the work of SIKIKA 1. The latter is an internal mechanism meant to address operational impacts, such as health and safety, living and working conditions and other grievances handled and resolved at the company level. This partnership allows for the referral of complaints, review of monthly reports and offering appropriate advice. Between 1st August 2022 and 30th April 2023, SIKIKA 1 referred Eight (8) complaints to SIKIKA 2. On its part, SIKIKA 2 referred Eight (8) complaints to SIKIKA 1 and one (1) complaint was later recalled based on the further information received. Out of the complaints referred to SIKIKA 1, one file was a complaint brought by about 24 individuals qualifying to be a community complaint.

A. Total Grievances per Department

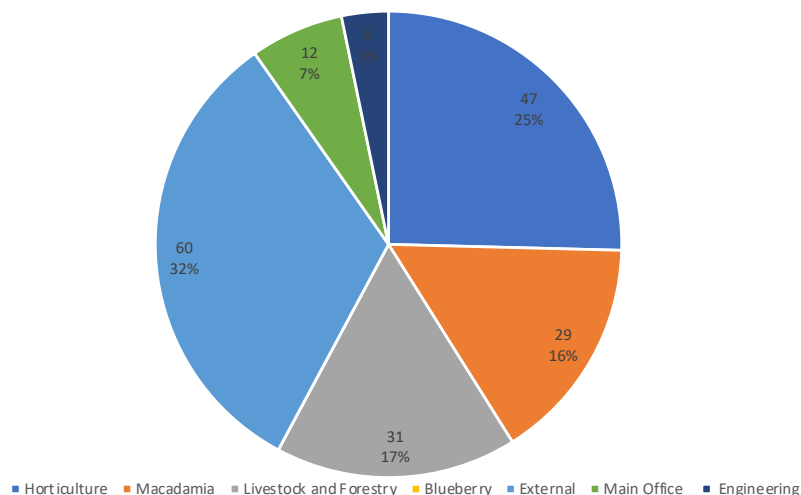


Illustration 1: SIKIKA 1's Complaints by Division between 1st August 2022 and 30th April 2023

B. Number of Grievances Per Theme

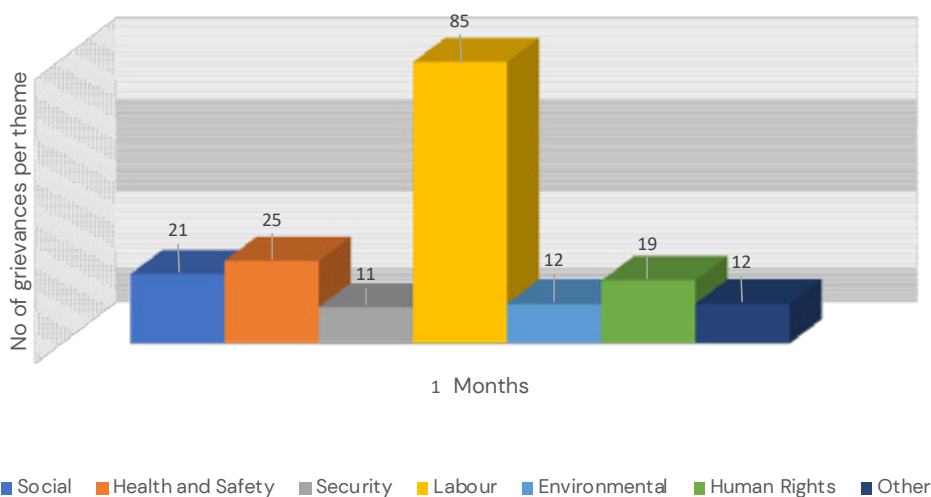


Illustration 2: Number of cases handled by SIKIKA 1 between 1st August 2022 and 30th April 2023 per theme.

Majority of the complaints lodged and handled at SIKIKA 1 are employment/labour related. Kakuzi has different sectors from which complaints may be lodged by the different stakeholders. The graph below shows the types and numbers of grievances handled at SIKIKA 1 from the different sectors.

C. Number of Grievances Per Stakeholder Group

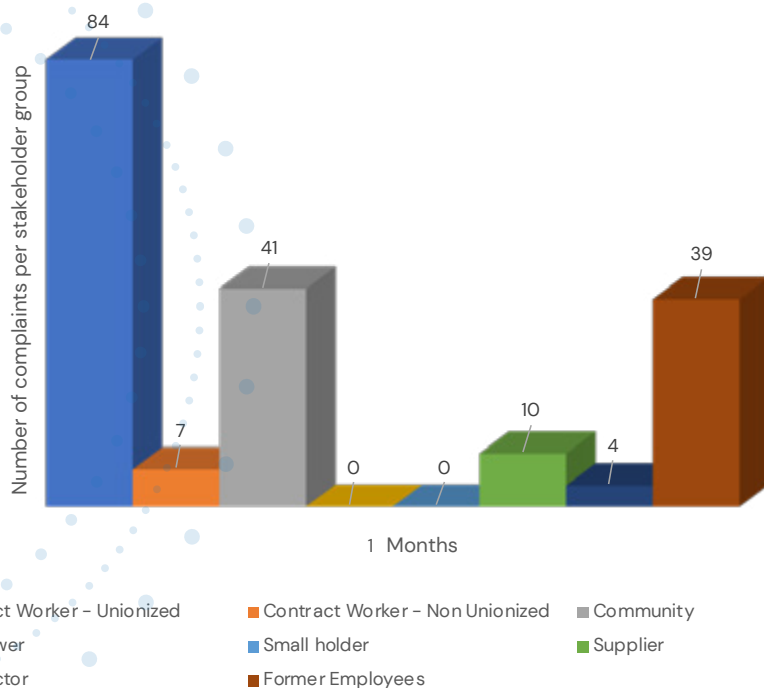


Illustration 3. Number of grievances received by SIKIKA 1 from 1st August 2022 – 30th April 2023

SIKIKA 2 can transfer complaints to SIKIKA 1 and vice versa. The illustration below shows the nature of complaints referred to SIKIKA 1.

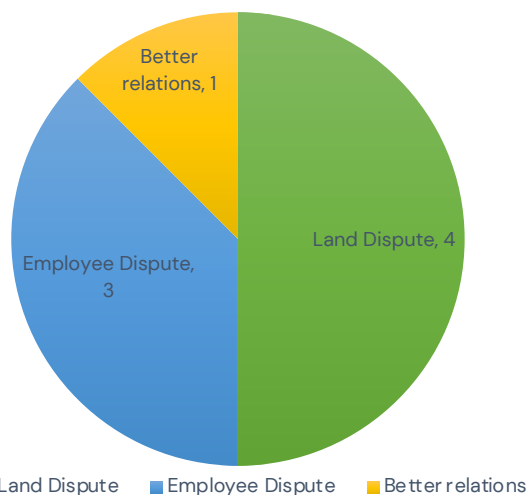


Illustration 4: Pie Chart Showing Breakdown of Files Referred to SIKIKA 1 during the Reporting Period

The following is a further breakdown of the files under the 3 categories:

Land Dispute – 4 files

The grievances under this category vary as follows:

1 file: claim for compensation for cows alleged to have been confiscated in a land dispute.

1 file: claim that eucalyptus tree planted in Kakuzi land is causing damage to a neighbour's land.

1 file: claim for land compensation brought on behalf of 388 members of a self-help group.

1 file: Border dispute.

Employee Dispute – 3 files

The grievances under this category were as follows:

1 file: Work dispute involving a claim for allowances.

1 file: Work dispute involving a request to convert a casual labourer to permanent employment.
1 file: Unfair termination.

Better Relations

1 file: This file was brought by a complainant who claimed he was assaulted on 2/9/2014 by Kakuzi Security Guards but his requested relief was that Kakuzi PLC improves relationships with the community.



