

With respect to Rio Tinto's response to the BHRRC regarding conflict around their QMM mine in Madagascar, we (Publish What You Pay Madagascar ([PWYP MG](#)) and the Andrew Lees Trust ([ALT UK](#))) take this opportunity to share our observations based on our active research and reporting of alleged human rights violations occurring around the QMM mine in 2022-2023. While we do not speak on behalf of local Antanosy communities, we do work in solidarity with them. We are deeply conscious of the challenges they face in protecting their rights at local level due to significant power asymmetry, including the role of the Malagasy government as a joint owner of the QMM mine. The Malagasy government's clampdown on fundamental rights, such as the right to peaceful assembly, and repression of civil society leading up to the [national elections](#) in 2023 undoubtedly added complexity to existing challenges for citizens to exercise their rights and to tensions around QMM.

### Overview

Rio Tinto appears to be failing in [its commitments](#) to meet UN Guiding Principles (UNGPs) for Business and Human Rights in relation to its QMM mine in Madagascar. There is a [history of conflict](#) around the mine, and QMM's failed Community Social Performance (CSP) and the resulting loss of trust is acknowledged by Rio Tinto<sup>1</sup>. The promise Rio Tinto made in 1995 to pull the region out of poverty is not reflected in the rural, mine-affected population, +90% of whom report negative impacts on their lives, and significant loss of livelihoods and income since the mine began. There were five protests between December 2021 and October 2023 alone, related to water quality and compensation issues. Three months of intense conflict followed two [tailings dam failures at QMM in 2022](#). Rio Tinto/QMM has distanced itself from the conflict, vilifying protestors, ignoring civil society calls for independent audits for transparency, and placing responsibility on the Malagasy government, joint owner of QMM, to manage protests using armed police and army. [Civic space](#) and [freedoms](#) in Madagascar have declined in the last decade.

Contestation over QMM water quality is [ongoing](#) and draws on local testimony, [social research](#), numerous scientific [studies](#) and analysis from independent international experts. Rio Tinto/QMM's practice of issuing assertions about QMM's impact based on inconclusive studies, internal reports that lack coherent data sets and/or methodology, a lack of independent assessment or verification, and the use of the Malagasy Regulator's unsupported statements as if fact-based science (e.g., to defend [QMM's illegal buffer zone breach](#)), together with delays and omissions in sharing raw data and other technical information required for equitable dialogue, has contributed to a contested [landscape](#). The company's failure to directly engage with certain groups or persons except under its own terms, timing and conditions, irrespective of the legitimacy or urgency of the matters in hand, has arguably contributed to tensions and the conflict in Anosy region and is a failure of QMM commitment to the UNGPs.

***To our knowledge, to date there has never been a Human Rights Impact Assessment of QMM. Social Impact Assessments are required by Rio Tinto<sup>2</sup>. 15 years after commencing operations no such assessment has been conducted at QMM and made available for communities/civil society to validate<sup>3</sup>. Malagasy civil society is demanding [independent audits](#) of QMM.***

### Summary: Key points of contestation with regard to Rio Tinto/QMM claims

- Two mine [tailings dam failures](#) occurred at QMM in 2022, before the "exceptional release" of QMM mine basin water
- QMM mine wastewater was non-compliant for limits of cadmium and aluminium, so release required "exceptional" permission
- Probable [cause of fish deaths](#): acid mine drainage (high aluminium low pH) from QMM mine process wastewater
- [Protests followed](#) QMM failures to address hardship from a three-month fishing ban in adequate and satisfactory ways
- QMM's compensation/[grievance process](#) suffered alleged human rights violations, e.g., inadequate payments, gagging orders, coercion, intimidation. Rio Tinto/QMM has repeatedly rejected calls for an independent audit.
- Three protestors shot dead in what appear to be extrajudicial killings by local police in 2023. No public inquiry or open reporting.
- Rights to peaceful [assembly](#) is enshrined in Malagasy constitution; suspension of these rights raises Human Rights issues<sup>4</sup>
- Water contamination concerns include: questions on elevated levels of uranium and lead; lack of data and consultation on new water treatment plant; dam and tailings issues; lack of independent impact assessments; no statutory limit for uranium
- ALT UK's published review of radioactivity around QMM ([Swanson 2019](#)) demonstrated high uranium levels downstream of the mine using QMM water data, which was in chemical measurements (mg/l) because there were *no radiological data* available for ingestion pathways. ALT UK has never made allegations of "elevated levels of radiation" or high exposure rates because, as Swanson highlighted, it was "*unknown whether current dose estimates are, indeed, very conservative or whether in some cases they are not.*" She added doses were "*high enough to trigger additional investigation*". ALT UK raised questions about exposure to radionuclides after QMM's [breach of a buffer zone](#), with concerns about QMM's impact on water quality. Dr Swanson's review the final JBS&G report 2023 is pending. The QMM water report for 2021-23 is currently under expert review.

