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Compliance Investigation Report

CAO Investigation of IFC's Environmental and Social Performance in Relation to Investments in Lonmin Plc platinum mining company, South Africa

IFC Project Numbers: 24803, 28400, 33170

20 June 2023

About CAO

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism of the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA), members of the World Bank Group. We work to facilitate the resolution of complaints from people affected by IFC and MIGA projects in a fair, objective, and constructive manner, enhance environmental and social project outcomes, and foster public accountability and learning at IFC and MIGA.

CAO is an independent post that reports directly to the IFC and MIGA Boards of Executive Directors. For more information, see www.cao-ombudsman.org

About the CAO Compliance Function

CAO's compliance function reviews IFC and MIGA compliance with environmental and social policies, assesses related harm, and recommends remedial actions where appropriate.

CAO's compliance function follows a three-step approach:

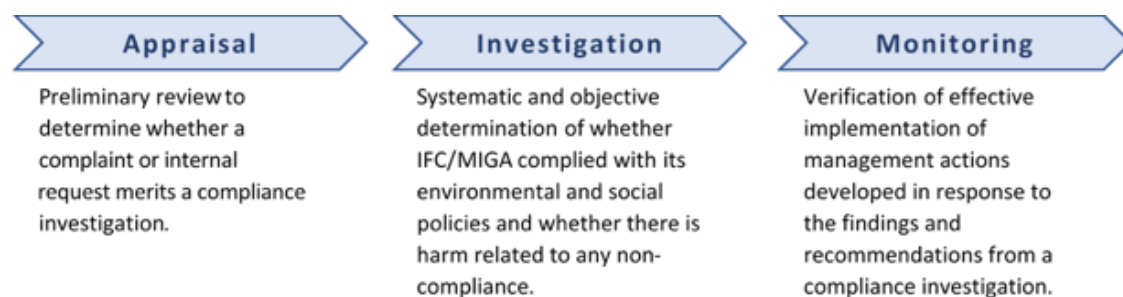


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Acronyms

Acronym	Definition
AMR	Annual Monitoring Report
BCS	Broad Community Support
CO ₂	Carbon Dioxide
CaSO ₃	Calcium Sulfite
CAO	Office of the Compliance Advisor Ombudsman
DME	Department of Minerals and Energy
DMR	Department of Mineral Resources
E&S	Environmental and Social
EHS	Environmental, Health and Safety
EMPR	Environmental Management Program Report
EPL	Eastern Platinum Limited
ESIA	Environmental and Social Impact Assessment
ESRP	Environmental and Social Review Procedures
ESRS	Environmental and Social Review Summary
GIIP	Good International Industry Practice
GLC	Greater Lonmin Community
IFC	International Finance Corporation
LEDP	Local Economic Development Program
MPRDA	Mineral and Petroleum Resources Development Act
MPRDR	Mineral and Petroleum Resources Development Regulation
MIGA	Multilateral Investment Guarantee Agency
PLC	Public Limited Company
PS	Performance Standards
SDR	Sustainable Development Report
SLP	Social and Labor Plan
SO ₂	Sulfur dioxide
TAAS	Technical Assistance Advisory Services (IFC)
WPL	Western Platinum Limited

Executive Summary

From 2007 through 2015, IFC invested in Lonmin, a leading platinum producer with two large mining operations in South Africa. IFC's goal was to support the company to expand its Marikana operations and improve its development impact on surrounding communities. This CAO compliance investigation responds to a 2015 community complaint alleging non-compliance by Lonmin with its social and labor commitments as well as harmful environmental impacts from its operations. CAO reviewed how IFC appraised, structured, and supervised its investment in Lonmin to ensure that impacts of the nature raised by the complainants were adequately considered and mitigated. CAO finds that IFC was non-compliant with its environmental and social oversight requirements during both pre-investment review of Lonmin and its client supervision throughout the investment.

Context and IFC Investment

In 2007, Lonmin (the company) was the third-largest platinum producer in the world. Listed on the London Stock Exchange, it ran two mining operations at Marikana and Limpopo in South Africa, employing 25,000 people. IFC committed to an equity investment of up to US\$50 million and a US\$100 million corporate standby loan as well as an IFC Advisory Service project (TAAS), to support expansion of Lonmin's mining operations and improve its development impact on nearby formal and informal settlements where living conditions were poor. Together with Lonmin, IFC hoped to “empower the 350,000 people in the communities surrounding Lonmin's operations in South Africa by opening up business opportunities.” IFC disbursed its equity investment between April 2007 and November 2008.

In 2002, South Africa established a legal requirement that mining companies develop and implement a Social and Labor Plan (SLP) as a condition for retaining their mining licenses. In 2006, a year before IFC's investment, South Africa's government approved Lonmin's first SLP, which contained commitments to improve the social outcomes of its business activities. Of particular relevance to this case, Lonmin was required to meet defined targets to build employee housing, improve access to water and sanitation in communities around the Marikana mine, and employ more women in its workforce.

In addition to its 2007 investment, IFC made two more equity investments in Lonmin in June 2009 and December 2012, at a total cost of US\$9.7 million, by participating in two rights issues. Between April 2009 and March 2010, IFC also sold part of its equity in the company on the London Stock Exchange. In December 2015, IFC completed the sale of its equity holding, ending its exposure to Lonmin. IFC's loan was structured as a standby facility and it was never disbursed. Accordingly, in March 2010 IFC cancelled the facility after the loan availability period expired.

In June 2019, Lonmin was acquired by South Africa's Sibanye-Stillwater.

The Complaint

In June 2015, CAO received a complaint from community members near Lonmin's Marikana operations. Most of the complainants are women who lived in an informal settlement. They alleged that the company had failed to comply with aspects of its SLP, particularly provision of housing, water infrastructure, and the participation of women in mining, and was also non-compliant with air emission and groundwater pollution standards. In this context, the complainants expressed serious doubts that there was "broad community support" for the company's activities—a condition of IFC's involvement in projects with significant potential environmental and social (E&S) impacts.

Client and IFC Responses

In response to the complaint, Lonmin asserted that it had fully complied with national requirements to maintain its mining rights and highlighted its commitment to work closely with regional and national governments to meet housing challenges around Marikana. Lonmin accepted that its previous social performance had not always been what was hoped but stated that shortfalls were the result of over-ambitious plans and did not breach national laws.

IFC informed CAO that it did not review the feasibility of Lonmin's Social and Labor Plan commitments prior to investment approval as the SLP had already been approved by South Africa's government. IFC also stated that it viewed these commitments by its client as aspirational and not directly related to IFC Performance Standards compliance. Regarding Lonmin's alleged lack of broad community support, IFC cited an "absence of any active opposition" among communities during pre-investment review and stated to CAO that from 2012 to 2015 it considered Lonmin in material compliance with IFC's E&S standards.

Following a failed attempt at a CAO-facilitated dispute resolution process, in May 2017 the complaint was transferred to CAO's compliance function. In December 2017, CAO concluded that the allegations merited a CAO compliance investigation of IFC's E&S performance. The investigation was delayed due to internal staff turnover, the COVID-19 pandemic, and a backlog of compliance cases under investigation.

