COMMENTARY AND QUESTIONS ON THE QMM PDF REGARDING LOCAL COMMISSION FOR COMPLAINTS AND QMM COMPENSATION / GRIEVANCE PROCEDURE

Dated: 20th October 2022

These comments have been gathered from observations and analysis against ICMM and other international criteria and recommendations for grievance procedures for mine affected communities, and reflect concerns expressed by local people. The document is co-authored by ALT UK/PWYP MG and Anosy Diaspora and community representative, Tahiry Ratsiambahotra, who jointly raised questions about the process in July 2022.

Context

Requests were made by the co-authors of this paper to Rio Tinto/QMM at a face-to-face meeting in July at Rio Tinto HQ with CEO Jakob Stausholm and QMM, asking QMM to explain and provide details of the QMM grievance process that was set up to address losses and complaints as part of a conflict resolution process in Anosy in May 2022. A local commission agreed steps for resolving months of protest against QMM following a fishing ban that occurred when dead fish appeared downstream of QMM operations shortly after two mine tailings dam failures and the release of a million cubic metres of QMM mine basin water. The QMM grievance process is meant to address the community losses during the ban as well as those reported over a ten-year period of QMM related impacts.

We subsequently obtained a copy of a PDF document that QMM distributed to a civil society platform (OSCIE) in Antananarivo in late September to explain the QMM grievance process /activity (in annex). We note that, despite requesting information about this process, QMM did not share the PDF directly with us, nor have we or others received any other information prior to this document, except a few verbal points shared at the meeting with the CEO Stausholm in July, at which QMM provided no detail about the process itself.

Concerns and issues arising

We have some concerns about the grievance procedure including but not exclusively:

1. It is not clear by whom and how the criteria were set. They do not reflect IFC performance standards, ICMM, or Rio Tinto international standards.
2. The criteria do not appear to have been informed using anthropological or agronomical understandings of the contextual reality in rural Anosy region, as would be expected under good practice.
3. Exclusions cited in the criteria need to be explained, and may be unjust and discriminatory – **see below some examples**
4. Criteria do not appear to have been shared widely in advance of the process, or in ways that were sufficiently accessible. This is highlighted by the fact that QMM note "tension" regarding the criteria, suggesting these were not been established through a transparent and inclusive process locally at the start, or that appropriate measures were taken e.g., criteria discussed and communicated in advance, assistance for non-literate claimants, etc.
5. That QMM identifies a large number of complaints *"sans objet"* suggests, again, that local people were not fully advised about how to go about the process correctly, in advance, and
6. local people were not benefitting from any accompaniment/assistance, legal or otherwise, to ensure their full participation in the process as per their rights – ***this is especially important as the majority of villagers are non-literate and would need support to submit a written complaint***
7. A *cut-off date* for complaints goes against the notion/policy that QMM has a continuous process for local people to submit complaints to QMM (QMM to explain)
8. It is not clear what third party/independent agency has arbitrated or observed this process to ensure its objectivity, fairness, respect of rights etc.
9. The issue of monetary compensation is neither clear nor resolved. This was raised in the meeting with CEO Jakob Stausholm in July 2022, i.e., QMM proposing work as compensation instead of money.

10. It is impossible to assess what complaints QMM has determined are '*not related*' to QMM's responsibilities, what criteria QMM has used to decide this, and who has engaged independently to validate such a decision. Transparency and accountability are required.
11. There appears to be no evaluation of the complaints process built into QMM's timeline of activity.
12. There is no suggestion as to how this process will be reported in full, and transparently. Note: we know from past QMM compensation processes there has been "loss" of paperwork, little reporting, and summary judgements made without explanations.
13. There is nothing to explain how the commission is constituted, roles and functional process.

Feedback/Issues arising on the eligibility criteria

There are multiple issues arising around the criteria, including but not exclusively:

Usufructuaries

Criteria: having no other activities than the exploitation of natural resources in the forest

- this notion of exclusivity is neither realistic, fair or reflective of international standards since there are people who are employed with wages below the SMIG and to supplement their living, they exploit natural forest resources. As in most parts of Africa, local people in Madagascar have multiple sources of income to ensure survival in a fragile economy.

Criteria: Permanently living in localities located around the Rio Tinto QMM mining perimeter (Mandromondromotra, Ampasy Nahampoana, Fort Dauphin)

- many people who live in Fort-Dauphin live off or support themselves with local forest resources.

Criteria: excludes minors still in school, civil servants, employees in the private sector, retirees (former civil servants or employees of the private sector)

- retirees have very modest incomes and often use local natural resources to make up for the shortfalls.

Criteria: Zebu breeders will be placed in another category

- what is this category? When /how will it be explained and addressed?