2.2 AN OVERVIEW OF SIKIKA 2

During the reporting period, SIKIKA 2 processed 525 cases. 110 cases out of the 525 cases were land related grievances. The remaining 415 cases were mostly cases that involve grievances that relate to the 2014 incident in which many complainants alleged assault by Kakuzi Security Guards. Only a few cases arising in 2014 did not arise from the 2014 incident. See the breakdown below.

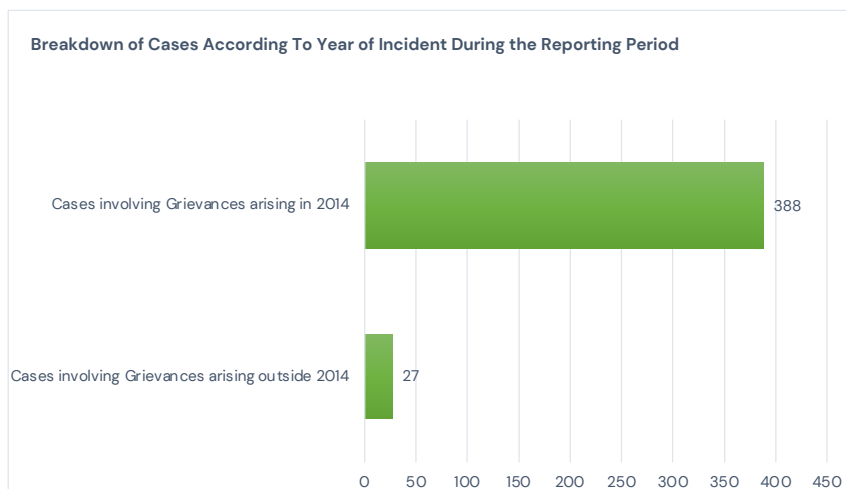


Illustration 5: Breakdown of Cases Registered According to Year of Incident During the Reporting Period

For a long time SIKIKA 2 had been misunderstood to be an IHRM that is intended to address the violations (mainly assault) alleged to have occurred during the 2014 incident. Consequently, the bulk of cases were initially dealing with the 2014 incident. However, with more community engagement programs and more public sensitization, the IHRM began to register complaints alleging other grievances aside from assault by Kakuzi security guards during the 2014 incident. 179 out of the 525 cases were new registrations and the analysis below shows how new grievance themes started to emerge prominently following more public education.

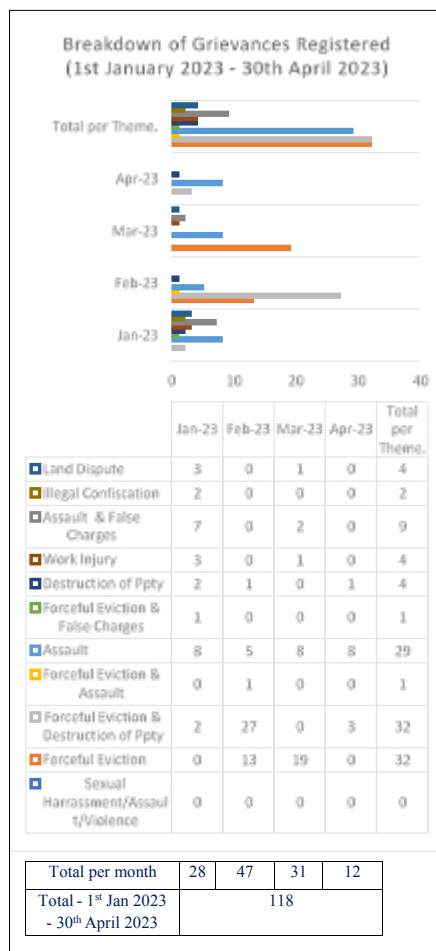
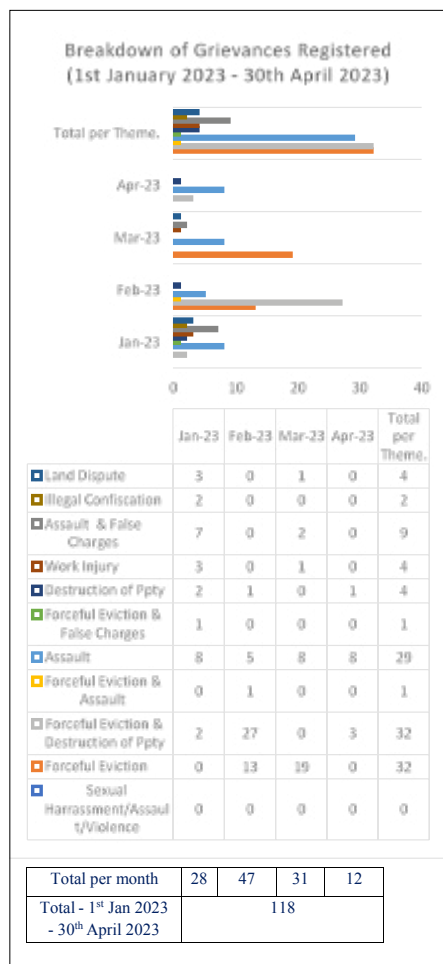


Illustration 6: Breakdown of all New Registrations received by SIKIKA 2 in the Period Under Review According to Grievance Themes.

Total per month	0	24	15	18	4
Total - 1st Jan 2023 - 30th April 2023	118				

*During the period under review no grievances relating to sexual and gender violence offences were registered. SIKIKA 2 continued to process similar grievances registered before the reporting period

Table 2: Description of the Various Themes for New Registration in the Period Under Review

THEME	DESCRIPTION
Land Dispute	Grievances in which the complainants who neighbor Kakuzi and are disputing the boundaries or seeking relocation.
Illegal Confiscation	Grievances where complainants allege that Kakuzi employees/guards or contractors took their property illegally.
Assault and False Charges	Grievances where complainants alleged that security guards assaulted them and subsequently made malicious reports or allegations to the police to have the complainants arrested and or charged.
Work Injury	Grievances where the complainants allege to have suffered injuries or illnesses arising out of or in the course of their employment.
Destruction of Property	Grievances where complainants allege that security guards intentionally damaged their property without repair during evictions.
Forceful eviction and False Charges	Grievances in which complainants alleged that the following two violations combined were committed by security guards on them: Forceful eviction: Complainants claim they were involuntarily removed from their homes without notice, at night, without adequate notice and involving use of excessive force. False Charges: malicious reports or allegations made to the police particularly on trespass to have the complainants arrested.
Assault	Grievances in which complainants allege that Kakuzi Security Guards physically battered them or beat them.
Forceful Eviction and Assault	Grievances in which complainants alleged that the following two violations combined were committed by security guards on them: Forceful eviction: Complainants claim they were involuntarily removed from their homes without notice, at night, without adequate notice and involving use of excessive force. Assault: Grievances in which complainants allege that Kakuzi Security Guards physically battered them or beat them during the forceful eviction.
Forceful Eviction and Destruction of Property	Grievances in which complainants alleged that the following two violations combined were committed by security guards on them: Forceful eviction: Complainants claim they were involuntarily removed from their homes without notice, at night, without adequate notice and involving use of excessive force. Grievances where complainants allege that security guards intentionally damaged their property without repair during evictions.
Forceful Eviction	Complainants claim they were involuntarily removed from their homes without notice, at night, without adequate notice and involving use of excessive force.
Sexual Harassment/ Assault/ Violence	This category addresses a range of crimes that can be considered as sexual offences, including non-consensual crimes such as rape, defilement, harassment or violence that occurs in connection with any sexual act directed against another person, without the consent of that person.

*It is important to note that complaints may be categorized in different themes yet they originate from the same incident. What determines the theme is the complainant in his/her interview, particularly what they say in their interview. For instance, two people may have been forcefully evicted but one decides to only pursue justice for the forcible eviction while another decides to seek justice for the destruction of their property in addition to the claim for forcible eviction.