CAO's investigation reviewed how IFC appraised, structured, and supervised its investment in Lonmin to ensure impacts of the nature raised by the complainants were adequately considered and mitigated—from pre-investment review in 2006 to divestment in 2015.

CAO Findings: Pre-Investment Review

During this phase, in accordance with the IFC Sustainability Policy (2006), IFC must assess the E&S risks and impacts of a company's business, and, as relevant, agree upon mitigation measures with the client consistent with IFC Performance Standards (PS, 2006). In addition to specific standards based on good international industry practice, the PS require companies to operate in accordance with relevant national law.

IFC acknowledged the E&S risks involved in exposure to a large platinum mining and processing operation, categorizing the Lonmin investment as Category A (i.e., a project with potential significant adverse social or environmental impacts that are diverse, irreversible or unprecedented). IFC's approach to pre-investment review was broadly consistent with its Sustainability Policy requirement to conduct an E&S review that is "*appropriate to the nature and scale of the project*" and "*commensurate to [its] level of social and environmental risks and impacts.*" However, CAO finds that IFC gave insufficient attention to historical and other contextual risk factors, including the complex relationships between the mine, its workers, and the poor living conditions at surrounding informal settlements. This lack of contextual risk analysis at the outset was an underlying cause of many of the IFC non-compliances identified in this report.

Key gaps in IFC's pre-investment review included:

- IFC did not consider the company's ability to meet SLP targets that were binding under national law, and, accordingly, a requirement under PS1. This gave rise to E&S regulatory compliance risks that persisted throughout IFC's investment.
- Informal settlements surrounding the company's Marikana operations were within the company's "area of influence" as defined in the PS. However, IFC did not adequately assure itself that the company had analyzed the project's risks and impacts related to these informal settlements.
- IFC did not adequately review the company's environmental controls and emissions performance.

Further, while IFC's loan agreement did require Lonmin to operate in accordance with the Performance Standards, IFC did not include such a PS covenant in its equity agreement. As a result, from the time the loan was cancelled in 2010 until IFC's equity divestment in 2015, IFC had no binding commitment from Lonmin to implement the PS. Additionally, as Lonmin was a publicly listed company, IFC agreed that Lonmin would report on its E&S compliance via an annual Sustainable Development Report (SDR) published on its website. As summarized in this investigation report, CAO notes that Lonmin's reporting through its SDR did not provide sufficient information for IFC to adequately assess Performance Standards compliance.

CAO Findings: Project Supervision

After making an investment, IFC's role is to monitor the client's E&S performance and ascertain evidence that it operates in accordance with the PS, including applicable E&S national laws and regulations. However, challenges related to Lonmin's application of IFC E&S requirements persisted throughout the life of IFC's investment.

Between 2007 and 2011, the company's public reports noted limited progress in addressing its SLP commitments on housing and participation of women in its mining operations. The steep fall in platinum price in 2008 dramatically impacted the company's profitability and ability to finance its SLP commitments. This change in project circumstances raised potential non-

compliance with IFC's requirements, and thus required IFC action. These issues became particularly acute from 2010 onwards when the company publicly reported: (a) that failure to meet its SLP commitments and sulfur dioxide emissions requirements could lead to loss of its mining license; (b) a significant increase in people living in informal housing surrounding its Marikana operations, presenting additional pressure on inadequate infrastructure; and (c) poor community relations, due to internal and external factors, that could result in civil unrest. While Lonmin repeatedly noted that failure to meet its SLP targets could lead to withdrawal of its mining license, Lonmin did not receive a formal notification of SLP non-compliance from the national regulatory authority during the period of IFC's investment (2007-2015).

CAO finds that IFC's failure to consider implementation of the SLP as an E&S compliance issue was contrary to PS1 requirements that clients operate in compliance with applicable laws and regulations. As a result of taking this stance, IFC did not work with Lonmin to address the above challenges in a manner consistent with the Sustainability Policy (2006).

In August 2012, an industrial action at the Marikana mine led to violent incidents in which 44 people were killed and 78 injured. Collectively, these events are referred to as the "Marikana tragedy". While the complaint to CAO is not based on this event, IFC's ability to supervise following the Marikana tragedy was materially affected. On Lonmin's advice, no IFC supervision visits took place from 2012 onward; supervision was limited to review of Lonmin's public reports and discussions with the company. This, combined with a lack of contractually binding E&S requirements tied to IFC's remaining equity investment, made effective E&S supervision difficult from 2012 until IFC's divestment in 2015.

Following the Marikana tragedy, Lonmin sought additional equity investments from its existing shareholders. In December 2012, IFC participated in a rights issue at a cost of US\$5 million after affirming in its investment documentation that the company was in material compliance with covenanted E&S requirements in its equity investment agreement and operates in accordance with Good International Industry Practice. As outlined in this report, IFC reached this conclusion despite Lonmin's public statements that it faced serious community engagement challenges as well as regulatory compliance issues that posed a threat to its mining license. Additionally, CAO recalls that IFC's equity investment had no covenanted E&S requirements.

Overall, CAO finds that IFC's supervision of its investment in Lonmin was materially non-compliant with Sustainability Policy requirements in the following areas:

- **Social and Labor Plan Implementation:** The company annually reported shortfalls against binding SLP commitments on housing, participation of women in mining, and investments in water and sanitation infrastructure. As the implementation of the SLP was required by law, and compliance with national laws is a requirement under PS1, IFC was obliged under the 2006 Sustainability Policy to seek to ensure compliance with the PS. respond. Despite the risk to Lonmin's mining license, IFC did not adequately engage the company on this underperformance or review with the company any performance

improvement opportunities to support compliance with applicable national laws and regulations.

- **Community Engagement:** PS1 requires an IFC-financed company to undertake an engagement process in order to build and maintain over time a constructive relationship with communities that may be affected by risks or adverse impacts from a project. IFC's monitoring of Lonmin's community engagement did not adequately identify and respond to emerging community engagement risks even when flagged by the company as generating the potential for civil unrest. IFC was required to work with Lonmin to address the changed project circumstances that could result in adverse social impacts but IFC did not do so.
- **Living Conditions in Informal Settlements:** PS1 requires a company to analyze risks and impacts in a project's area of influence and, when these change, take action to avoid or minimize adverse impacts. Between 2006 and 2011, the percentage of people living in informal settlements around Lonmin's Marikana mine increased from 32% to 67%, constituting changed project circumstances. In 2012, the South African government's Farlam Commission report on the Marikana tragedy described conditions in these informal settlements as "squalid" and stated that Lonmin's *"failure to comply with its housing obligations created an environment conducive to the creation of tension, labour unrest, disunity amongst its employees or other harmful conduct."* Despite these significant risks and adverse conditions, and the increased proportion of people exposed to them, there is no evidence that IFC worked with Lonmin to address living conditions in the informal settlements.
- **Environmental Impacts and Community Health:** PS3 requires a company to apply pollution controls to avoid, minimize, or reduce adverse impacts on human health and the environment as a result of its emissions. IFC did not obtain sufficient environmental reporting from Lonmin to assess compliance with relevant national or IFC standards. Further, IFC did not require Lonmin to assess community health risks and impacts associated with reported pollution exceedances for groundwater pollution, sulfur dioxide, calcium sulfite, and particulate matter emissions from its Marikana operations.