***For detailed explanations of the key points please see the following pages, which correspond section by section to Rio Tinto's letter to the BHRRC. See also a summary Investor Briefing, November 2023 [here](#).***

<sup>1</sup> CEO Jakob Stausholm acknowledged CSP failure at QMM during a meeting with representatives from Malagasy civil society and NGO ALT UK in July 2022.

<sup>2</sup> Rio Tinto CSP standard, approved July 2022

<sup>3</sup> One available report, an assessment of villagers displaced by the mine undertaken by Prospect International (2007), was unable to verify compliance against World Bank guidelines due to the failure of QMM to provide necessary monitoring paperwork and information as requested.

<sup>4</sup> <https://www.amnesty.org/en/wp-content/uploads/2021/05/AFR3505632019ENGLISH.pdf>

## 1. QMM 2022 tailings dam failures, fish deaths and lack of transparency

The ‘controlled release’ of QMM mine basin water was necessary due to the risk of a significant collapse of the QMM tailings dam following two tailings dam failures after heavy rains in February and March 2022. These were the third and fourth reported QMM tailings dam failures, in a history of contested tailings and water management issues. See [TIMELINE of events](#).

After both 2018 and 2022 QMM tailings dam failures, dead fish were reported. In both instances, government research and regulatory agencies were unable to produce scientifically robust reports that could meet international standards. Nor could they provide credible answers on the fish deaths. Critically, in 2022, the fish deaths studies undertaken by the regulator were *never released* publicly, which only added to local tension and mistrust. Even so, Rio Tinto/QMM has cited these studies repeatedly to claim QMM were not responsible for the fish deaths. The company denied having tailings and a tailings dam ( [2022 AGM](#)).

Though not published, the 2022 government water/fish studies were [accessed by civil society and analysed](#) by an independent international expert. Dr Swanson, reviewed all the available data, including from the fish deaths in 2018 and 2022, and demonstrated high levels of aluminium with low pH in QMM mine discharge process wastewater. This type of *acid mine drainage* is a well-documented toxic phenomenon known to asphyxiate and kill fish, and deemed by Swanson to be the most [probable cause](#) of the fish deaths in 2022. This analysis supported community concerns. QMM recognised that it could not “*rule out a potential link*”<sup>5</sup> to the mine and the company was unable to categorically dismiss Swanson’s findings. Importantly, at the same time as denying this impact, QMM developed a new treatment plant specifically to address high aluminium and low pH. Rio Tinto/QMM has yet to release the WRG report, despite the study having been undertaken almost two years ago. Rio Tinto claims that preliminary findings from the WRG report have shown that metals “*in the fish*” are “*unlikely*” to have caused their deaths. However, this claim has been critiqued by Dr Swanson who explains that the impact from the acid mine drainage is an *adsorption* effect – asphyxiation via the external gills, not an *absorption* of metals *inside* the fish (see [Annex 1](#)).

Throughout 2022 and 2023, water and fish data were *repeatedly* requested from Rio Tinto by civil society actors. This raw data is essential to engage in equitable dialogue on the scientific aspects of QMM water contamination issues. However, Rio Tinto/QMM has still not shared the 2022 raw water data, even after publishing its internally produced [Water Report 2021-23](#). Similarly, the company has failed to deliver an external evaluation report of the two QMM tailings dam failures in 2022, which it had promised to civil society and to investors ([AGM 2023](#)). Instead, it carried out an internal review with only external support.