Grievances involving Land Disputes

During the reporting period, SIKIKA 2 registered 110 cases relating to land disputes out of the total 525 cases. Most complaints regarding land have however been historical as shown in the table below:

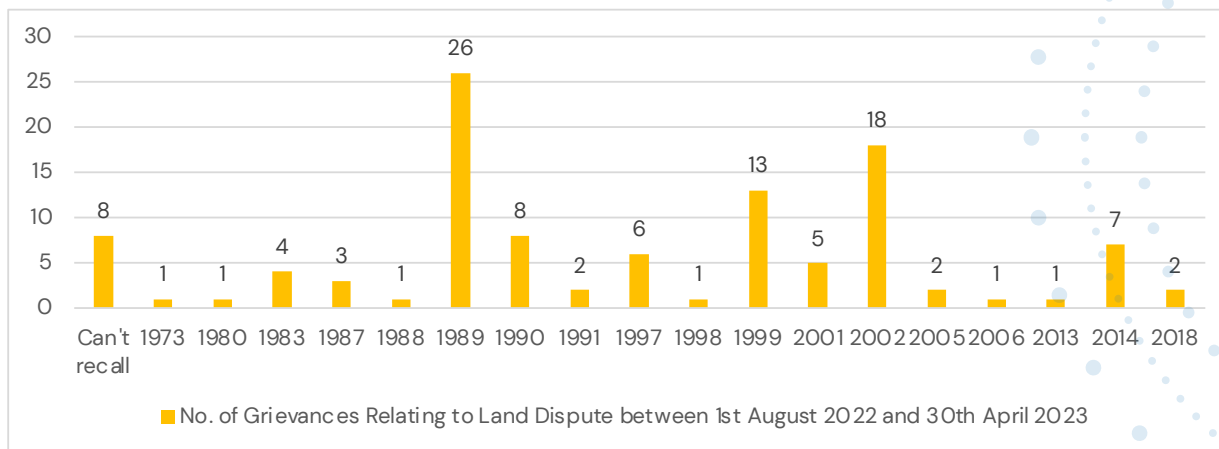


Illustration 7:

Breakdown of the 110 Cases Relating to Land Grievances between 1st August 2022 and 30th April 2023

Grievances involving Assault

The bulk of the cases in the reporting period 415 cases involved grievances relating to assault. 388 cases involved the 2014 demonstrations incidences.

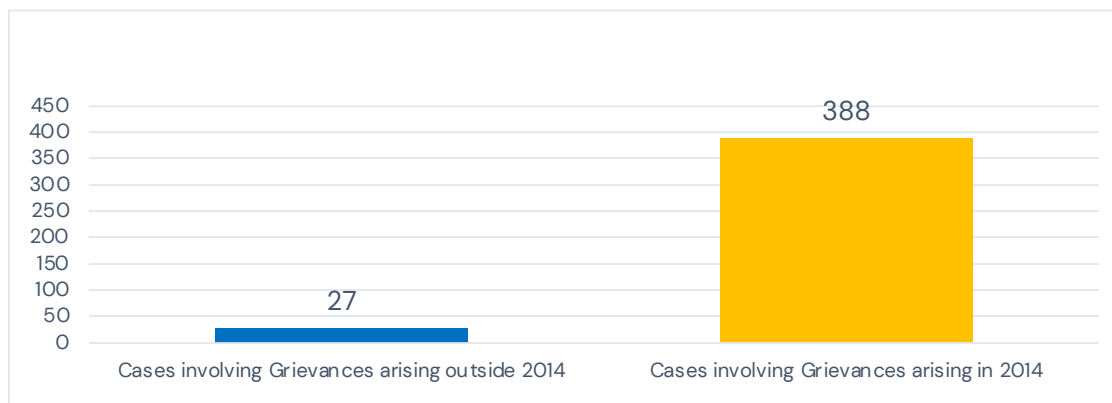


Illustration 8: Breakdown of Cases According to Year of Incident during the Reporting Period

57% of the new registrations have been female complainants. Below is a breakdown of the newly registered complainants by gender.

Registered Complainants by Gender

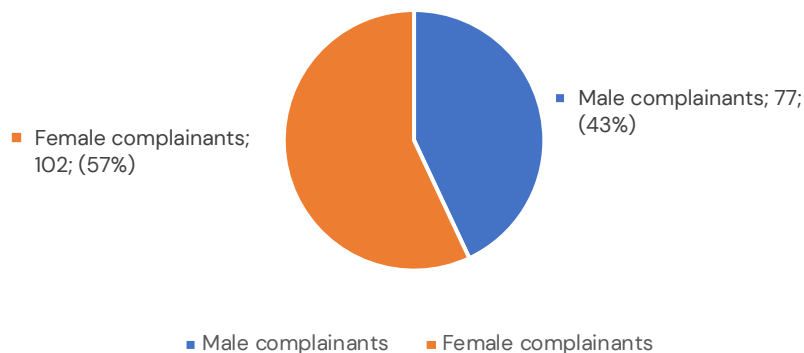


Illustration 9: Breakdown of all New Registrations received by SIKIKA 2 in the Period Under Review by Gender

2.3. THE GRIEVANCE PROCEDURE AT SIKIKA 2

The management of Complaints under SIKIKA 2 is guided by a clear procedure with an indicative time frame for each stage in order to ensure that the process is consistent and predictable.

The grievance management process consists of 8 steps:

Step 1 – Receive: A grievance can be submitted to any SIKIKA 2 access point, including referrals from SIKIKA 1. The first point of contact is the Legal Administrative Office (LAO) where complaints are registered. The LAO is comprised of Advocates and a Receptionist. SIKIKA 2 uses Kikuyu and Kamba languages in addition to the Official languages of English and Kiswahili to communicate with complainants. Complainants can also submit their grievances anonymously, and these would be duly registered. The following bar graph shows the various access points and the numbers of complainants per access point, illustrating that some access points are preferred more than others.

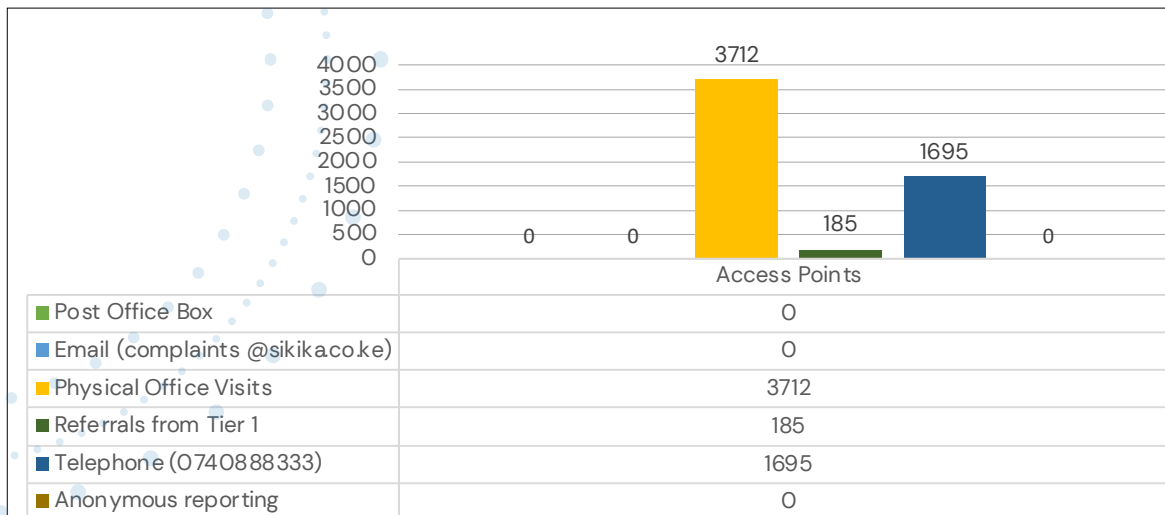


Illustration 10: Breakdown of Persons Served through the Various Access Points between 24th February 2022 and 30th April 2023

NOTE:

The 3,712 physical visits include repeat visits of:

- Complainants who registered their complaints;
- Complainants who recorded statements or presented supporting documents;
- Witnesses who recorded statements (at times accompanied by complainants);
- Complainants who provided clarifications regarding their complaints, presented additional documents, made enquiries about the status of their complaints or underwent counselling sessions; or
- Stakeholders like Counsellors and independent Advocates who provided professional assistance.