CAO Recommendations to IFC

In December 2015, IFC ended its exposure to the company. In June 2019, Lonmin was acquired by South Africa's Sibanye-Stillwater. Given the time that has passed since IFC divestment, and the subsequent change in ownership of the mining company, there may be limited scope for a project level response to this compliance investigation.

As a result, CAO recommends that IFC's response focus on measures to ensure that the lessons learned from this investment are captured and institutionalized. In this case, shortcomings in IFC's review and supervision of the project failed to address legal and reputational risks for the client and for IFC.

CAO therefore recommends that IFC:

- Review its approach to contextual risk analysis as required by the Sustainability Policy and Performance Standard 1 to ensure significant historical grievances that may exist between a company and its workforce or affected communities are assessed;
- Review operational procedures to ensure the inclusion of robust E&S covenants in all investment agreements, including equity agreements;
- Prior to making an equity investment in a publicly listed company, ensure that client reporting will align with IFC E&S requirements to evidence compliance;
- Develop systematic approaches to identifying and supervising critical E&S compliance requirements under national law, as required by Performance Standard 1;
- Where emissions and/or discharges exceed permissible standards, ensure that these are promptly addressed, and, as relevant, ensure that potential health impacts on communities are assessed and mitigated in the project's area of influence; and
- Ensure that client E&S commitments are costed and resourced, as required by Performance Standard 1, in order to reduce their vulnerability to financial downturns.

CAO Case Status

As of the date of this report, CAO finalized its investigation report and sent it to IFC Management. In accordance with CAO Policy, IFC prepares a Management Report which includes a Management Action Plan (MAP) for the purposes of addressing CAO's findings. Once the IFC Board approves the MAP, CAO publishes this investigation report and IFC's Management Report. CAO's role thereafter is to monitor the effective implementation of the actions set out in the MAP.

CAO's Compliance Investigation Process

This CAO investigation was conducted in accordance with CAO's [Operational Guidelines](#) (2013). During this investigation, the IFC and MIGA Boards of Executive Directors (the "Board") approved the [IFC/MIGA Independent Accountability Mechanism \(CAO\) Policy](#) (the "CAO Policy"), effective July 1, 2021, which replaces CAO's Operational Guidelines. To facilitate transition to the CAO Policy, CAO, IFC, and MIGA agreed to Transitional Arrangements which provide that this investigation would be finalized under the CAO Operational Guidelines while the new CAO Policy will apply to the preparation of IFC's response to the investigation and Management Action Plan.¹

When CAO receives an eligible complaint, it first undergoes an assessment to determine whether the parties wish to initiate CAO's dispute resolution or compliance function to address the complaint. If CAO's compliance function is triggered, CAO conducts an appraisal of IFC's/MIGA's involvement in the project and determines whether an investigation is warranted.

In accordance with the Operational Guidelines, CAO compliance investigations focus on IFC/MIGA and how IFC/MIGA assured itself/themselves of a project's environmental and social (E&S) performance. The purpose of a CAO compliance investigation is to ensure compliance with policies, standards, guidelines, procedures, and conditions for IFC/MIGA involvement, and thereby improve the institution's environmental and social (E&S) performance.

At issue is whether:

- the actual E&S outcomes of a project are consistent with, or contrary to, the desired effect of the IFC/MIGA policy provisions.
- a failure by IFC/MIGA to address E&S issues as part of the appraisal or supervision resulted in outcomes contrary to the desired effect of the policy provisions.

In many cases, in assessing the performance of a project and implementation of measures to meet relevant requirements, it is necessary for CAO to review the actions of the IFC/MIGA client and to verify outcomes in the field.

CAO has no authority with respect to judicial processes. CAO is neither a court of appeal, nor a legal enforcement mechanism, nor is CAO a substitute for international court systems or court systems in host countries.

Upon finalizing a compliance investigation, and in accordance with the CAO Policy, IFC/MIGA is given 50 working days to prepare a management response. To address CAO non-compliance findings and related harm, if any, the management response will include a Management Action Plan (MAP) comprising time-bound remedial actions proposed by IFC/MIGA for approval by

¹ See (2021) CAO Policy: Transitional Arrangements. Available at: <https://bit.ly/3qaGZ1o>

the Board. In preparing a MAP, IFC/MIGA is required to consult with the complainants and the client. Once the Board approves the MAP, CAO's investigation report, the management response, and the MAP are published on CAO's website.

After the Board has approved a MAP, CAO will monitor to verify the effective implementation of the actions it sets out. CAO compliance monitoring will not consider non-compliance findings for which there is no corresponding corrective action in the MAP.

For more information about CAO, please visit www.cao-ombudsman.org.

1. Background

Lonmin (the company) was a major, publicly traded mining company that extracted and processed platinum group metals. The company had mining operations at Marikana and Limpopo in South Africa and employed 25,000 people (including contractors). In 2007, when IFC made its investment, Lonmin was listed on the London Stock Exchange and among the FTSE 100.^{2,3} In December 2015, IFC completed the sale of its equity investment. In 2019, Lonmin was acquired by South Africa's Sibanye-Stillwater.

CAO's investigation responds to a complaint from people living around the company's center of operations, the Marikana platinum mine and processing facility in the North West Province. Lonmin's other operations are not within the scope of this report.

1.1 Regulatory and Social Context

IFC's investment was made against the backdrop of a changing national regulatory context relevant to the complaint.⁴

In 2002, South Africa's government introduced the Mineral and Petroleum Resources Development Act (MPRDA), which required mining companies to convert their "old order" mining rights to "new order" mining rights. As part of the conversion process, mining companies were required to lodge a Social and Labor Plan (SLP) with the Department of Minerals and Energy (DME).⁵

Requirements for companies' SLPs were laid out in the 2004 Mineral and Petroleum Resources Development Regulations (MPRDR),⁶ and included provision of a local economic development program (LEDP).⁷ The mandatory content of LEDPs span several issues relevant to the community complaint to CAO against Lonmin. These include measures to address miners' housing and living conditions, support infrastructure and poverty eradication projects, and measure the mine's impact on local and labor-sending communities.⁸

Lonmin developed an SLP covering its Marikana operations between 2004 and 2006. At the time, approximately 350,000 people lived in the Marikana district, around and on the mine

² FTSE 100 [Financial Times Stock Exchange 100] is the index of the 100 companies listed on the London Stock Exchange with the highest market capitalization.

³ IFC. 2006. "Lonmin: Summary of Proposed Investment", *IFC Project Information Portal*. Available at: <http://bit.ly/2YDaDvD>. [Hereinafter 'IFC. 2006. SPI.']