In parallel, demands from civil society to see results from the pilot phase of the new QMM water treatment plant have been obstructed for two years. This has left unanswered questions and concerns about how QMM is managing the resultant *waste sludge*, which is calculated to include aluminium hydroxide, a substance highly toxic to aquatic life. QMM mine basin water is enriched with elevated levels of uranium due to the churning of sands during the extraction process ([Swanson Memo 2019](#)). Exceedances of aluminium, cadmium (QMM 2021), high levels of lead ([Emerman, 2019/2020/2021](#)) and other heavy metals are also of concern. There are inevitable questions about the potential presence of toxic levels of these metals in the waste sludge. There has yet to be any open engagement or local consultation process over the installation of the new QMM treatment plant or answers about the waste sludge. Also, to address whether this treatment is effectively tackling other heavy metal contaminants present in QMM wastewater beyond the high aluminium, and before release. **See also water section below.**

*UN Guiding Principle (UNGPs) 21 “involves communication, providing a measure of transparency and accountability to individuals or groups who may be impacted and to other relevant stakeholders, including investors”.* The failure of Rio Tinto/QMM to release technical information and raw data requested by civil society in timely, equitable ways, the delays to sharing studies - especially the withholding of the WRG report and the lack of consultation on the QMM treatment plant, have all raised questions about Rio Tinto/QMM’s adherence to the UN Guiding Principles – in particular, to addressing QMM’s impact, to transparency in its stakeholder engagement, to FPIC, and with additional concerns over masking or potential manipulation of external study results.

## 2. Grievance and Compensation Process

A compensation process was negotiated as part of a conflict resolution agreement with community protestors after the QMM tailing dam failures and fish deaths led to a fishing ban followed by months of hardship, conflict, protests, road blocks and hostage taking. Five government ministers intervened in the crisis to develop an [agreement in May 2022](#), in which QMM was to pay compensation: not just for the three months of losses during the fishing ban, but for all the years of impacted livelihoods as a result of the QMM operations. To contextualise these losses, civil society provided studies showing over 90% of affected villagers were unable to cite any positive benefits from the mine, whereas local livelihoods had been negatively affected by QMM with income falling by as much as 45% since the mine began ([PWYP 2022](#)). Since the mine affected communities in Anosy region are multidimensionally poor, already living on less than \$2 dollars a day, these losses represent a failure by Rio Tinto/QMM to carry out human rights due diligence and responsibly address harm caused by the mine over a long period of time. These harms and losses have been compounded by reports of human rights abuses during the QMM compensation process following the May 22 agreement.

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<sup>5</sup> QMM response to Swanson’s Memo, 2022 (sent to ALT UK)

The QMM process in 2022 was reportedly riddled with human rights violations, including gagging orders, coercion and inadequate compensation. Efforts to demand full transparency on these issues and the process itself were rejected, including the repeat written and verbal requests to Rio Tinto between October 2022 and April 2023 from PWYP MG and ALT UK. Also ignored were civil society demands for an [independent audit of QMM's compensation and grievance process](#). This would align the company with its responsibility under UNGP 18. However, the company declined the request multiple times and insisted on its own internal review in 2023, which has not been published or shared with civil society and communities.

The company assertions that the QMM processes in 2022 was fair and objectively monitored are not supported by any independent verification process, as is expected under international standards and good practice. Nor by communities' response to the outcome of the QMM process, as evidenced by further contestation and conflict (*see below*). In particular, the amounts said to have been paid were apparently accepted by villagers only because of urgent, dire survival needs, not because sums were acceptable or what the communities had requested<sup>6</sup>. Reportedly, some villagers signed the QMM agreements under duress.

The unsatisfactory nature of the QMM payments was confirmed by civil society Malagasy legal advisers, who were able to access and review the QMM agreements in Tana, the capital. They concluded that compensation was not reflective of the true value of losses that locals experienced. Payments meant to compensate for losses since the mine began, approximately 15 years ago, were more equivalent to 1-2 years maximum, based on available information, and land values were paid at a mere 0.02 \$ dollars per square metre. There has been no external process of verification for the payments and compensation process.

