

Sinead Kaufman
CEO of Minerals
Rio Tinto PLC
6 St James Square
London



21st December 2022

Dear Sinead,

Re December 16th Convention 2022

We have received disturbing reports from Anosy about events leading up to the signing of a new convention between villagers, QMM and the government of Madagascar on December 16th 2022.

What we are hearing brings into question the legal validity of the new convention and has damaging implications for the communities as well as for Rio Tinto.

Working with oral accounts directly from villagers involved in this process on the ground and, based on what we have heard, we are deeply concerned that villagers' rights have not been respected in this current process, that international standards are far from being realised, and that the processes risk to create further conflict.

Please see attached commentary and questions.

Under its agreements with the Malagasy government, ICMM guidelines, Rio Tinto standards, and through other instruments such as the United Nations Guiding Principles on Business and Human Rights (UNGPs), Rio Tinto is expected to demonstrate its understanding of how QMM's activities impact local communities, how these impacts intersect with internationally recognised human rights, and how Rio Tinto/QMM will therefore mitigate and remediate them.

Please can you shed light on the most recent events and what Rio Tinto is doing to ensure the rights of citizens, as well as a meaningful and coherent strategy to resolve the grievances?

We are especially keen to understand what resources and expertise Rio Tinto will bring by way of neutral third-party intervention and independent inquiry to allow for a transparent process that will protect citizens' rights, resolve conflict and meet international standards.

Yours sincerely,

Dr Ketakandriana Rafitoson,
Publish What You Pay Madagascar (PWYP MG)

Yvonne Orengo,
Andrew Lees Trust (ALT UK)

cc. Jakob Stausholm, CEO, Rio Tinto Plc

Commentary and Questions about the current 16th December 2022 Convention

Context

The current conflict in Anosy erupted when QMM announced they would not pay landowners for claims for compensation, stating they had already paid for the lands under agreements made with the government in 2008/2016. These land claimants had already had their applications for compensation approved by the local May 2022 commission, to which QMM was a party and co-signatory with joint responsibilities. We even hear that some land measurements for these claimants were made during the commission. Naturally then expectations would be that the promise to pay compensation would be honoured.

We heard that villagers, with support from local Member of Parliament, Perle Bien Aimée Zafinandro (aka “Députée Perle”), gave an ultimatum to QMM in November to pay the landowners or the road block would return. The deadline was 15th November.

On November the 15th the problem had not been resolved. By December the 1st the payments were not made, and QMM appears to have become more entrenched in its position. Road blocks and protestors returned to the road to Mandena.

Reports from the field

During the negotiations between QMM, the government and the villagers, we have received reports from the ground, stating a number of questions, issues and anomalies:

1. Eight villagers were illegally detained at the Prefet’s office in Ft Dauphin. They had been invited to further negotiations around the road blockade and QMM compensation issues but were held and guarded by police.
2. At the same time, QMM cut the electricity supply in Ft Dauphin. An action which inevitably escalates tension and conflict levels locally. This also sets out QMM as a quasi-state power exerting control over government-owned entities and local service provision.
3. Villagers issued a statement to the town that they were not preventing petrol trucks or workers involved in the electricity supplies from access (posted online)
4. Villagers were finally released after an intervention by Antanosy elders and assistants to the Députée Perle. Villagers were then fearful to attend any further negotiations as this intimidation of arrest/detention set a tone. However, when one or two representatives went to another meeting, others felt the imperative to witness and attend.
5. 16th December, the Ministers for Interior, for Mines and Strategic Resources and for Fisheries and the Blue Economy together with Deputée Perle, met with protestors in Ft Dauphin.
6. We understand the protestors were told that QMM has no money to pay the landowners and that they already paid the government for these lands and would not pay twice.
7. Villagers were told by government officials that the government would pay, and would do so through the JIRAMA. The new convention states that JIRAMA owes QMM money and the funds from this debt will be used to make payments for the landowners’ claims. The claims are against QMM so the transfer of responsibilities is a cause for concern.
8. Villagers told the Ministers that they have no problem with the government, only with QMM.
9. We understand villagers were then told that if they did not sign this convention, they risked to be arrested, as the military would be brought in to take down the road block.
10. They were also told that a Human Rights Defender in Toliara had just recently been arrested for contesting a breach of land laws. This echoes the chilling persecution of Ketakandriana

Rafitoson and Transparency International - Initiative Madagascar following the organisation's efforts to expose potential corruption in the lychee trade, and emphasises the need for the adoption of a Protection Act for HRDs and whistleblowers in Madagascar

11. ***We believe the introduction of the threat of retaliation/arrest has contributed to a situation where villagers have signed the new 16th December convention under duress.***
12. We also understand that in parallel to the landowners' dispute, QMM has been negotiating with separate groups, fisherfolk for example, pressing them to accept programmes/projects with no provision of any direct financial or other compensation for addressing their losses over the past months (during the fishing ban) or the last ten years, as had been expected.
13. Some leaders have been excluded from the negotiations, which means some groups will not be fully represented. If a form of "Resettlement Plan" for economic impacts is finally being developed by QMM, then everyone should be equitably involved.