The 185 referrals from Tier 1 include:

- 174 ad-hoc files that were referred to SIKIKA 2 at SIKIKA 2's inception; and
- 11 files referred to SIKIKA 2 between 24th February 2022 and 30th April 2023.

The phone calls received include:

- Enquiries by members of the public wishing to know more about SIKIKA 2 and the admissibility of their complaints;
- Complainants inquiring about the status of their complaints, or seeking clarifications on issues regarding their complaints such as what further documents are required.

Step 2(a) –Register and Acknowledge: Registration and Acknowledgement of complaints is mainly done by the Legal Administrative Office. The process takes an average of 45 (forty-five) minutes per complainant. This involves taking the complainant through the SIKIKA 2 process and explaining the contents of the Informed Consent and Mutual Confidentiality Agreement, which are signed between SIKIKA 2 and the Complainant. The complainant is then issued with a formal acknowledgement of their grievance in the form of a grievance registration slip confirming that a grievance has been registered. A total of 179 new cases were registered and processed between 1st August 2022 and 30th April 2023.

Step 2(b)– Statement Recording: The Legal Administrative Assistant interviews and records a statement of the complainant and any witnesses presented. A complainant may be requested to record a further statement to clarify or inform on a complaint already lodged. The Legal Administrative Assistant then advises the complainant on what relevant documentary evidence and/or witnesses the complainant should provide. Once this process is complete, the Legal Administrative Assistant forwards the file to the Head of SIKIKA 2 for triage.

Step 3– Assess and Assign, or Referral (Triage): All complaints, whether admissible or not, are processed by the LAO. Cases not admissible include, cases before other adjudicative bodies (such as courts, the police and other agencies such as the National Land Commission), land cases, and cases which are within the mandate of SIKIKA 1. The Legal Administrative Assistants assess and explain to complainants why their cases may be inadmissible. The files are then forwarded to the Head of SIKIKA 2 along with any observations and/or recommendations.

At the triage stage, the Head of SIKIKA 2 determines whether the grievance qualifies as a severe human rights impact regarding its scale, scope and irremediable character and therefore whether the grievance is admissible. Based on this assessment, the grievance will be assigned to the Fact-Finding Team, or referred to SIKIKA 1, or to any other relevant dispute resolution mechanism. Where the information in the file is insufficient, the complainant will be requested to provide further information and the file is either sent back to LAO to ensure compliance, or the file will be closed where such compliance is not met.

Step 4 – Referral: SIKIKA 2 refers to SIKIKA 1 grievances received at SIKIKA 2 but which fall within the mandate of SIKIKA 1. This is done with the consent of the complainant. Such complaints include:

- Grievances that are within the mandate of SIKIKA 1.
- Complaints related to wildlife and environmental impacts at Kakuzi.

Where the grievances fall outside the scope of both SIKIKA 2 and SIKIKA 1, the complainant is advised on the appropriate institution to present their grievances. Such grievances include:

- General historical land claims.
- Those involving Impacts not caused by, contributed to, or directly linked to Kakuzi's operations or business relationships.
- Complaints that have been filed and resolved by the courts, or are still pending in court.
- Where grievances about alleged severe human rights impacts concern acts of a criminal nature.

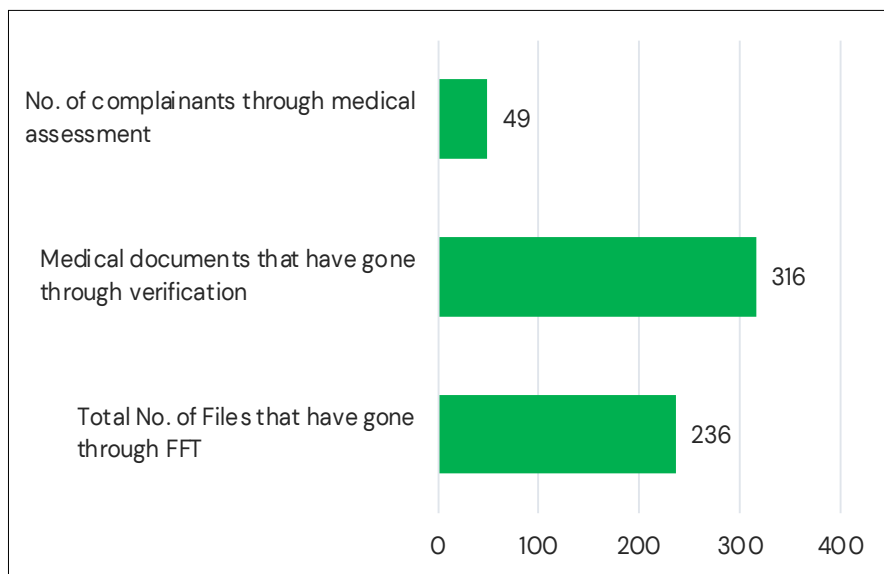
Step 5- Investigation, Verification and Recommendation: The Investigation process is carried out to resolve a grievance in order to inform the basis for an appropriate resolution or remedy. This process is done by the Fact-Finding Team comprising of a Lead investigator supported by three other investigators. The team carries out independent investigations regarding the nature, circumstances and evidence related to the grievance/complaint by taking any further statements from the complainant and any witness, site/scene visits if required, verification of the authenticity of documents including medical records, proof of credentials of medical officers and institutions, or seek expert independent medical assessment/opinion, or refer one to counselling. The investigators also assess the evidentiary threshold of the complaint and recommend potential resolution options.

Some of the challenges during investigations include:

- Delays by the Complainants to avail themselves for scene investigation or to avail documents;
- Delays Responses from Regulatory bodies involved in the verification of documents;
- Some medical facilities have closed, or changed ownership. Where

- the facilities are closed, medical records are not available. Where ownership changed, the new management has been unwilling to own the medical records issued under previous ownership. This makes it difficult to verify the authenticity of medical documents;
- The medical facilities are spread out across various Counties. Some of the facilities are located very far (See Illustration 11). Since verification of medical documents often requires physical visits, the process may be slowed down due to the long distance and time related to travel by the Fact-Finding Team;
- Some medical facilities destroy medical records after a specific number of years and can, therefore, not verify. This results to complainants being unable to provide medical evidence.
- Some medical facilities do not keep records or there is no systematic way of keeping records.
- In some cases, there is collusion between some medical officers with complainants for the officers to generate medical documents irregularly at a fee.
- Some medical facilities are unlicensed, which raises doubts as to the authenticity or genuineness of the medical documents since the source of the documents would be an institution operating illegally.

Where the verification process has not yielded positive results, SIKIKA 2 dismisses the complaint. Where the complainant contests the results of the verification (e.g that the document did not originate from the medical facility), the complainant is usually given additional time to seek for letters of confirmation from the medical facilities confirming that they were treated in those facility. SIKIKA 2 also takes on board proposals fronted by the complainants for non-financial remedies that benefit the community. SIKIKA 2 also takes on board proposals fronted by the complainants for non-financial remedies that benefit the community.



*A single file can have two or more medical documents. This explains why the number of medical documents going through verification may be more than the total number of files that have gone through FFT.