⁴ Parliament of the Republic of South Africa. 2002. *Mineral and Petroleum Resources Development Act*. Available at: <https://bit.ly/2Q4qMJM>, <https://bit.ly/2ZfxZva>. [Hereinafter 'GoSA. 2002. MPRDA.']

⁵ GoSA. 2002. MPRDA, Section 7(2)(f).

⁶ Minister of Minerals and Energy, Government of South Africa. 2004. *Mineral and Petroleum Resources Development Regulations*, Regulation 41. Available at: <https://bit.ly/2Oi9Qem>. [Hereinafter 'GoSA. 2004. MPRDR.']

⁷ GoSA. 2004. MPRDR, Regulation 46.

⁸ GoSA. 2004. MPRDR, Regulation 46.

lease areas. Of these, just over 100,000 people lived within a 15km radius of Lonmin's operations, defined by the company as the Greater Lonmin Community (GLC).⁹

The Department of Minerals and Energy approved Lonmin's Social and Labor Plan in December 2006.¹⁰ Under its terms, the company committed to:

- Setting training and education targets for employees and local communities
- Increasing women's participation in mining operations to 10.1 percent by 2009 and 12.4 percent by 2014
- Achieving over 40 percent participation by Historically Disadvantaged South Africans (HDSA) in all levels of management by 2009
- Assessing regional economic impact to determine Lonmin's upstream and downstream effects on the region and local communities
- Building 5,500 houses and converting 114 hostels to single and family units by 2011
- Spending 40 percent of total procurement on Black Empowered and Owned Companies by 2009.¹¹

The government's efforts to require the provision of decent living conditions for mineworkers in post-apartheid South Africa, as part of the new local economic development plans, sought to improve on a charged history. Mining in the country historically relied on migrant workers from so-called 'labor-sending areas' in rural South Africa and neighboring countries. These migrant workers were typically housed in high-density single-sex hostels at compounds near mine sites, with well documented negative social impacts.¹² IFC noted in discussion with CAO that every mining company had struggled with the issue of housing, and characterized some of Lonmin's challenges as emblematic of the wider South African mining industry.

Part of IFC's investment was earmarked for a "*comprehensive, large-scale community and local economic development program*"¹³—an agenda that aligned with Lonmin's SLP requirements and commitments, as discussed in section 1.2.

According to IFC, the mining site's vicinity at the time of investment included nine villages and five informal settlements as well as mine hostels housing about 9,000 workers. Some of the company's workforce also lived in informal settlements, conditions in which later became the focus of the complaint to CAO.

In 2014, Lonmin developed a follow-on Social and Labor Plan covering 2014–2018. The community complaint to CAO does not address the commitments in this later SLP,

⁹ IFC, 2006. ESRS.

¹⁰ The Department of Minerals and Energy's successor for purposes of the 2002 MPRDA is the Department of Mineral Resources.

¹¹ Lonmin (2006) Social and Labour Plan for Marikana Operations (Eastern Platinum Limited and Western Platinum Limited)

¹² See for example C. Vosloo. 2020. 'Extreme apartheid: the South African system of migrant labour and its hostels,' *Image and Text*, 34. <https://bit.ly/3jzL4J5>

¹³ IFC. 2006. "Lonmin: Summary of Proposed Investment", *IFC Project Information Portal*. Available at: <http://bit.ly/2YDaDvD>. [Hereinafter 'IFC. 2006. SPI.']

implementation of which largely fell outside the time period of IFC's investment. CAO has considered in general terms how IFC supervised the company's SLP implementation with respect to housing and women in mining during the life of IFC's investment.

1.2 IFC Investments in Lonmin

In March 2007, IFC committed to equity and loan investments in Lonmin. The purpose of the investment was to support (a) the development, expansion, and mechanization of Lonmin's mines and (b) a local economic development program (LEDP) to support communities surrounding Lonmin's operations. IFC's commitment consisted of an equity investment of up to US\$50 million and a US\$100 million loan.¹⁴ Between April 2007 and November 2008, IFC acquired approximately 1 percent equity in the company at a cost of US\$50 million.¹⁵

An equity investment in a large publicly listed company is not mainstream business for IFC, since such companies typically have adequate access to capital. In this case, IFC's equity investment provided for an initial US\$15 million to be allocated to Lonmin's community development initiatives (such as the LEDP), with the objective of making a positive impact on the 350,000 people near the Marikana operations. Further, the overall investment objective was technical assistance-led rather than investment-led, with the *"main driver for IFC involvement... [being] a TA [Technical Assistance - TAAS] package with a supporting commercial investment in the form of corporate financing"* (see section 1.3 below).¹⁶ At the time, IFC described the investment structure as groundbreaking.

Through its general-purpose financing to Lonmin, in the form of equity and a corporate standby loan facility, IFC was exposed to the full range of the company's business activities. IFC categorized the project's E&S risk as Category A, which denotes potential significant adverse social or environmental risks or impacts that are diverse, irreversible, or unprecedented, as would be expected of a large mining operation.¹⁷

IFC's pre-investment review identified a legacy of distrust and community dysfunction as a key project risk. Against this background, IFC considered that it could serve as an honest broker between the company and communities around the company's operations, alongside the company's own efforts to build positive community relations. Pre-investment review documentation described the investment as the largest ever IFC-supported community development project and referred to ambitious plans for community and economic development as a high-impact element of IFC's involvement.¹⁸ At the time the investment was approved, IFC stated that it would mobilize World Bank Group internal resources to ensure proper implementation and to maximize development impact. The company's CEO stated that IFC funds would be used to create *"thriving communities"* around Lonmin's sites so that when the

¹⁴ IFC. 2006. SPI.

¹⁵ IFC. 2006. SPI.

¹⁶ IFC. 2006. ESRs.

¹⁷ Refer to IFC. 2006. *Policy on Social & Environmental Sustainability*, paragraph 18. Available at: <http://bit.ly/2Z5uZSx>. [Hereinafter 'IFC. 2006. Sustainability Policy.']

¹⁸ IFC. 2006. SPI.

platinum was depleted and the miners left, the communities would be “comfortably middle-class” and able to support themselves.¹⁹

In June 2009 and December 2012, IFC made additional equity investments in the company at a total cost of US\$9.7 million by means of participation in two rights issues. During 2009 and 2010, IFC also sold part of its equity in Lonmin on the London Stock Exchange.

In December 2015, IFC completed the sale of its equity holding in full. This ended IFC’s exposure to the company. IFC decided to sell its remaining equity because it viewed its role with the company as complete and the size of its equity at that point (less than 1 percent of the company’s share capital) to be a passive investment. IFC’s loan investment, which was structured as a standby facility, was never disbursed.²⁰ It was cancelled in March 2010.

In June 2019, Lonmin Plc was acquired by South Africa’s Sibanye-Stillwater, which took over its operations. With this acquisition, Lonmin Plc ceased to exist.²¹

1.3 IFC Advisory Services Project with Lonmin

As a result of the government’s 2004 Mineral and Petroleum Resources Development Regulations, Lonmin identified a need to improve its social performance alongside its application to convert its old order mining rights into new order mining rights. Lonmin sought IFC’s support in this endeavor, particularly in areas related to implementing its Social and Labor Plan. A Technical Assistance Advisory Services (TAAS)^{22,23} agreement, linked to but separate from IFC’s equity and loan investments in Lonmin, was approved in April 2007.