16th December 2022 convention : issues arising

14. Signing a document without free consent or under duress (e.g., threat of arrest) makes the convention null and void under Malagasy law, civil code 66-003 theory of general obligations, Article 76, "*La menace abusive d'employer une voie de droit peut être considérée comme violence viciant le consentient.*"
15. In the case of establishing agreements with vulnerable peoples, e.g., non literate villagers, international standards require additional accompaniment to ensure rights are protected.
16. The absence of any clause to hold QMM/the Malagasy government/Jirama to account if the articles related to their responsibilities to villagers are not honoured, e.g., if compensation is not paid, makes the document inequitable, injurious, failing to protect villagers claims and rights.
17. In the same perspective, the exigence in the agreement that precludes villagers from any further claims about their lands is in direct contradiction of international standards where legal prerogatives and recourse to legal action prevail.

Some villagers understandably did not sign the agreement. Others apparently wept, suggesting they felt compelled to sign against their will. We note that for both the May 2022 and the 16th December conventions some groups did not sign the proposed agreements. Rather than be concerned about these unresolved elements, QMM appears to readily accept the exclusion of some groups.

Rio Tinto/QMM Responsibilities

The most recent events called for delicate handling of a highly complex socio-political negotiation, at a sensitive moment in a conflict resolution process, happening during an election year when the political atmosphere is even less conducive than normal to observing human rights in Madagascar.

In light of this, it is not clear why Rio Tinto/QMM proceeded so brusquely with the new convention when there are so many questions regarding the way it was brought about, its legality, and the potential consequences it may have in degrading relations further with local communities in Anosy.

We are concerned that state interests may be compounding already complex challenges in Anosy. However, this only serves to highlight a lack of strategic planning on the part of Rio Tinto/QMM, and QMM's lack of capacity to ensure robust, transparent mechanisms that protect human rights and deliver the prerequisite international standards at local level in Madagascar. Rio Tinto is responsible for the actions of its partner and cannot disentangle from what has been delivered to villagers, not least since QMM's signature is on this document, and the entire process since May.

We are also concerned that, although both the government and the written agreement claim the power and water utility, JIRAMA, will pay the compensation, it is unclear that JIRAMA has the finances to do so, nor the state treasury come to that (e.g., it is currently unable to pay teachers). There was no proof of the debt presented during the negotiations, or whether JIRAMA's Board of administrators and shareholders had approved this payment to villagers, as this is not the remit of the utility. If monies for the compensation will in fact come from Rio Tinto but be distributed via the state, as happened in QMM's first round of land displacement compensation, there is a danger the state will again capture funds and pass only a fraction on to villagers. Villagers will lose again and be dissatisfied.

Each conflict that occurs, Rio Tinto/QMM loses money without arriving at its objective of social peace. This is a loss for all concerned: the communities, RT/QMM, and the country, because the situation returns repeatedly to conflict and all the misery and costs that accompany it.

QMM has had opportunity to understand the land claims since May/June. It is unclear why only in November this issue became a source of conflict. We suggest that Rio Tinto/QMM has been aware of outstanding complaints and conflict over land claims for more than a decade. It is then equally unclear why nothing has been done to audit and address these complaints before, and create systematic processes and procedures for resolving past and future land claims.

For example, when their lands were expropriated for the QMM operation, we understand that landowners in Mandena were promised they would benefit from formal land tenure after mining ends. However, QMM appears not to have accounted for the loss of productivity of the lands during the interim, nor provided alternative means of subsistence to remediate losses for those owners unable to use the land during the mining phase. All of which has led to grievances left unresolved.

In the PWYP MG 2022¹ study, it was noted that 63 percent of respondents said they had filed complaints about the QMM mine's impacts. 90 percent of these reportedly received no results. The remaining 10 percent reported other outcomes, mostly explaining that promises for solutions were not kept. Over 79 percent reported difficulties including police repression. 8778 villagers submitted complaints/claims against QMM during the local May 2022 commission grievance process.

In conclusion

Based on the current level of reporting received from the ground, we do not believe that villagers' rights have been respected in grievance processes. It is clear that international standards are far from being realised. Attempts to apply blunt instruments to lift the immediate problem of road blocks, instead of developing meaningful long-term solutions to real grievances, are likely to fail. Worse, they risk to deepen the lack of trust in QMM and its partner/s.

New programmes to restore income to communities immediately affected by the mine are long overdue. We argue these should have been in place since operations began, if not before. They may, if done correctly, remediate against *future losses*. They do not, however, compensate for tangible losses experienced during the 2022 fishing ban, or those accumulated over the last ten or more years of QMM's negative impacts on villagers' incomes/livelihoods (approx. 45% loss of income).

We take this opportunity to refer Rio Tinto to villagers' recommendations in the Publish What You Pay 2022 report (Pages 83-85) which include: "*Compensate fairly for damages to the community*".

¹ Large Scale Mining Impacts: A Case Study of Rio Tinto/ QMM mine in Madagascar, available at: <https://pwyp.mg/en/publications/>