

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

The following document shares questions and critique sent to Rio Tinto co-authored by Publish What You Pay Madagascar (PWYP MG), the Andrew Lees Trust (ALT UK) and community representative Tahiry Ratsiambahotra (TR), who jointly raised questions about the QMM grievance process in July 2022 at a meeting with the Rio Tinto's CEO, Jaakob Stausholm.

The joint letter was sent on 20<sup>th</sup> October 2022 and Rio Tinto replied on the 15<sup>th</sup> November 2022.

Rio Tinto's response below in blue ink follows the commentary submitted jointly by PWYP MG, ALT UK and TR in black ink.

The answers from Rio Tinto are welcome and it is acknowledged that the process is ongoing and evolving.

For additional information, see also: <http://www.andrewleestrust.org/blog/?p=3074>

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

Dated: 16th November 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.

### **QMM comments:**

- We apologize for not sending the PDF, and will ensure future communication reaches the principals of ALT UK/PWYP MG directly.
- **The grievance process overview**
  - The grievance process started in May 2022 is not part of QMM's grievance management mechanism but stems from the agreement signed with the authorities, the protest leaders and QMM in order to resolve a major social crisis, and relates exclusively to the May agreement reached between these parties. Community members can file grievances directly with the company at any time through QMM's operational grievance mechanism, and everyone ultimately retains their legal rights and remedies in court.
  - This specific grievance process was led by the Government under the aegis of the Minister of Fisheries and Blue Economy in conjunction with the Governor of the Anosy region after numerous exchanges with community leaders, notables and leaders of the various associations concerned (natural resource users, fishermen, landowners etc.). QMM had limited influence over it and is aware that it has flaws.
  - Now that eligibility of complainants has been established by the Commissions, this process is entering a second phase of direct discussions with stakeholders and/or their chosen representatives to further investigate their complaints. QMM's efforts are focused on recalibrating and reorienting this process and

dialogue to better align with the key principles of the international standards you reference and ensuring the preservation of communities' rights.

- QMM is proposing that to ensure a fair and legitimate process going forward, adjudication should be provided by a legitimate, following an independent third process. It is important that the grievances are reviewed individually and that solutions are sought in a collaborative manner with the involvement of the complainants, recognized stakeholder representatives, respected key informants, and legitimate representatives of subgroups.
- QMM will for its role ensure that:
  - These discussions are undertaken in a transparent manner
  - The mechanism complies with national and international standards

### **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.

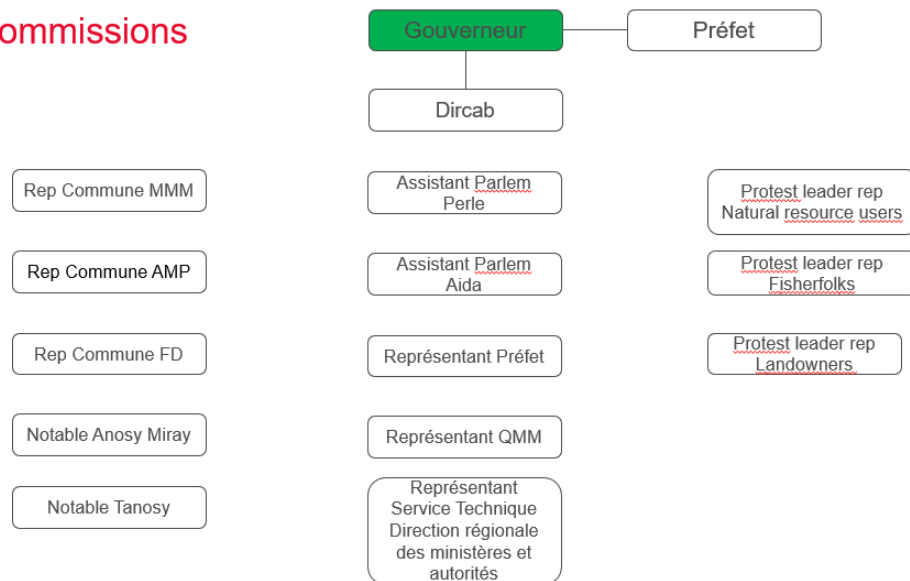
12. There is no suggestion as to how this process will be reported in full, and transparently. Note: we know from past QMM compensation processes there has been “loss” of paperwork, little reporting, and summary judgements made without explanations.