QMM future social programme commitments – including long overdue access to drinking water for the mine-affected communities, are part of the fiscal agreement with the Malagasy government and/or are related to the project's social and environmental management plans and obligations. They cannot and should not be used in argument to exonerate QMM from any violations of human rights in relation to its operations and impact. Nor can they be used as some kind of offset, to claim as mitigation or remedy against temporal losses and legitimate grievances or claims. That over 8,000 villagers submitted complaints against QMM in 2022, and 15,000 local association members signed a petition to the government about grievances with QMM (April 2023), shows the extent to which QMM has failed with regard to human rights and its [social licence](#) in Anosy.

*Failing to meet UNGPs, the QMM grievance process is not readily open to scrutiny. It has been shown to have been significantly flawed (PWYP MG 2022) and there is no available data to see how its failings may have been addressed. It is not clear whether grievances have been framed using a Human Rights framework. There has been no redress to the power imbalance between the company and affected communities, making it hard to see how QMM intends to achieve fair and durable solutions. There is nothing to demonstrate the grievance process meets the needs of local people, especially given their vulnerability (e.g., low education, poor literacy rates, etc). There is no independent verification/audit of the QMM grievance and compensation process.*

### 3. LuSud protests in 2023

Both the contested compensation process and other<sup>7</sup> QMM failures related to the May 2022 agreement, exacerbated by a lack of transparency over QMM water issues and loss of trust in QMM, appear to have contributed to the eruption of new protests in 2023 led by a newly formed local association, LuSud.

In April 2023, LuSud submitted a petition to the Government of Madagascar (GOM) signed by 15,000 of its members demanding a suspension of QMM activities until multiple social and environmental issues could be resolved – including failure to hear local complaints and objections since 2001; poverty acceleration; water pollution; failures in transparency, and calling for the application of various laws to be enacted. Following this, QMM rejected numerous requests for dialogue directly from LuSud, and also via third party interlocutors advocating for dialogue between QMM and LuSud<sup>8</sup>. Instead QMM directed LuSud leaders to join an externally facilitated platform, funded by QMM, to which they declined participation due to perceived bias.

QMM's expectation for LuSud to join third party platforms fails to reflect a commitment to UNGPs 29/31 and to ensure that QMM's process is accessible and allows for individuals or groups to interact directly with an effective and legitimate operational level grievance process in which they can have trust. Furthermore, it ignores local peoples expressed ask: villagers do not want third part intervention in their negotiations with QMM (PWYP MG 2022). In particular, the levels of corruption and capture around QMM are recognised as key drivers of conflict and intra community tensions in Anosy (PWYP MG 2022).

The failure of QMM to engage in dialogue with LuSud was followed by protest on Independence Day, on 26<sup>th</sup> June 2023, a public holiday. Hundreds of villagers blocked the road to the mine and were met with disproportionate force, not only from local police but also, reportedly, from military and security forces flown in from other parts of the island. Since the government was unlikely to finance such operations, questions arose as to QMM's involvement in the mobilisation of these forces.

<sup>6</sup> Antanosy diaspora group following the process with local family reported that the communities proposed certain amounts during the negotiations

<sup>7</sup> For example, by May 2023 there was still no sign of a promised commission on water for the region - just one part of the May 22 negotiated settlement

<sup>8</sup> Chief Officer of the Church of England Pension Fund apparently suggested QMM meet with LuSud leaders during a visit he made to the mine in June 2023

QMM has a formal agreement with state security forces, the army and police, to protect “the agglomeration” in Anosy region<sup>9</sup>, raising questions over the extent to which QMM can then distance itself from the events that followed. Calling the protests “illegal” raises further questions as to why QMM would support and be complicit in the actions of a government exercising forms of human rights oppression in contravention of the Malagasy constitution, which upholds the right to peaceful assembly. The company was, at the time, finalising its [negotiations for a new lease](#) for the QMM mine with the Malagasy government, which included a \$77 million dollar debt relief and almost \$20million dollars in benefits to the government, and in the election year.

According to local reports, 127 protestors were arrested in July, at least a dozen reported injured. 87 protestors were incarcerated including four women, one of whom was seven months pregnant. The latter was held for over three weeks in a prison miles from her home, inaccessible for her family and rendering her highly vulnerable to lack of food and [harsh conditions](#). Another woman apparently reported physical intimidation. [Women](#) are especially at risk in Malagasy prisons. There were reports of human rights violations against other prisoners but, without independent inquiry and verification processes, these cannot be confirmed. The local Tribunal processes that followed appeared to proceed without transparency and a lack of physical evidence regarding certain allegations. Four of QMM’s [unionised workers](#) were charged and sent to trial even though they were not present at the LuSud protests. Their crime was apparently communicating with the LuSud leaders while working for QMM.