Criteria for Fisherfolk: must live 100% from fishing

- many Anosy coastal inhabitants have multiple food security and survival strategies, including fisherfolk

Transparency and accountability

We understand the list of usufructuaries who will receive compensation will not be displayed but notification will be sent in a closed envelope with the answer YES or NO. This will not be the case for the other complainants who will be on a published list. Why differences in the process? Why the lack of transparency and accountability?

Reporting

Given the questions and concerns listed above, we demand that QMM provides clear and open reporting, and detailed answers about how this process has been managed, especially with regard to the issues arising.

The QMM grievance process has been poorly managed over many years, with over 300 complaints reported as "outstanding" earlier this year, a failure to report openly, disappeared paperwork, lack of independent audits, as well as absence of buy in from local stakeholders (PWYP MG 2022). How has this recent commission process been any different? What steps have been taken/are being taken to address failings in the QMM grievance process, especially to ensure legal accompaniment and support mechanisms for vulnerable, non-literate villagers? What evaluation/audit process is envisioned to ensure independent, third-party analysis of the commission's effectiveness and fairness, and when will this take place?

We are attaching recommendations on grievance procedures enumerated by the British NGO RAID, which we believe are pertinent to the situation in Anosy with QMM and we ask QMM to respond as to how it is meeting this and other guidance, in particular IFC, ICMM and Rio Tinto international/global standards.

The following recommendations should only apply when private grievance mechanisms are used, in accordance with principle 29 of the UNGPs, to prevent problems from escalating into serious human rights violations (and not to deal with serious human rights violations themselves). In such circumstances, companies which use grievance mechanisms should do the following:

Engage in a genuine community-level process – Company control of grievance mechanisms, whether exercised directly or through the power of appointments and management over the administrative process, is wholly inconsistent with principles of procedural fairness, and is contrary to the clear direction of the UNGPs.

Ensure simple and clear rules of procedure – Claimants must be able to understand the process and what is required of them at each step of the process. It is not sufficient to provide simplified written guides if they do not represent the actual process that is being implemented. Claims and chances for redress are prejudiced by unduly complicated and legalistic procedures.

Ensure that power imbalances are appropriately addressed – Those seeking redress for human rights violations should not be disadvantaged by a relative *lack of access to assistance necessary to navigate a process intended to ensure that they receive just redress*. Without assurances that they will be adequately assisted, including through legal representation where appropriate, private grievance mechanisms will be disempowering, reinforcing problematic dynamics of corporate power.

Provide for independent and adequate investigations – Impartial investigations into incidents are essential to ensure adequate redress for human rights violations, accountability for wrongdoers and better practices. To these ends, investigations should be independent, free from company control and interference, and should complement rather than impede or improperly influence parallel investigations by public authorities. They should guarantee preservation of and access to any relevant information, including information that may be detrimental to the company's case, and ensure its full disclosure to claimants.

Require independent adjudication – When a problem cannot be agreed and remedied through dialogue, in accordance with principle 31 of the UNGPs, a business enterprise cannot, with legitimacy, both be the subject of complaints and unilaterally determine the outcome. Adjudication should be provided by a legitimate, independent third-party mechanism.

Not hinder or block redress in other forums – Given that the main purpose of private grievance mechanisms is to provide agreed remedy through dialogue to prevent problems from escalating, it is difficult to see how preventing those whose human rights have been violated from also pursuing their claims in other forums is antithetical to this. Proceedings under private mechanisms are generally conducted on a 'without prejudice' basis, but can be prejudicial to the interest of those seeking redress if they are forced to choose one avenue of redress over others, especially when limitations periods may close-off other routes.

Provide full transparency for claimants and the process – Grievance mechanisms that prevent claimants from accessing relevant evidence or materials, including those that define relationships between companies and associated parties such as state police, cannot ensure that their claims will receive fair determination. More generally, a lack of transparency regarding the process, its performance, treatment of individual claimants and resolution of claims precludes oversight and is vulnerable to abuse, while affording the opportunity for misleading public representations.

Be open to scrutiny beyond 'self-reporting' – Where concerns are raised about the use of private grievance mechanisms by those who have suffered human rights violations and civil society, the UN Working Group on Business and Human Rights or an independent expert or Special Rapporteur from a relevant thematic mechanism should undertake a review of their functioning.

Recommendations developed by Rights and Accountability in Development (RAID) following assessment of a grievance process for mine related human rights abuses in Tanzania, 2019.

RioTinto

QIT Madagascar Minerals (QMM)

Rio Tinto est un leader international de l'industrie minière. QMM est membre du Groupe Rio Tinto. L'Etat Malagasy, représenté par l'Office des Mines Nationales et des Industries Stratégiques (OMNIS) détient 20% des actions.