13. There is nothing to explain how the commission is constituted, roles and functional process.

QMM comments:

- **The mediation/grievance process from “guichet unique” opening to eligibility**
  - The government initiated and led this first part of the process, up to confirming the eligibility status of complainants.
  - The government invited all parties to submit complaints they had, via guichets unique established in each of the communes.
  - Three commissions (fisherfolks, natural resource users, landowners) have been established, which QMM participates in as 1 of 16 representatives, and constituted as follows:

### 3 Commissions



- The commissions meet every Monday. The Governorate (Governor or his DirCab) leads the discussions and makes final decisions. The commissions
  - Defined the criteria
  - Sorted complainants as eligible or non-eligible based on the criteria
  - Conducted on-the-ground visits regarding landowners
  - Procès Verbal (PV) of each meeting are available at the Governorate
- A cut off to this process does not imply that QMM will not receive ongoing complaints, rather that the process provided a window for submissions to be lodged in the interests of advancing the process and not leaving it indefinitely open.
- Eligibility

- The eligibility criteria set by the commissions were the result of numerous multistakeholder meetings and discussions and were based on the Plan de Gestion Environnementale Sectoriel (PGES), on Malagasy legislation, and on the Mining Code for the natural resource users.
- The process and the criteria have been communicated and explained to the communities through various channels: radio interventions from the Governor and his DirCab, radio spots and sketches (developed and placed by QMM), QMM Facebook posts, focus groups held in the communes led QMM supported by Tokotany Iraisana (TKI), an NGO focused on promoting peaceful coexistence.. Please see all details on the communications at the end of this document.
- The eligibility lists for fisherfolks and natural resource users, based on the criteria, was reviewed, and signed by the commissions and authorities at the end of September. A grace period of an additional 10 days allowed those community members identified as non-eligible to bring forward appeals demonstrating their eligibility.
- Zebu breeders were identified as a new category and is currently being considered by the commissions
- Landowners are being dealt with by the commission
- It should be noted that:
  - This parallel grievance process was first initiated in response to the specific issue of alleged impacts on the lagoon system affecting fisherfolks and those who bought their catch. During the fishing moratorium, QMM agreed to distribute food to communities as outlined elsewhere. The government went on to widen the scope of this grievance process to all those who felt they had been impacted by QMM's operations from the beginning of QMM's operations.
  - The PGES undertaken for QMM by independent consultants, as is required by law, and approved by the authorities had initially identified 2,500 project affected persons in the mine affected area. This said, 8,778 complaints were received and QMM has accepted, based on Commissions recommendation, to further review the cases of 5431 of these complainants, these being the total number 'eligible fisherfolk and natural resource users. The large majority of these complaints regarding impacts had not previously been raised. The 300 unresolved grievances that were previously recorded in QMM's system to date are included in the grievances currently being reviewed
- The commission decided in keeping with the need to balance transparency with respect for confidentiality of complainants not to make the eligible/non-eligible lists public. Complainants are being informed individually by letter, and, to those non eligible, an explanation being given as to the reason for their non-eligibility.
- As regards the question regarding QMM offering work to communities in place of compensation for impacts, there appears to have been a miscommunication. Since start of operations, QMM has contributed to and promoted possibilities for communities to enroll in 'travaux HIMO' (Haute Intensité de Main d'Oeuvre), whereby the government commissions public work (e.g. road rehabilitation) that seeks to involve the communities and providing a daily wage. QMM supports

the financing of these wages. We stress that QMM's contribution to this government-led initiative is not in place of any compensation mechanism.

- We agree that the process needs to be transparent and has been shared and communicated at the local level with communities, as outlined above. A register of the complaints and QMM's responses will also be fully recorded and reported to the ONE.

### **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

QMM comments:

- The eligibility criteria set by the commissions were the result of numerous multistakeholder meetings and discussions and were based on the PGES, on Malagasy legislation, and on the Mining Code for the natural resource users.
- The fisherfolks commission recognized that setting the level at 100% of ones' livelihood being earned from fishing, as stated in the various texts outlined in the above point, would exclude all fishermen. Hence the commission discussed each case based on the information provided
- The zebu breeders were identified as another specific category. They are eligible if they are registered in the authorities zebu breeder registry. Claims from this group will be looked at individually.

### **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?

QMM comments: The Commissions decided in keeping with the need to balance transparency with respect for confidentiality of complainants the eligible/non-eligible lists not be made public. This process is the same for all Complainants regardless of the category they fall within.