After the protest, and at the time of QMM’s invitation to join a meeting with Anosy elders (FTAMAR), the two leaders of LuSud were in hiding from arrest and charged with “undermining state security”, which carries a five-year jail sentence, The LuSud leaders fear of arrest is understandable given the abuses in Madagascar’s pre-trial detention system, which is well documented by [Amnesty International](#). Although apparently promised clemency from a government representative circa August 2023, no formal reprieve of the two LuSud leaders was forthcoming - the apparent cause of renewed protests in October 2023.

During the [October 2023 protests](#), three local protestors were shot dead by state police forces on the road to Mandena where the Rio Tinto/ QMM mine site is located. The protestors had reportedly been occupying a space on private land next to the road, where they were expressing their demand for a formal confirmation of a promised lifting of arrest warrants on the two leaders of the LuSud local association. The three dead included Mr Jean Salomon Andriamamonjy, Mr Damy, and Ms Françia, Rasolonirina, the latter a 45-year-old female domestic worker. QMM apparently only registers one of the losses of life.

The killings are unprecedented and signal a serious escalation of violence around the QMM mine. As joint owners, QMM and the Malagasy Government are jointly and severally responsible for each other’s’ actions around the mine operation. The use of live ammunition and the order to fire upon and shoot dead three protestors have not been subject to an independent inquiry or accountability process, and appear to be extrajudicial killings. There was also a highly unusual media blackout of these events in the national press and TV. QMM risks to be perceived as complicit in these events. In particular, the lack of public inquiry leaves too many questions unanswered and denies justice or remedy for the families of the bereaved.

The July 2023 arrests and the October 2023 killing of three protestors are clearly related to conflict around QMM operations. Rio Tinto is committed to the Voluntary Principles on Security and Human Rights and it is hard to understand how the use of armed state security forces against QMM protestors is in keeping with that Code. Instead of owning its responsibilities, the company has characterised the LuSud conflict as related to the state. It has capitalised on this optic in a year when national elections were declared an “[institutional coup](#)” by opposition candidates, whose peaceful marches were fired on by military with tear gas and rubber bullets. The state has been perceived as complicit in [previous conflict](#) and arrests around QMM.

#### 4. Water and radioactivity

The impact of the QMM mine on local water quality is ongoing. Local people have reported health issues and publicly complained about degradation of water quality over a number of years (Fimihota Association/CSO Platform Tolagnaro, [TANY , PWYP MG 2020, 2022](#)). Multiple independent [studies](#) have determined elevated uranium and lead, chemically measured in waters downstream of QMM, at levels 52 and 40 times higher than WHO safe drinking water guidelines respectively.

As the majority of the communities living next to the mine draw their domestic and drinking water from these natural sources, they are deemed at risk and their human rights to a safe environment undermined. Water data retrieved from 2001<sup>10</sup> indicate that the high levels of uranium and lead were not present in the local lakes pre-mining. These lakes are critical for fisherfolk and are also part of an estuary system that eventually feeds drinking water to the town of Ft Dauphin, capital of Anosy region.

Water monitoring and reporting has improved since 2020/2021 after QMM were forced to concede that the “passive” water management system it had been using for at least a decade was not removing heavy metal contaminants from the QMM mine wastewater, as expected. Instead, QMM’s system was concentrating heavy metals in settling ponds or “paddocks” ahead of release into local waterways ([Emerman 2021/QMM Water Monitoring Discharge data 2021](#)).

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<sup>9</sup> Economic development in Anosy is focused around the QMM mine, which was designed to be central to a World Bank funded ‘Integrated Growth Pole initiative’ for the south. The ‘Unite de Protection Civile’ agreement was signed by QMM in 2012.