Illustration 11: Breakdown Fact finding process for the Period between 1st August 2022 and 30th April 2023

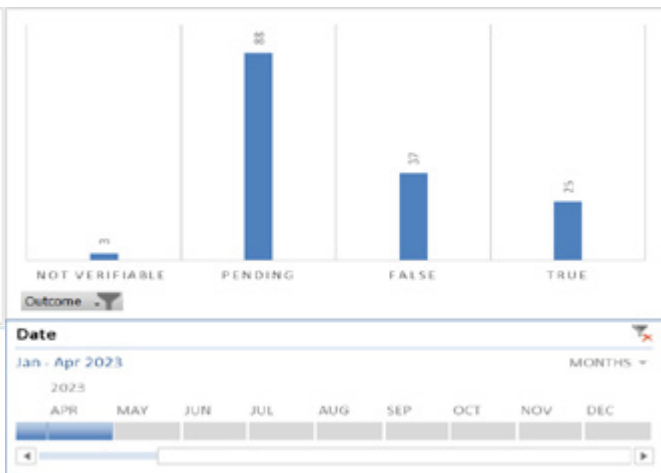
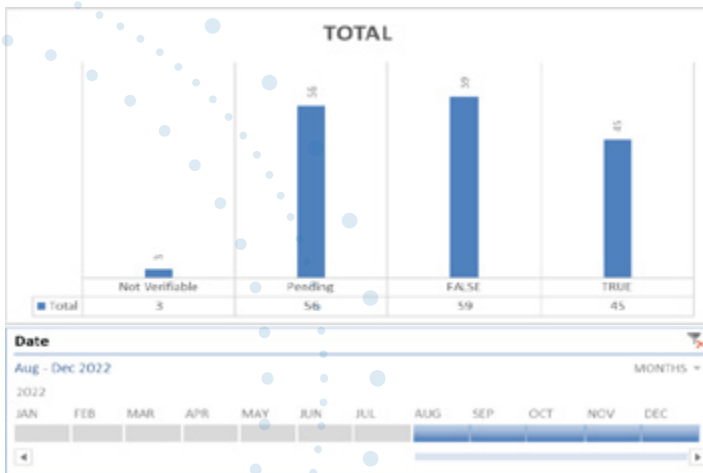


Illustration 12: Breakdown of Medical Documents Verified between 1st August 2022 and 31st December 2022

Illustration 13: Breakdown of Medical Documents Verified between 1st January 2023 and 30th April 2023

NOTE:

- Not Verifiable:** These are documents that the medical institutions cannot authenticate.
- Pending:** These are documents that are yet to be verified by medical facilities.
- False:** These are outcomes where a document was found not authentic.
- True:** These are outcomes where a document is confirmed as emanating from a medical facility and in relation to the complainant.

It is important to note that a document being found to be true or being confirmed to be emanating from a medical facility and in relation to a complainant does not mean that the same is true in relation to a grievance. For instance in one complaint a document was found to be emanating from the medical facility and in relation to the complaint. However, the document revealed that the complainant was suffering from arthritis while the complainant had stated that she had been assaulted by Kakuzi security guards and sustained prolonged injuries to her legs

During the reporting period, 316 medical documents were subjected to medical document verification and 30 facilities in about 7 counties were visited for purposes of document verification.

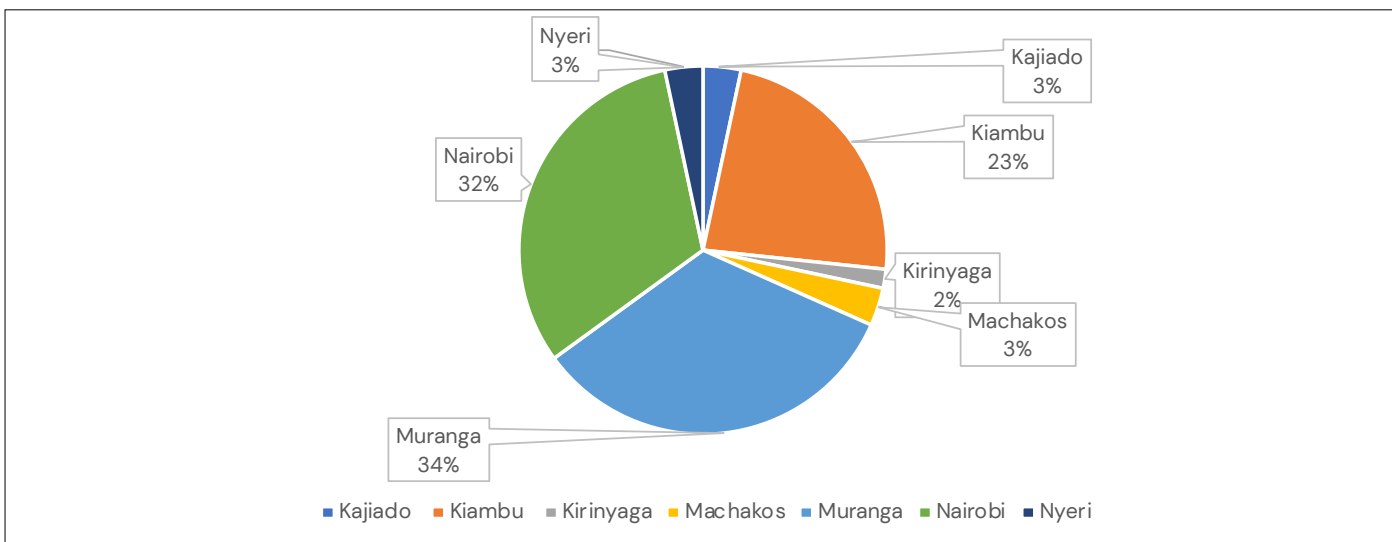


Illustration 14: Distribution of Counties where Medical Verification has been conducted during the Reporting Period

Benefits of Medical Verification

Medical verification has been a fundamental component of the SIKIKA 2 process as it is useful to:

- Determine the genuineness of medical documents.
- Identify unlicensed medical practitioners. In one case a Sub – County hospital informed SIKIKA 2 that a clinician who had authored a medical report had misrepresented himself to be medical doctor and illegally used the hospital letterhead and stamp in the fake report.
- Identify unlicensed medical facilities.
- Determine the nature and extent of injuries.
- Determine where a person qualifies for quantum of damages.
- Determines the genuineness of the complaint/grievance.

Step 6 – Independent Expert Medical Assessment: SIKIKA 2 also utilizes independent medical experts in various fields to ascertain the relationship between the complainant’s physical injuries/scars, complainant’s treatment record, or the complainant’s persistent medical condition to the allegation made in the grievance. This is an extra step in ascertaining the truthfulness of a complaint. During medical assessments, SIKIKA 2 has identified complaints in which the complainant suffers from a medical condition that is not linked to the incident

alleged to have occurred. The Independent Medical Experts have, in some instances, recommended counselling for complainants in cases deemed severe medical conditions to help the complainant understand the diagnosis they got. This is also a process where the complainants get more information and advice on their medical issues. Between 1st August 2022 and 30th April 2023, 49 (forty Nine) complainants have been taken through expert medical assessment.

Step 7-Adjudicate and Respond: The Head of SIKIKA 2 assesses the totality of evidence and recommendation by the Fact Finders, and decides whether the evidentiary threshold which is on a balance of probability has been met and will provide a formal response to the complainant. The Head of SIKIKA 2 writes a reasoned decision in English and which is delivered in Kiswahili. This decision is further explained to the complainant in any other language that she or he understands where possible. The decision may be in favour of the complainant, or dismissed. A positive decision may include a decision of any potential remedy which may be financial, or non-financial. Both the Complainant and Kakuzi have a right of appeal to the Appeals panel on that decision. A total of 792 cases have been dismissed in the period between February 2022 and April 2023.

The following remedies can be recommended by SIKIKA:

- **Apologies :** These are given by either Kakuzi, or its business partners or other actors who caused or contributed to the adverse impact.
- **Commitment to non-repetition:** by giving information about the mitigation measures and operational changes that Kakuzi and its business partners made or have committed to making to avoid any new adverse impacts.
- **Rehabilitation:** restoring a complaint's well-being by providing medical, psycho-social or other support services.
- **Restoration:** in-kind or non-financial compensation that restores the complainant to a condition nearest to the condition he or she was before the adverse impacts occurred through the development of partnerships with government agencies, civil society organizations and experts to provide individual, or collective restorative justice initiatives as needed.
- **Financial compensation:** provides the complainant with money in an attempt to quantify the adverse impacts based on the national legal standards and decisions from the courts. This is awarded where the evidentiary threshold has been met, and the award is considered an appropriate remedy considering the nature of harm or damage.
- **Non-financial compensation:** provided in the form of economic assistance to the same value as financial compensation.
- **Community Projects (Collective remedy):** where the complaint concerns the broader Kakuzi community issue.
- **Punitive sanctions:** against an individual, or entity that caused the human rights impact and include criminal sanctions, or employment sanctions.