The purpose of the TAAS was to support local supplier development, women’s participation in core mining and processing operations, HIV/AIDS risk mitigation, and community development.²⁴ Its budget was US\$5.8 million, which was 50% financed through IFC donor funds and 50% by the company.

IFC regarded the TAAS program as an opportunity to improve Lonmin’s social and environmental performance beyond the requirements of the Performance Standards (exceeding compliance with the IFC Performance Standard requirements. As a matter of internal policy, IFC could not have applied donor funds in support of a TAAS designed to assist a company to comply with its obligations under the IFC Performance Standards (PS). The TAAS closed on June 30, 2010. IFC recorded that overall implementation of the TAAS was successful. IFC noted

¹⁹ Rose, Rob. 2007. “South Africa: World Bank Body Puts \$150m Into Lonmin [March 14, 2007]” *Business Day*. Available at: <https://bit.ly/3y7bale>.

²⁰ IFC. 2006. SPI.

²¹ Lonmin. 2019. Notification on Lonmin website: www.lonmin.com. Also see Sibanye Stillwater transaction details, available at <https://bit.ly/3zyR2yW>.

²² IFC 2006. “Lonmin (platinum producer) Technical Assistance Program”, Project number 548827, IFC Disclosure, available at <https://bit.ly/2TcaAjl>.

²³ IFC. 2006. “Lonmin: Environmental and Social Review Summary,” *IFC Disclosure*, Available at: <https://bit.ly/2LV5ZX1>. [Hereinafter ‘IFC. 2006. ESRs.’]

²⁴ IFC. 2008. “IFC-Lonmin Partnership Wins Nedbank Green Mining Award” [October 28, 2008]. Available at: <https://bit.ly/2Peamv8>.

that the local supplier business development initiative was very popular among local entrepreneurs, and that contracts to local small medium enterprises exceeded the TAAS original objective. Further, the company implemented (a) sexual harassment induction training and (b) a workplace and community-based HIV/AIDS prevent program that reached 18,000 people.

The TAAS closed five years prior to CAO receiving the complaint that triggered the present compliance investigation. CAO's Operational Guidelines exclude complaints on closed projects. Consequently, the IFC advisory services to Lonmin fall outside the scope of this investigation. However, this report refers to the TAAS when relevant to CAO's consideration of the E&S performance of IFC's equity and loan investments.

1.4 CAO Community Complaint to CAO

In June 2015, CAO received a complaint from community members living near Lonmin's Marikana operations.²⁵ The individuals submitted their complaint along with a local community-based organization Sikhala Sonke—"We Cry Together"—(collectively "the complainants"). Most of the complainants were women who lived in Enkaneng, an informal settlement within the Bojanala District Council of North West Province.

The complainants described the informal settlements surrounding the Lonmin facilities as lacking proper housing, sanitation, access to energy, and roads and water supply, and stated that living conditions were difficult.²⁶ Their complaint alleged the following concerns:

- Serious doubts there was broad community support for the company's activities
- Non-compliance under national law with aspects of the SLPs, including provision of adequate worker housing, access to adequate water and sanitation and participation of women in mining
- Adverse environmental impacts from the company's activities on the Enkaneng community.

The complaint does not center on the 2012 Marikana tragedy, in which industrial action at Lonmin's facilities resulted in 44 people being killed and 78 injured.²⁷ However, this report

²⁵ Local Community Members. 2015. *Complaint by Affected Community Members in Relation to the Social and Environmental Impacts of Lonmin Plc's Operation in Marikana*. Available on the CAO website at: <http://bit.ly/31TKoCs>. [Hereinafter 'Local Community Members. 2015. Complaint to CAO.']

²⁶ CAO Complaint. 2015. See Local Community Members. Available at: <http://bit.ly/3YiNgpm>. Annexure A.

²⁷ In August 2012, the Marikana mine was the site of industrial action. Between 11th and 16th August, a series of violent incidents resulted in a total of 44 people being fatally wounded and a further 78 injured. Collectively these events have often been referred to as the 'Marikana tragedy'. Following news of the Marikana tragedy, CAO triggered a compliance appraisal of IFC's investment in Lonmin. Based on information then available, CAO concluded that the nexus between IFC's E&S performance and the outcomes of the August 2012 dispute was insufficiently established in the absence of a complaint from affected workers. As a result, the case was closed.

See e.g., Farlam, I.G., P.D. Hemraj, and B.R. Tokota. 2015. *Marikana Commission of Inquiry: Report on Matters of Public, National and International Concern Arising out of the Tragic Incidents at the Lonmin Mine in Marikana, in the*

references the findings of the Farlam Commission appointed by South Africa's government to investigate the incident, where relevant to the complainants' concerns.

In 2012-2014, CAO itself conducted a compliance appraisal following the Marikana tragedy but decided not to trigger a compliance investigation (see timeline, below).²⁸

In July 2015, Lonmin issued a response to the community complaint to CAO.²⁹ This asserted that the company had fully complied with national requirements to maintain its mining rights and highlighted its commitment to working closely with regional and national government to meet housing challenges around Marikana. Lonmin accepted that its social performance to date had fallen short, which it stated was the result of over-ambitious plans and did not breach national laws. It added that it had learned from the tragic events at Marikana and was committed to working with stakeholders to bring about real change and transformation in the mining industry.

Following CAO's assessment phase, a CAO-facilitated dispute resolution process began in September 2015, shortly before IFC completed the sale of its equity in Lonmin. In March 2017, the complainants withdrew from the dispute resolution process and the complaint was transferred to CAO's compliance function for appraisal.³⁰

In December 2017, CAO's compliance appraisal concluded that the allegations in the complaint merited a CAO compliance investigation.³¹ The subsequent five-year gap before publication of this investigation report was due to several factors including CAO staff turnover, the COVID-19 pandemic, and a backlog of compliance investigation cases.

Figure 1 below provides a summary timeline of key milestones, events, and reports relevant to this IFC project and the issues raised by the compliance investigation.

North West Province. [March 31, 2015]. Available at: <https://bit.ly/2KI18JN>. [Hereinafter 'Farlam et al. 2015. Marikana Commission Report.'], at page 493.

²⁸ CAO. n.d. *South Africa:Lonmin-01/Vice President Request*. Available at: <https://bit.ly/2MdxPyu>. CAO. 2013. *Compliance Appraisal Report – Lonmin-01/Vice President Request*. Available at: <http://bit.ly/3lVXaaT>

²⁹ Lonmin response to IFC complaint by affected community members in relation to social and environmental impacts to Lonmin's operation in Marikana. 10 July 2015. Available at: <https://bit.ly/2vmgDvu>. [Hereinafter: 'Lonmin response to IFC complaint. July 2015.']