<sup>10</sup> Hatch & Associates, 2001, QMM Water study



***New efforts to both manage the QMM mine process wastewater and to provide drinking water to communities are all a result of significant advocacy effort from international and national civil society actors over the past six years. This effort is acknowledged by Rio Tinto<sup>11</sup>.***

For example, The JBS&G radioactivity study of the QMM mine was only commissioned by Rio Tinto/QMM in 2019 after the independent review of radioactivity by Dr Swanson was published that year and demonstrated an “unacceptable” lack of monitoring of the impact of QMM in the wider environment (Swanson, 2019). In particular, a complete lack of monitoring ingestion pathways (water, soil, food etc). Swanson identified a signature of elevated uranium in the water, taken from QMM water data, because there were no radiological water data available. In this regard, there were no claims made by ALT UK of “elevated radiation”, only urgent questions arising and the need for more investigation into radioactivity and water quality.

The final results of the JBS&G study are yet to be independently reviewed by Dr Swanson. One analysis of a shared ‘incidental’ water report from JBS&G in 2020 highlighted that the study had failed to include any water data pre-2019 (Emerman 2020), thereby starting the evaluation as if no water discharge had occurred before that year. Whereas the mine had been discharging its mine process wastewater for approximately a decade by 2019. There is no scientific argument for excluding pre-2019 data, since Rio Tinto/QMM insist that *all* the QMM water data are reliable<sup>12</sup> and are used for reporting to the Malagasy government.

The most recent QMM internal reporting on water has yet to be analysed by an independent expert who has reviewed all the previous QMM water reports. Rio Tinto’s disagreement over what it calls “interpretation” of QMM’s water data has led civil society to demand an independent audit of QMM water – an impact assessment process would include community participation. As the company is committed to reach the new GISTM standards by 2024 at QMM, such an audit could contribute to multistakeholder engagement and increase transparency, in line with GISTM standards. Rio Tinto has declined the audit request.

We continue to demand independent audits/impact assessments of the QMM grievance and compensation process and of water. We believe these processes can help address community concerns as well as technical issues and help meet the UNGPs and international standards, thereby helping to build more trusted, long-term relations and aid conflict resolution in the region.

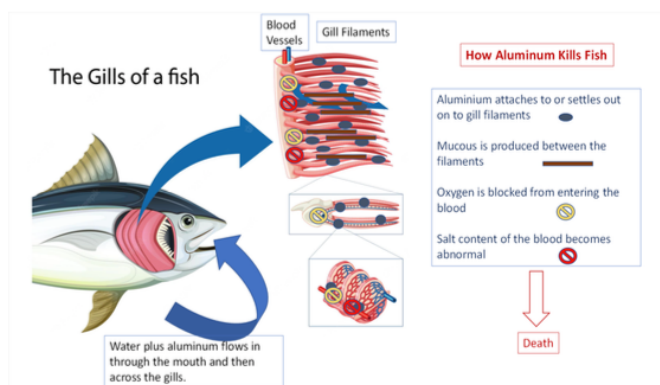
Signed,

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

Yvonne Orengo,  
The Andrew Lees Trust (ALT UK)

## **ANNEX 1:**

*Fish deaths – Swanson response regards Rio Tinto’s reference to the preliminary WRG findings, April 2023:*



*“Metal concentrations in fish is not the point – it is metal concentrations (specifically aluminium) **adsorbed\*** to fish gills. As I explain in some detail in the report of last year. Metal uptake via water and food into fish tissues is almost never a cause of sudden fish death. The effects of accumulation in fish tissue are typically sub-lethal – often on reproduction via increased egg mortality or deformities of the fish fry. Other chronic sub-lethal effects can include changes in kidney function, slower growth rate (because more energy is being used to detoxify and excrete the metals), and sometimes immune suppression leading to increased disease (parasites, bacterial infection etc).*

***So, the claim that metal concentrations in fish is unlikely to cause fish death is true – but is completely missing the point. The problem was metal concentrations in the water under low pH which led to aluminium (and perhaps iron) adsorbing to the surface of gills”. Ref: Dr Swanson, email to ALT UK, April 2023.***

Definition \*Adsorb = attach to the exterior surface

<sup>11</sup> Letter from Rio Tinto to PWYP MG and ALT UK November 2023

<sup>12</sup> Email correspondence from Rio Tinto to ALT UK +MG civil society, April 6<sup>th</sup>, 2022