It is not in all cases that complainants have requested financial remedies. SIKIKA 2 will also pursue non-financial remedies in line with the complainants' requests and recommendations made in the Grievance Manual. Some of the remedies requested include access roads and expansion of CSR activities, among others. These suggestions are forwarded to Kakuzi with recommendations for implementation.

After the decision is delivered, the Complainant attends a Post-Decision Discussion with a Legal Administrative Assistant who explains the decision in a language they understand and advises the complainant on the right of appeal. The Post-Decision Discussion acts as a tool of collecting feedback from the complainant on their experience with the OGM's processes which may inform on areas to be improved.

Step 8 - Resolve: A complaint is marked as resolved when a positive outcome of the complaint is made and neither the complainant nor Kakuzi appeals. When the decision is in favor of the complainant and uncontested by Kakuzi, a copy is delivered to Kakuzi Plc for their information and further action. During the reporting period, SIKIKA 2 has recommended that Kakuzi Plc compensate five (5) complainants which decision Kakuzi Plc did not appeal.

Step - 9 Appeal- The complainant, or Kakuzi PLC may appeal the decision of SIKIKA 2. The SIKIKA 2 Appeal process is undertaken by a Retired Judge of the Court of Appeal. Each party is given 7 (seven) days to file their intention to appeal. The three permissible grounds for appeal are:

- That there is new evidence that was not considered before;
- That the decision of SIKIKA 2 does not follow logically from the facts available; and
- That the procedure was not followed, or safeguard and support was either not provided, or adequately provided.

The Legal Administrative Assistant guides the complainant in identifying which of the three permissible grounds of appeal the complainant wishes to rely on and guides the complainant in filling the Appeal Form; write a letter to the Head -SIKIKA 2 or record a statement to appeal the decision. Where a Pro Bono lawyer represents the complainant, then the lawyer files the Appeal on behalf of the complainant. 5 cases have been referred to Appeal.

Step 10 - Follow-up and close out: a grievance is marked as closed once it has been resolved either at the first instance, or after any appeal, and any commitments or remedies implemented. Where a financial remedy is decided, the complainants are taken through a free financial literacy entrepreneurship and saving training, before the final payments are made. The complainant signs out a Complaint and Resolveform and is given an opportunity to make any recommendation on the whole process.

Inactive Complaints

Between 24th February 2022 and 30th April 2023, SIKIKA 2 had registered 1,599 complainants for the new cases and processed 1084 complaints. 515 complainants have not been traced for various reasons and therefore remain inactive. The complainants are consistently contacted by phone and via multiple SMS in order to make arrangements with them to come and process their complaints. Out of the 515 complainants:

- **285 complainants** could not be reached because their phone numbers did not go through, went unanswered, or the numbers given were out of service.
- **36 complainants** moved from the local area for various reasons, including work.
- **54 complainants** stated that they would confirm the date on which they would be available to attend a meeting at SIKIKA 2.
- **47 complainants** 1 stated that they were not available on weekdays to avail themselves and register complaints, while
- **93 complainants** had reasons varying from lack of transport finances², illness, discouragement of having discovered complaints were being dismissed etc.

¹ Please note that 38 out of the 47 have opened files after being reached but the processing of their complaints came after the period under review.

² While SIKIKA 2 extends a transport stipend to complainants, that stipend is granted to needy complainants in the form of a reimbursement for complainants who turn up. This is to guard the provision from misuse by complainants who may receive the stipend by mobile money then decide not to turn up.

The following table shows the status of complaints handled by SIKIKA 2.

Table 3: Status of the Complainants Registered between 24th February 2022 and 30th April 2023

SIKIKA 2 Complainants Registered (ALL CASES) (1773)	Referral (Ad- Hoc) Complainants Registered (174)	Processed (Complainants) Cases 174	Being Processed	7
			Referral to SIKIKA 1	0
			Pending further action by Complainant (Suspended)	21
	Un - Processed Complainants) Ad- Hoc Cases 0	Dismissed	109	
		Deferred Decisions	27	
		Appeal Stage	5	
		Recommended for Compensation	5	
	2022 New Cases Complainants Registered 1,599*	Registered and Processed Complainants New Cases 1084	Being Processed	176
			Referral to SIKIKA 1	8
			Pending further action by complainants (Suspended)	39
Dismissed			683	
Deferred Decisions			178	
Appeal Stage			0	
Recommended for Compensation			0	
Registered Inactive Complainants		515		

*3 complainants out of the 1599 had an extra file/grievance each.

2.4. SEXUAL AND GENDER BASED VIOLENCE

Sexual and Gender based Violence (SGBV) is an umbrella term for a range of violations that include sexual and physical abuse. It is violence that is directed to a person based on their gender and thereby disproportionately affects them. The National laws of Kenya have listed such abuses as criminal offences and are, therefore, subject to the criminal justice system.

The UN Office of the High Commissioner for Human Rights notes that women face particular barriers to remedy because of social structures, cultural or gendered expectations. These barriers can take many forms, from an inability to pursue justice in various fora due to difficulties arranging childcare, to concerns over physical safety and threats of sexual violence in retaliation for speaking out. Women may not have the same access to decision-making structures as men, or have less access to the resources needed to assist them, and thus often struggle to a greater extent to get their voices heard.

In its grievance handling process, SIKIKA 2 has incorporated gender sensitivity in its various interactions with complainants. Although vulnerabilities of men also arise and are addressed, women often experience adverse effects from activities by companies differently and disproportionately and may also face additional barriers in seeking access to effective remedies as a result of discrimination. Further, due to the shame and stigma associated with Sexual and Gender-based Violence Violations, such violations are often under-reported with victims hesitant to report such crimes. Victims of offences arising from activities of large companies cannot effectively be responded to as a homogeneous group. Due to the foregoing, SIKIKA 2 has endeavoured to incorporate gender equality and women's rights considerations in all its processes, particularly towards complainants who allege Sexual and Gender based Violence violations.

SIKIKA 2, has 19 registered cases that fall under SGBV. These cases are submitted by both men and women, but a higher number is from women. This could be due to underlying gender stereotypes and power dynamics between genders. SIKIKA 2 pays careful attention to rapidly respond to such allegations in order to avoid any exacerbation of threats. At the point of statement taking, a risk assessment is carried out.

The following issues are determined at this level:

- Whether the complainant is under pressure, or has been paid to lodge the grievance.
- Whether the complainant is under threat, or any fear of retribution or other risk.
- Whether the complainant has the capacity to address the risks.
- Whether the complainant needs support or safeguards to address the risks.
- Whether the complainant needs legal aid.
- Whether the complainant needs other support such as medical, psycho-social/counselling.

A complainant of SGBV is referred to counselling immediately unless the same is denied. Where this support is initially rejected, the same is offered on the advice of the Independent Medical doctor. The counselling services are offered at no cost to the complainant.

Table 4: Status of Counselling and Psycho-social Support Services for Complainants alleging SGBV for the period between 24th February 2022 and 30th April 2023

COMPLAINANTS WHO HAVE BEEN OFFERED COUNSELLING			
TOTAL NUMBER	STILL ATTENDING	COMPLETED	CANNOT BE TRACED
18	9	8	1

Explanatory Notes:

- **Offered counselling** – This means that a proposal has been made to the complainant for counselling and psychosocial support services at no cost to the complainant.
- **Still Attending** – The complainant has started counselling sessions and is pending a few sessions.
- **Cannot be traced** – The complainant was recommended for counselling, but their phone numbers do not go through, or they cannot be reached and have failed to come to SIKIKA 2 to continue pursuing their grievances.