³⁰ CAO. 2017. *Dispute Resolution Conclusion Report – Lonmin-02/Marikana*. Available at: <http://bit.ly/3YiNgpm>.

³¹ CAO. 2013. *Compliance Appraisal Report – Lonmin-01/Vice President Request*. Available at: <http://bit.ly/3lVXaaT>

Figure 1: Project Events Timeline

Date		Milestones, Events and Key Documents
2006	May	IFC begins pre-investment review for Lonmin investment.
	December	Lonmin publishes its 2006 Social and Labor Plan (SLP).
	December	IFC Board approves Lonmin debt and equity investment.
2007	March	IFC makes legal commitment to Lonmin debt and equity investment.
	April	IFC acquires equity in Lonmin during April 2007- November 2008.
2010	March	IFC cancels US\$100 million loan to Lonmin.
	December	Lonmin publishes 2010 Sustainability Report. As a principal risk, Lonmin notes possible withdrawal of its mining licenses due to failure to deliver on SLP commitments.
2011	December	Lonmin publishes 2011 Sustainability Report. As a principal risk, Lonmin notes possible withdrawal of its mining licenses due to failure to deliver on SLP commitments.
2012	9–16 August	Industrial action at Lonmin’s Marikana facilities. Violence results in 44 deaths and 78 injured. Following the tragedy, there are no further IFC E&S supervision visits to Lonmin sites.
	17 August	Marikana Commission of Inquiry (the Farlam Commission) established.
	21 August	CAO triggers compliance appraisal following the Marikana tragedy. Case name: South Africa: Lonmin-01/CAO Vice President Request.
	November	IFC approves its participation in Lonmin rights issue at a cost of US\$5 million.
	December	Lonmin publishes 2012 Sustainability Report. Lonmin notes its social license to operate and reputational risk as principal risks.
	August	CAO publishes compliance appraisal report South Africa: Lonmin-01/CAO Vice President Request; does not trigger compliance investigation.
2015	June	Farlam Commission Report published.
	June	Sikhala Sonke and individual community members submit CAO complaint.
	September	CAO Assessment Report on South Africa: Lonmin-02/Marikana published and dispute resolution process starts.
	December	IFC completes sale of Lonmin equity.
2017	March	Complainants withdraw from dispute resolution process. Case is transferred to CAO compliance.
	December	CAO compliance appraisal report published. CAO triggers investigation.
2019	June	Lonmin Plc acquired by South Africa’s Sibanye-Stillwater.

2. Investigation Framework

2.1 Scope of the Compliance Investigation

Under the 2013 Operational Guidelines, CAO oversees investigations of IFC's environmental and social (E&S) performance by ascertaining IFC compliance with those of its policies, procedures, and standards whose violation might lead to adverse E&S outcomes.³²

In accordance with terms of reference (TOR) issued by CAO, this compliance investigation considers whether IFC's investment in the client, platinum producer Lonmin, was appraised, structured, and supervised in accordance with applicable IFC policies, procedures, and standards. Considering the issues raised in the complaint, the TOR state that the investigation will focus on:

- IFC's pre-investment review of: (a) the company's stakeholder engagement, (b) the company's ability to implement its Social and Labor Plan (SLP), and (c) the company's assessment of environmental impacts and consideration of mitigation measures.
- IFC's supervision of the client's E&S performance, through to the decision to divest, which relates to these same areas of concern.
- In addition, given that IFC divested from Lonmin in 2015, the TOR direct that the investigation should aim to document lessons learned for future operations.³³

2.2 Methodology

This investigation was conducted by CAO in accordance with its Operational Guidelines (2013)³⁴ with input from an external expert in E&S issues associated with mining projects.

The CAO team reviewed relevant documents and interviewed representatives of IFC staff in Washington D.C. and Johannesburg. The investigation team visited the Marikana operations and surrounding areas in June 2018. During this visit, CAO staff met with individual complainants and members of Sikhala Sonke, representatives of the Center for Applied Legal Studies, the company's management team, and its Executive Committee. The CAO team visited a wastewater treatment facility at Wonderkop, calcium sulfite dams, a tailings dam, apartments used by the company's workers, community areas around the mine, the informal settlement of Enkaneng, and the Sikhala Sonke women's food gardening project.

³² CAO, *Operational Guidelines* 2013, paragraph 4.3, <http://bit.ly/3JecGQC>

³³ CAO. 2018. *Terms of Reference for Compliance Investigation, South Africa/Lonmin-02/Marikana*. Available at: <http://bit.ly/3YiNgpm>.

³⁴ CAO. 2013. *Operational Guidelines*. Available at: <http://bit.ly/3JecGQC>.

When considering the adequacy of IFC's E&S pre-investment review and supervision of issues raised in the complaint, CAO was conscious not to expect performance at a level that required the benefit of hindsight. Rather, CAO sought to ascertain whether there was evidence that IFC applied relevant requirements based on sources of information available over the relevant period.

In accordance with CAO's Operational Guidelines, this report documents investigation findings with respect to IFC's compliance with relevant requirements and adverse E&S outcomes, including the extent to which these are verifiable. Summary analysis of IFC's E&S performance against relevant compliance requirements is presented in section 3.

2.3 Applicable IFC E&S Policy, Procedures, and Client Requirements

IFC's commitment to sustainable development relevant to the Lonmin investment is articulated in its 2006 Sustainability Framework which includes IFC's Sustainability Policy, Policy on Disclosure of Information, and Performance Standards.³⁵

The first two policies govern IFC's own actions. Through the Sustainability Policy (SP, 2006), IFC commits to "do no harm" to people and the environment in carrying out its investment operations and advisory services. The policy sets out a mitigation hierarchy in which negative impacts are avoided where possible, and if unavoidable, reduced, mitigated or compensated for as appropriate. The Sustainability Policy also commits IFC not to externalize the costs of projects on people who are poor or vulnerable.³⁶

In addition, IFC requires its clients³⁷ to operate in accordance with the Performance Standards (PS, 2006) throughout the life of an IFC investment. The PS are a series of E&S requirements for a client to manage and improve their E&S performance through an outcomes-based approach. Through the PS, a client is required to assess project risks and impacts, implement an E&S Management System (ESMS) to manage project risks and impacts, and operate in accordance with key E&S requirements. The latter include Labor and Working Conditions; Community Consultation; Community Health, Safety, and Security; and Environmental Pollution. Further, the PS require that clients comply with applicable national laws.³⁸

³⁵ IFC. 2006. *Sustainability Framework*. Available at: <https://bit.ly/2w6L49f>. The 2006 Sustainability Framework is applicable to IFC's investment in Lonmin (2007). The Sustainability Framework was updated in 2012. However, as IFC's investment was made in the context of the 2006 Sustainability Framework, the 2006 Performance Standards were anticipated to be binding upon Lonmin. The updated 2012 Performance Standards were not binding upon Lonmin.

³⁶ IFC. 2006. Sustainability Policy, paragraph 8.

³⁷ This CAO report refers to Lonmin or the company. IFC's E&S standards refers to the client. For the purposes of this report, these terms have the same meaning.