## **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.

## **QMM comments**

- The Commissions decided in keeping with the need to balance transparency with respect for confidentiality of complainants the eligible/non-eligible lists not be made public.
- On transparency and record keeping
  - QMM will keep a register, provided to the ONE, of all the details of the agreement reached with individual complainants.
  - The procedures will include detailed record-keeping that will be built into the agreements on compensation between the company and the complainant.
- QMM recognizes the need to review its current operational grievance mechanism, in conjunction with affected communities and stakeholder groups, to ensure compliance with international best practice and will complete this process during the course of 2023. Thank you for sharing the documentation from RAID in this regard.

## **Recapitulation of grievance management milestones**

- Distributions by QMM of emergency food aid to 7,725 households– June/July
- Set up of multistakeholder structure Commission - June
- Opening of ‘Guichets Unique’ in the communes - June
- Community members invited to file grievances - June
- Multi stakeholder process to align on the mechanism for managing grievances - July
- Eligibility criteria defined by the Commission - July
- Ongoing communications by both QMM and the Governor’s office on a regular basis throughout the process - ongoing

- Sorting process of eligible/non-eligible persons driven by the Commission, according to defined criteria - finalized.
- Landowners are being considered by the commissions
- Next:
  - An independent third process will be put in place to move us forward

## Appendix 1

### **Communications – record of external communication with stakeholders**

#### *Anosy region level*

3 June : Press breakfast. Media engagement and sharing of the content of the agreement content

06 – 30 June : radio vignettes radio on the content of the agreement

#### **Series of 6 radio spots on advancement of the agreement implementation**

1. 10 June : Governor and Dircab Anosy region. Subject : update of agreement implementation / explanation on agreement content / announcement of upcoming opening of guichets uniques and key dates
2. 18 Jul : Radio intervention by Dircab. Subject : update on agreement implementation / explanation on established structures (commissions) and their roles, number of grievances received and key dates
3. 9 Aug : radio intervention by DirCab : Subject : eligibility criteria by the commissions
4. 30 Sept : radio intervention by Dircab. Subject : Announcement of eligibility lists finalisation for fisherfolks and natural resource users
5. 7 Oct : Subject: announcement of lists and call for peace
6. 15 Oct : radio intervention by Dircab. Subject: Announcement of letter notification distribution

#### **Spot radio**

2<sup>nd</sup> week of Oct: radio spot on all local radios on set up of information points during 10 days to get information on eligible decision and process to claim eligibility

#### **Focus groups: 42 in total**

Theme : eligibility criteria

Communes : Mandromondromotra / Ampasy Nahampoana

Sept : 16 focus groups

Oct : 26 focus groups

#### **Poster in communes :**

Theme : eligibility criteria

Sept : 80 displays

Communes : Mandromondromotra, Ampasy Nahampoana and Fort-Dauphin



Fokontany : Betaliny, Ampasy centre, Mangaiky, Analambendra, Hovatraha, Mandromondromotra centre, Emonty, Egnandrano, Enato and Amparihy.

***At national level :***

**Insertion TV in the 5 most watched TV stations - 3 themes**

03/08/22 : Food distribution in the 3 communes

16/08/22 : Respect of QMM community commitment

27/09/22 : Distribution of school kits for pupils of Fort Dauphin

**Press releases**

05/05/22 : Stakeholders advance to ensure social peace

11/05/22 : QMM strengthened community engagements

13/06/22 : emergency support donation

22/07/22 : Advancement of agreement implementation

23/09/22 : distribution of school kits to Fort Dauphin pupils

**Facebook Publications: 6 in total**

1. 13 June : Annonce on agreement signature and details of its content –  
People reached : 912 / Interactions : 148
2. 15 June: 1st food distribution. People reached : 1074 / Interactions : 292
3. 2 Aug: calendar of grievance process -  
Persons reached : 923 / Interactions : 65
4. 9 Aug: 2<sup>nd</sup> food distribution  
Persons reached : 1129 / Interactions : 97
5. 16 Aug : Eligibility criteria  
Persons reached : 931 / Interactions : 72
6. 10 Oct : Signature of the eligibility lists. Persons reached: 889 / Interactions : 160

**Stakeholder engagement**

- June/Sept/Oct: Engagement on agreement implementation update with central Government, institutions, OSCIE.