Where any potential risks are raised, the investigator will recommend the supports and safeguards to be implemented. SIKIKA 2 has the capacity through its networks to offer deaired safeguards. As a preventive measure, SIKIKA 2 utilizes public education training on SGBV. Through outreach programmes in public barazas and sharing of IEC materials on SIKIKA 2, the OGM has reached many men and women for purposes of contributing to change in attitudes and mindsets. Cases referred to other institutions will be done with the consent of the complainant.

2.5. HANDLING OF SEXUAL AND GENDER BASED VIOLENCE GRIEVANCES

Table 5: Gender analysis of handling of SGBV complaints

OGM COMPONENTS	GENDER ANALYSIS
Knowledge and experience of SIKIKA staff members	Staff are highly trained professionals with knowledge and experience in law, human rights, gender, social science and psychology
Access points and staff composition	Persons that raise SGBV complainants are prioritized in the processing of complaints in terms of their rights and needs. SIKIKA has a balanced Male and Female staff members which means complainants can choose to be attended to by a SIKIKA 2 member of a suitable gender. All medical assessments or counselling processes are accorded gender sensitivities. Complainants can choose suitability in this regard. Data is segregated at the point of registration in order to incorporate gendered approaches in case processing. There is confidentiality in data management.
Safety	SIKIKA is located in a building that enhances safety and easy access for vulnerable persons. SIKIKA encourages reporting of these cases to Gender desks at police stations. SIKIKA can make any adjustments in a person living or working environment including through transfers, or redeployment in order to enhance safety. SIKIKA will suspend the investigation of any matter if requested by the complainant.
Interviewing	Interviewing activities are conducted in spaces that enhance confidentiality and anonymity. Complainants are allowed to select their preference in terms of gender for any services that SIKIKA offers including interview, investigation, medical assessment and/or counselling. In interviewing, SGBV victims are provided with an option of coming with a friend or being provided with a counsellor to assist their interviewing. A counsellor also ensures that appropriate questions are asked. Relaxed Timelines in SIKIKA 2 Procedures: Although there are fixed timelines designed to ensure that the process is predictable and to guard against delays, the Interviews with complainants are not limited to a specific duration where there is a need for extension. Complainants are also given grace period to provide their documents. SIKIKA 2 does not dismiss SGBV complaints based on procedural technicality.
Fact-finding	Fact finding is compliant with the national and international laws in relation to SGBV. Fact finding approaches are victim centered. The immediate needs of a complainant are listened to, even if a fact-finding process is not complete. This includes ongoing counselling throughout the process. The Fact-Finding Team integrates a gender analysis in impacts of a case in order to inform gendered approaches in making findings and proposing outcomes. Fact finding can incorporate external expertise to identify risks and respond to reports.
Remedies	For cases that meet the evidentiary thresholds, gendered approaches are employed in discussion of appropriate remedy which include financial, including rehabilitation and non-financial remedies. For financial compensation, special attention is made by providing financial literacy training, bank accounts and other safeguards to mitigate gendered risks.
Supports and safeguards	Risk assessment: Risk assessment for the Tier 2 mechanism includes a gender analysis to ensure supports and safeguards are appropriate for female complainants. Partnership: The OGM has developed a partnership with appropriate agencies and Pro bono Lawyers to provide advice to the OGM and additional support and safeguards for complainants in appropriate cases Counselling and psychosocial support: Provision of Counselling Support Services to complainants free of charge. The number of sessions accorded to complainants vary from case to case depending on the assessment of the Counsellor. Provision of Independent Medical Assessment. This process not only helps in determining the nature and extent of injuries sustained, but also gives an opportunity to the complainants to be aware of their medical conditions. Transport Stipend to Needy Complainants: SIKIKA 2 provides a transport stipend to lessen or, in many cases, eliminate the financial burden of transport fares. The provision of the stipend is, therefore, a crucial support mechanism geared towards enhancing access to remedies in SIKIKA 2 for women and other marginalized, or vulnerable persons and is given to the neediest cases majority of which are women. Provision of refreshment for complainant: this creates a welcoming atmosphere and enhances the interviewing process.

2.6. GRIEVANCE MANAGEMENT OF SEXUAL AND GENDER-BASED VIOLENCE REPORTS

Since its inception, SIKIKA 2 has registered nineteen (19) complaints (Seventeen Females and Two males) that involve Sexual and Gender-based Violence Violations that happened on diverse years.

- Seven (7) complaints occurred in 2014;
- Three (3) complainants could not remember the exact date of the incident;
- Nine (9) complainants gave diverse years of incident.

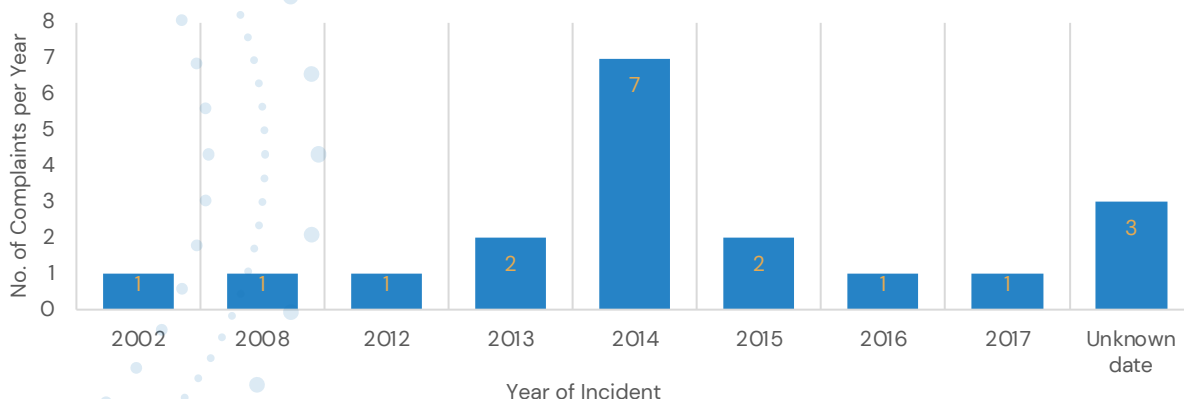


Illustration 15: Breakdown of SGBV Complaints Registered with SIKIKA 2 between 24th February 2022 and 30th April 2023 by Year of Incident

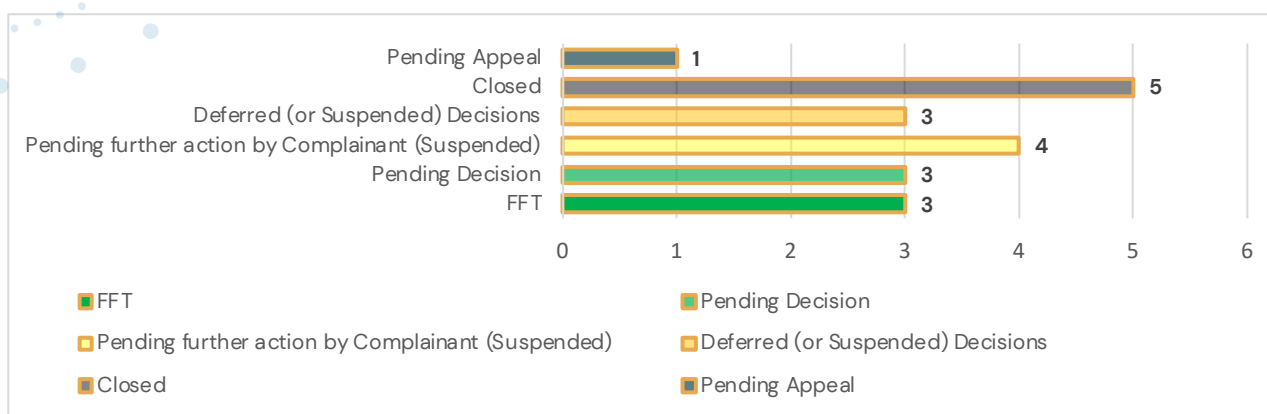


Illustration 16: Breakdown of SGBV Complaints Registered with SIKIKA 2 between 1st August 2022 and 30th April 2023 by Stage in SIKIKA 2 Process

Explanatory Notes:

- **FFT** – This means the complaint is at the Fact-Finding Stage. Files at this stage are either undergoing the verification of medical documents, pending further statements, or site visits by investigators.
- **Pending Decision** – This means that the File has gone through all the Stages and is now being reviewed by the Head of SIKIKA 2 for final determination and recommendations.
- **Pending further action by Complainant (Suspended)** – Generally, suspended files are those that are still undergoing SIKIKA 2 processes but the complainant no longer avails himself/herself to provide the documents and/or witnesses required. For this illustration, it means that the complaint is has reached the FFT stage, but the complainant is no longer traceable and has failed to adduce such documents and information as requested by the Fact-Finding Team.
- **Deferred (or Suspended) Decisions** – This means that the Head of SIKIKA 2 has already written the decision, but the complainant has not availed themselves to SIKIKA 2 to receive the decision.
- **Pending Appeal** – File being sent to the Appeals Panel.