Accord du 21 mai 2022

Contexte

A titre de rappel, suite à de fortes tensions sociales qui ont abouti à des barrages sur l'axe Fort Dauphin – Mandena, un accord a été signé entre les représentants du gouvernement, les manifestants et les représentants de QMM le samedi 21 mai 2022. Dans le cadre de cet accord, des engagements ont été pris par chaque partie prenante concernée.

Engagements de QMM réalisés à date

- Deux distributions d'aides alimentaires d'urgence (7725 ménages)
- Fin de la réception des doléances
- Vérification des ayants-droits
- Alignement avec les autorités sur le mécanisme de gestion des doléances et les critères d'éligibilité* (cf en annexe de cette note)

- Validation du plan d'action pour la gestion des doléances avec la région
- Communication média conjointe et régulière à travers le gouvernorat sur l'avancement du processus.
- Communication sur le processus de traitement des doléances et des voies de recours (focus group …)

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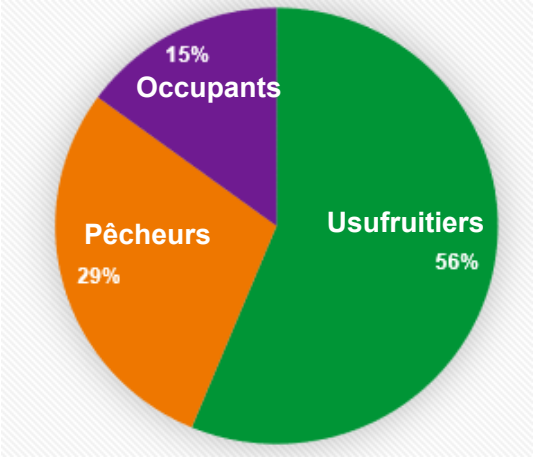
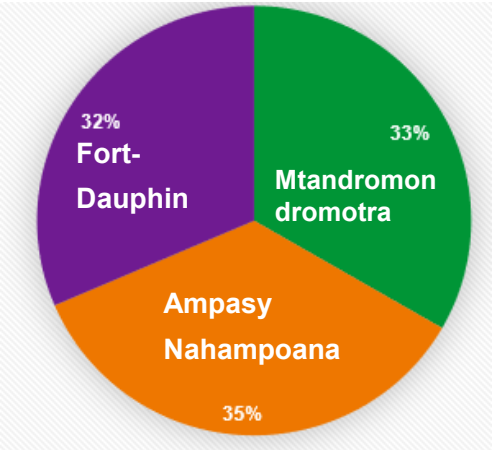
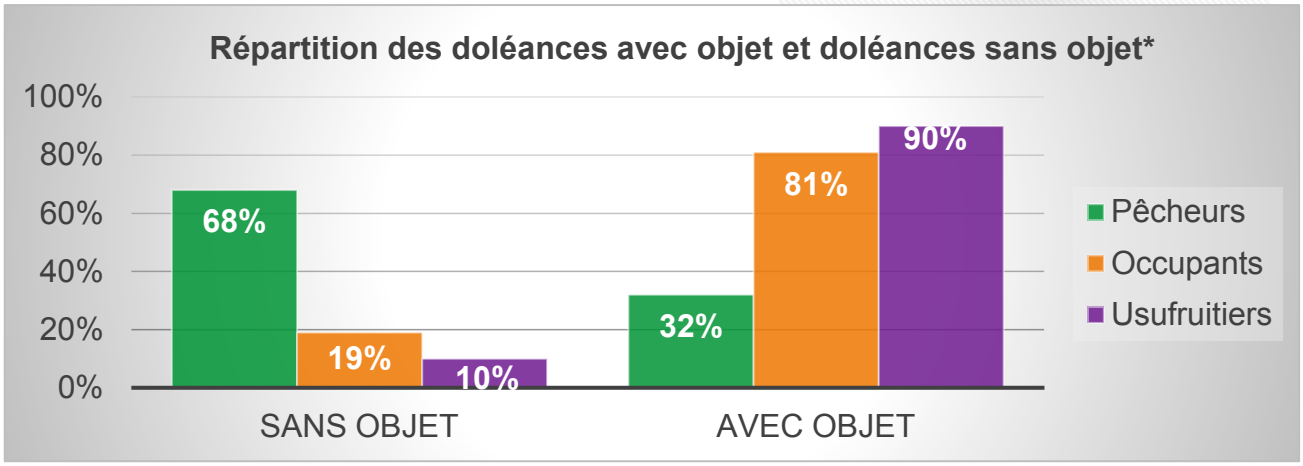
Gestion des doléances

Le nombre total de doléances s'élève à 8778. Ces doléances concernent les usufruitiers, les pêcheurs et les occupants dans 3 localités, à savoir Ampasy Nahampoana, Mandromondromotra et Fort-Dauphin.