³⁸ IFC. 2006. Performance Standards Introduction, paragraph 3; Performance Standard 1, paragraphs 4, 14, 16, and 18.

IFC requirements: pre-investment stage and project supervision

The Sustainability Policy sets out IFC's responsibility for conducting E&S pre-investment review and supervision of client operations throughout the life of an investment.

IFC's role is to: review E&S risk and impact assessment conducted by the client; categorize the project's E&S risk;³⁹ assist the client in developing measures to avoid, minimize, mitigate or compensate for E&S impacts; help identify opportunities to improve E&S outcomes; and monitor the client's ongoing E&S performance.⁴⁰

Through these activities, IFC commits not to finance new business activity that cannot be expected to meet the PS over a reasonable period of time.⁴¹

To this end, IFC staff must follow detailed Environmental and Social Review Procedures (ESRP) for the pre-investment review and supervision of projects.⁴²

Pre-investment review

At this stage, IFC reviews the E&S risks and impacts of a proposed investment and agrees with the client on measures to mitigate them in accordance with the PS. This client screening determines the scope of the E&S conditions attached to financing⁴³ and is part of IFC's due diligence in advance of investment approval. The goal is to identify and establish commitments to address any gaps between the client's approach to E&S issues and IFC's binding E&S requirements.⁴⁴

IFC's Sustainability Policy requires the E&S review to be "*appropriate to the nature and scale of the project, and commensurate to the level of social and environmental risks and impacts.*"⁴⁵ Thus, with a high risk project such as two large, long time operating platinum mines (Marikana and Limpopo), the review should be extensive. IFC is required to consider the E&S risks the client identifies as well as "*the commitment and capacity of the client*" to manage those risks.⁴⁶

³⁹ IFC Sustainability Policy (para. 18) describes the E&S categories as:

Category A: Projects with potential significant adverse social or environmental impacts that are diverse, irreversible or unprecedented

Category B: Projects with potential limited adverse social or environmental impacts that are few in number, generally site-specific, largely reversible and readily addressed through mitigation measures

Category C: Projects with potential limited adverse social or environmental impacts that are few in number, generally site-specific, largely reversible and readily addressed through mitigation measures.

For the purposes of this report, these E&S categories will be referred to as high, medium, and low risk, respectively.

⁴⁰ IFC. 2006. Sustainability Policy, paragraph 11.

⁴¹ IFC. 2006. Sustainability Policy, paragraph 17.

⁴² Project is defined as the business activity IFC finances.

The investment in Lonmin was approved under ESRP Version 1.0 and supervised under subsequent versions of the ESRP. IFC's current and former ESRPs are available at <https://bit.ly/2T70JEW>.

⁴³ IFC. 2006. Sustainability Policy, paragraph 5.

⁴⁴ IFC. 2006. ESRP 3.1.

⁴⁵ IFC. 2006. Sustainability Policy, paragraph 13.

⁴⁶ IFC. 2006. Sustainability Policy, paragraph 15.

IFC investment supervision

Once IFC makes an investment, it supervises project compliance with the Performance Standards (including applicable national law), and the E&S requirements in its investment agreements with the client, including any agreed action plan. The overarching objective is to assist the client in developing measures to avoid, minimize, mitigate, or compensate for E&S impacts consistent with the PS. During supervision, as relevant, IFC reviews with the client any performance improvement opportunities.⁴⁷

The Sustainability Policy states, “*if a client fails to comply with its social and environmental commitments, as expressed in the Action Plan or legal agreement with IFC, [IFC will] work with the client to bring it back into compliance to the extent feasible, and if the client fails to reestablish compliance, exercise remedies when appropriate.*”⁴⁸ In addition, if project circumstances change in ways that lead to adverse E&S impacts, IFC must work with the client to address these.⁴⁹

IFC’s supervision responsibilities include requiring a client to submit periodic monitoring reports on its E&S performance. This typically occurs in the form of an Annual Monitoring Report (AMR) and is the client’s primary channel for reporting on E&S performance and compliance to IFC. Where client activities include E&S risks and impacts, IFC conducts site visits to further review and retain E&S compliance-related information. For Category A (i.e., “high risk”) projects, such as IFC’s investment in Lonmin, IFC is expected to conduct an annual site visit to the company and ensure the client retains an experienced external expert(s) to verify its monitoring information.⁵⁰

Client requirements: Performance Standards

Three IFC Performance Standards are particularly relevant to this compliance investigation. These are: PS1 on Social and Environmental Assessment and Management Systems; PS3 on Pollution Prevention and Abatement; and PS4 on Community Health, Safety, and Security. The Performance Standards also require IFC clients to comply with applicable E&S-related national laws.⁵¹

PS1 contains provisions for client E&S assessment and monitoring, obligating clients to take into account applicable national laws and regulations. It also requires clients to engage affected communities appropriately on E&S impacts from their operations—in this case the platinum mine.⁵² PS3 includes requirements to avoid or minimize adverse impacts on human health and

⁴⁷ IFC. 2006. Sustainability Policy, paragraph 26.

⁴⁸ IFC. 2006. Sustainability Policy, paragraph 26.

⁴⁹ IFC. 2006. Sustainability Policy, paragraph 26.

⁵⁰ IFC ESRP (version 2007), paragraphs 6.2.13 and 14.

⁵¹ IFC. 2006. “Introduction,” *Performance Standards on Social & Environmental Sustainability*, paragraph 3. Available at: <http://bit.ly/2P43QLn>

⁵² As per PS1 (2006, para. 19) “Community engagement is an on-going process involving the client’s disclosure of information. When local communities may be affected by risks or adverse impacts from a project, the

the environment by avoiding or minimizing pollution from project activities. PS4 requires clients to avoid or minimize risks to and impacts on the health and safety of the local community from both routine operations and unplanned emergencies.

A client's ability to achieve E&S outcomes consistent with the PS may be dependent on the actions of third parties such as local and national governments, contractors, and suppliers. In such circumstances, and when the client has control or influence over third party actions and behavior, IFC requires the client to collaborate with the third party to achieve outcomes consistent with the PS.⁵³

engagement process will include consultation with them. The purpose of community engagement is to build and maintain over time a constructive relationship with these communities. The nature and frequency of community engagement will reflect the project's risks to and adverse impacts on the affected communities. Community engagement will be free of external manipulation, interference, or coercion, and intimidation, and conducted on the basis of timely, relevant, understandable and accessible information."

⁵³ IFC. 2006. Sustainability Policy, paragraph 25.

3. Analysis and Findings

This section addresses IFC's actions in relation to its client, Lonmin, and the complainants' concerns about the adverse impacts of the mining operation on local communities and workers. CAO assessed IFC's performance against its Sustainability Policy and ESRP requirements during both pre-investment and supervision, covering the following six key issues:

- 3.1 Investment Structure
- 3.2 Social and Labor Plan Requirements and Implementation
- 3.3 Broad Community Support and Community Engagement
- 3.4 Living Conditions in Informal Settlements
- 3.5 Environmental Impacts and Community Health
- 3.6 IFC Supervision: Summary.