CHAPTER 3. ANALYSIS OF SIKIKA'S PERFORMANCE BY THE INDEPENDENT MONITOR

Tier 1 and 2 of SIKIKA were subject to oversight by an Independent Monitor whose mandate is to monitor and report on the state of implementation of the OGM and the thoroughness of SIKIKA's investigation and dispute resolution process.

The Independent Monitor is also mandated to assess SIKIKA on the remedies it provides complainants and whether they are adequate, appropriate and effective. During the period under review, the Independent Monitor assessed SIKIKA in methods ranging from a study of documentary materials to a site visit in January 2023.

This is the first report of the Independent Monitor regarding implementation of the OGM. The report can be found at: <https://www.kakuzi.co.ke/documents/normal/kakuzi%202023%20public%20summary.final.pdf>. SIKIKA has reviewed the Report and has come up with the following implementation plan.



Table 6: Implementation Plan of some of the International Monitor's Recommendation

SIKIKA IMPEMETANTION PLAN		
UNGP	RECOMMENDATION	ACTION
22- Establishment of SIKIKA 1 and SIKIKA 2	Development of guidelines on the kinds of remedies that should be considered in different circumstances.	Review of the Grievance Guidance Manual is in progress.
29 – That Businesses should set up OGMs for individuals and communities adversely impacted	Clarifying in the Manual the right for a claimant to choose whether to be represented, consideration of remedies in a graduated approach, assisting the claimants with assistance in accessing community and other social programs; engagement on chiefs and community leaders as additional body of evidence; development of additional guidance on determination of standard of proof;	Review of the Grievance Guidance Manual is in progress.
31 (a) – Legitimacy	That OGM considers increased socialization of the governance and structure of SIKIKA 1 and means of enhancing awareness of SIKIKA 1's appeals mechanism through references in letters sent to claimants, forms and other steps; Continuous socialization of SIKIKA 2 approaches and independence.	This is being implemented. All the resolutions and letters provide for a right to appeal.
31(b) –Accessibility	SIKIKA should continue socialization efforts around SIKIKA, including in more remote communities; continuing efforts to solicit claims from heads of departments, and considering locating grievance offices in remote communities impacted by the company (or periodic travel by grievance personnel to accept and provide feedback on claims; development of a programme to address potential fears of retaliation for reporting.	Schedule of community engagement or socialization activities has been developed and is being considered internally. This will be done through public barazas, churches and distribution of merchandise that advertise SIKIKA. Discussions on how to receive grievances from remote areas will be discussed during the socialization meetings. The Grievance Guidance Manual will be reviewed on accessibility.
31(c) – Predictability	SIKIKA to continue socialization about its processes; amend its Manual and relevant processes on that appeals process for claims deemed illegitimate; SIKIKA to focus on allegations of more recent negative impacts, while bringing the 2014 (and other older) cases to orderly resolution; SIKIKA 2 to translate documents and decisions.	Grievance Manual is being reviewed to provide for this. A schedule of community engagement and socialization activities has been developed and is in progress. Right of appeal is provided for in all the decisions. Translations are given and this is indicated on documents and decisions.
31(d) – Equitable	SIKIKA 1 to undertake closeout meetings with participants (to the extent they are not always done), and document those meetings to ensure the participants understand the status and determine whether additional information would be helpful. Kakuzi to carefully consider all relevant factors before seeking to rely on statute of limitations or other legal, non-fact-based defenses, to the extent claimants wish to file historical cases with courts.	Close out forms have been developed for Tier 2. Close out meetings are being undertaken. Close out forms for Tier 1 are under development and close out meetings are being undertaken.
31(e) – Transparent	SIKIKA should continue communication with claimants while their cases remain under investigation and consideration. SIKIKA 2 should consider notifying members of groups associated with collective claims about outcomes, and not just the representatives, Tier 1 to consider publishing additional metrics and indicative information on the functioning of the OGM	SIKIKA 2 is notifying members of groups associated with collective claims about outcomes, and not just the representatives, and providing periodic updates to claimants when there are delays in the process through telephone and SMS.
31(f) – Rights compatibility	SIKIKA should develop guidance as to what remedies may be appropriate in different common circumstances. SIKIKA should consider other forms of non-financial compensation as a supplement to financial remedies; and seek means of engaging with local NGOs for information related to improving SIKIKA.	SIKIKA 2 is engaging local NGOs for information related to improving SIKIKA; The Review of the Grievance Manual on appropriate remedies being carried out.
31(g) – Source of Continuous Learning	SIKIKA to document that feedback has been sought from complainants; and continue to consider how the patterns of complaints and their resolution may inform changes to the mechanism, including in relation to socialization.	Feedback document form has been developed. SIKIKA 2 has already introduced a system to document feedback gotten from complainants. Feedback to be continuously sought at each stage of the process.
31(h) – Based on engagement and dialogue	SIKIKA to collect feedback from claimants and external stakeholders, including a round of community consultations in relation to collective approaches related to the 2014 claims; and consciously employ a philosophy of dialogue on two levels, to address the specifics of the grievance and underlying concerns the claimant may hold, and better enable tailored and effective remedy.	SIKIKA 2 has already introduced a system to document feedback gotten from complainants. SIKIKA continues to use the feedback as a source for learning.

CHAPTER 4. CONCLUSION

As noted by the Independent Monitor, the OGM was created as part of a suite of efforts undertaken by Kakuzi Plc, to mitigate and prevent negative human rights impacts within the workforce and larger communities. According to him, these efforts appear to be making progress. However, there is still work to be done for the OGM.

Going forward, the OGM will embark on improving the Grievance Guidance Manual. The Grievance Guidance Manual is the principal document which governs the operations of the OGM.

The manual is a living document that has seen several innovative adjustments to the standard processes and documentation used by the IHRM team to improve on and ease operational procedures. SIKIKA will continue to improve the Manual in line with the recommendations of the IM and other information that comes into its possession.

In addition, SIKIKA 2 will continue to register and investigate grievances against the company in line with its mandate, to identify

cases where violations have been committed and to provide remedy. This will further the efforts to enhance Kakuzi's existing processes to respect human rights and to improve relationships between Kakuzi and various stakeholders such as the local community.

SIKIKA 2 is currently placing special emphasis on efforts to enhance its processes for the benefit of complainants, and providing adequate assistance for those complainants who may face particular barriers to access the OGM.

Particularly, SIKIKA 2 will endeavour to reach out to the 515 complainants who this Report has addressed as complainants who were registered but their grievances have never been processed because they have never turned up for one reason or another. These complainants will be attended to once they avail themselves.

Finally, there will be more engagement with the various stakeholders because the success of SIKIKA largely lies in its impact on positive relationship between Kakuzi Plc and its stakeholders as well as the effective resolution of complaints that accord justice to victims of human rights abuses.



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