* la seule information dans la doléance est le nom du de la personne

Objets des doléances

Usufruitiers	Pêcheurs	Occupants
▪ Manque de ressources et baisse des captures ▪ Pollution des eaux impactant les activités de pêche ▪ Limite à l'accès aux ressources ▪ Demande d'appui /soutien et de collaboration ▪ Demande d'adhésion de membres aux associations de pêcheurs ▪ Réclamation de part sur l'aide d'urgence	▪ Manque de ressources et baisse des captures ▪ Pollution des eaux impactant les activités de pêche ▪ Limite d'accès aux ressources ▪ Demande d'appui /soutien et de collaboration ▪ Demande d'adhésion de membres des associations de Pêcheurs ▪ Réclamation de parts sur l'aide d'urgence	▪ Exploitation limitée des terrains agricoles ▪ Insuffisance du montant des indemnisations reçues sur les terrains impactés ▪ Réclamation du prix du m2 du terrain à 3000 ar ▪ Métrage des terrains non réalisé ▪ Non paiement des terrains métrés ▪ Non paiement des indemnisations sur les terrains impactés ▪ Perte de la valeur culturelle des terrains

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Défis rencontrés

- Gestion des attentes de compensations monétaires automatiques et systématiques
- Promesses de compensations financières sans aucun fondement par certains leaders
- Tensions intra-communautaires liées aux tentatives de manipulation des critères d'éligibilité
- Doléances sans lien avec les responsabilités d'une compagnie privée

Calendrier de mise en œuvre

	30 juin	15 août	16 sept	30 sept
Gestion des doléances	Clôture de réception des doléances	Validation des critères d'éligibilité Début des travaux des commissions pour vérification des ayants-droit	Evaluation participative des besoins dans les Fokontany	Clôture de traitement des doléances
Revue des investissements communautaires				Atelier de revue de programme dans les communes Elaboration de la charte des projets
Communication et engagement avec les communautés				

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Annexe Critères d'éligibilité

Usufruitiers

- Vivant en permanence des ressources forestières (tressage, bois, végétation, miel, raty et falafa)
- N'ayant d'autres activités que l'exploitation des ressources naturelles dans la forêt
- Personnes majeures vivant des ressources naturelles dans la forêt
- Habitant en permanence dans les localités situées aux alentours du périmètre minier de Rio Tinto QMM (Mandromondromotra, Ampasy Nahampoana, Fort Dauphin)
- Sont exclues les mineurs encore scolarisés, les fonctionnaires de l'Etat, les employés au sein du secteur privé, les retraités (anciens fonctionnaires ou employés du secteur privé)
- Les éleveurs de zébus seront mis dans une autre catégorie
- Tous les dossiers des ayants-droits doivent impérativement être accompagnés par une copie de la carte d'identité légalisée au niveau des communes

Pêcheurs

- Vivant à 100% des activités de pêche
- N'ayant d'autres activités que la pêche y compris les personnes inscrites dans la liste publiée par la direction régionale de la pêche après vérification suite aux dernières remarques
- Sont exclus ceux qui pratiquent la pêche maritime sauf pour les habitants du fokontany Hovatraha, commune rurale de Mandromondromotra qui feront l'objet d'un tri spécial
- Habitant en permanence dans les localités suivantes : Emanaka, Andrakaraka, Amparihy-Lanirano, Andranokana, Ampasy Nahampoana, Mandromondromotra, Amboanato-Antaninarenina (une partie), Hovatraha
- Etant majeurs (plus de 18 ans) même s'ils n'ont pas de ménages
- Sont exclues les mineurs, les fonctionnaires de l'Etat en exercice, les employés au sein du secteur privé, les retraités (anciens fonctionnaires ou employés du secteur privé)
- Concernant les femmes qui prennent et vendent les poissons d'eaux douce (démarcheuses): leur situation sera étudiée spécialement pour les femmes qui pratiquent ces activités habitant dans les localités susmentionnées et vivent à 100% de ces activités.
- Sont exclues les femmes des pêcheurs.

Occupants traditionnels

- Les terrains situés dans le périmètre minier de QMM, confirmés par la carte
- Tous les dossiers doivent faire l'objet de descente sur terrain même pour le cas des terrains appartenant à l'Etat
- La commission mise en place pour les occupants ne va pas étudier les doléances des personnes sises à Ehoala. Cette situation sera examinée spécialement par la société et l'Etat
- Toutes les doléances concernant le foncier (non mesuré, non compensé) feront l'objet de descente sur terrain pour pouvoir confirmer
- Les personnes ayant encore des doléances après l'évaluation à faire, pourront les adresser à nouveau avec des preuves claires et confirmées, puis au comité d'évaluation respectif de les étudier