Each subsection summarizes the issue, applicable IFC E&S requirements, CAO's analysis of IFC's pre-investment and supervision, and CAO's observations and findings.

3.1 Investment Structure

Summary of key findings:

IFC structured its investment in Lonmin in a manner consistent with Sustainability Policy requirements and Environmental and Social Review Procedures with one important exception. The equity agreement did not include "a general covenant requiring client compliance with the IFC Performance Standards" as required by ESRP para. 4.2.15 (v.1). As a result, between 2010 and 2015, IFC was exposed to business activities with significant E&S risks without (a) a legal covenant that required Lonmin to operate in accordance with IFC's Performance Standards or (b) remedies for client non-compliance under the Sustainability Policy. This situation persisted despite IFC's purchase of additional equity in Lonmin in 2012 and represented a breach of Sustainability Policy requirements (paras. 5, 11, 26) designed to safeguard against adverse environmental and social impacts on communities.

The TOR for this compliance investigation require CAO to consider whether IFC's investment was structured in accordance with applicable IFC policies, procedures, and standards. The investment in Lonmin was unusual for IFC in that it brought together (a) a technical assistance project; (b) an equity investment; and (c) a standby loan facility.

As stated above, the TAAS falls outside the scope of this compliance investigation. The equity and loan agreements are discussed further here.

3.1.1 Equity agreement

The conditions of IFC's 2007 equity investment in Lonmin were set out in an equity agreement.

The agreement did not require the company to comply with the PS on an ongoing basis, a decision by IFC that was inconsistent with ESRP requirements for “*a general covenant requiring client compliance with the IFC Performance Standards*”.⁵⁴

IFC investments ordinarily require a company to report on its E&S performance to IFC through Annual Monitoring Reports (AMRs) tailored to PS requirements. However, when IFC has limited influence over company operations, such as when it purchases equity in a publicly listed company, the applicable ESRPs allow alternative reporting mechanisms authorized as part of the pre-investment review process.⁵⁵ Following this approach, the equity agreement with Lonmin required the publicly listed company to provide IFC with an annual report about E&S aspects of its own and its subsidiaries' operations at the same time as this information was made available to other shareholders.

In practice, Lonmin provided IFC with its public annual Sustainable Development Reports (SDRs) and IFC provided summary comments on these to the company.⁵⁶ These disclosures addressed a range of E&S performance issues but did not provide the comprehensive reporting needed to assess compliance with IFC's Performance Standards. Key gaps included: (a) not reporting against key PS indicators; (b) where indicators were reported, in some years data was missing; (c) providing insufficient detail on mitigation measures; and (d) not providing summaries of internal audit reports on Lonmin's E&S performance.

Effective compliance monitoring depended on the quality of IFC's follow-up with Lonmin on PS-related matters. Yet, as IFC noted in several supervision documents, Lonmin's status as a publicly listed company limited IFC's ability to request additional information not otherwise available to all shareholders.

3.1.2 Loan agreement

IFC and Lonmin entered into a loan agreement in March 2007.⁵⁷ In March 2010, IFC cancelled the standby loan facility as the company did not use the facility during the loan availability period.

Unlike the equity agreement, the loan agreement incorporated a binding E&S performance covenant. This required Lonmin to undertake its operations substantially in the manner laid out by the PS and in compliance with specific requirements included in the ESRS as well as the

⁵⁴ IFC. 2006. ESRP. [Version 1.0], paragraph 4.2.15. Available at: <http://bit.ly/2TOsLkJ>.

⁵⁵ *Ibid*, paragraph 4.2.13.

The 2006 ESRP defines market instruments as financial instruments where the instrument holder has limited influence, or none, over the operations of the issuer of the instrument. This may include listed equity. IFC's website provides links to all versions of the ESRP in effect throughout IFC's investment in Lonmin, Plc. Available at: <http://bit.ly/2LGefji>

⁵⁶ Lonmin's annual Sustainable Development Reports are also referred to in this report as Annual Monitoring Report (AMR). IFC's review of these reports are referred to as AMR Review. IFC's AMR Reviews are not public.

⁵⁷ The loan agreement was between IFC and Western Platinum Ltd, a Lonmin subsidiary.

Environmental Management Program Report (EMPR) for each of its operations.⁵⁸ The EMPRs included a commitment by Lonmin to implement a Social and Labor Plan for its operations.⁵⁹ The loan agreement set out default options that provided IFC with the ability to exercise remedies in case of non-compliance, in accordance with the Sustainability Policy (para. 26). The agreement's provisions were binding on the company from the date of agreement until the date of cancellation.

3.1.3 Findings and conclusions

The overall structure of the investment at approval was consistent with IFC's Sustainability Policy and ESRP requirements with one important exception, the lack of a Performance Standard covenant in the equity agreement. As a result, after the loan facility was cancelled in 2010, the company was not legally obligated to comply with the Performance Standards, leaving IFC exposed. Between 2010 and 2015, when it sold its equity in Lonmin, IFC had no formal leverage or legal remedies to supervise the E&S compliance issues as anticipated by the Sustainability Policy.⁶⁰ This situation was further hindered by the gaps in Lonmin's E&S public reporting, which did not fully cover IFC PS requirements.

IFC provided an additional equity investment to Lonmin via a rights issue in December 2012, thus increasing its exposure to a company whose activities involved potential significant adverse E&S risks and impacts but with no legal obligation that these be managed in accordance with the Performance Standards.

3.2 Social and Labor Plan Implementation

Summary of key findings:

Pre-investment review

IFC's pre-investment review did not consider the possible risks if Lonmin failed to implement its Social and Labor Plan (SLP) commitments because IFC considered these commitments to be outside the review's purview, aspirational, and not directly related to PS compliance.

IFC took this approach despite the existence of national law mandating that Lonmin's continued mining license was dependent on SLP implementation. Since adherence to IFC Performance Standard 1 includes compliance with the E&S requirements of national law,

⁵⁸ The ESRS describes the Environmental Management Program Reports (EMPRs) as the South African equivalent of Environmental and Social Impact Assessments (ESIAs). The EMPR includes risk and impact assessments of the company's mining operations.

⁵⁹ Lonmin's EMPR includes a commitment for full compliance with the Broad-based Social Economic Empowerment Charter for the South African Mining Industry (Mining Charter 2004). Implementation of a Social Labor Plan is the instrument for achieving compliance with the Mining Charter.

⁶⁰ IFC. 2006. Sustainability Policy, paragraphs 5, 11, 26.

IFC's E&S pre-investment review did not provide a basis to conclude that the company could meet PS1 requirements within a reasonable period of time.

IFC's approach was therefore non-compliant with its Sustainability Policy in two areas. First, the requirement that IFC's review be appropriate to the nature and scale of the project and commensurate with the level of E&S risks and impacts (para. 13). Second, the requirement that IFC does not finance new business activity that cannot be expected to meet the PS over a reasonable period of time (para. 17).

Supervision

Lonmin's annual reporting on progress against its SLP commitments with regard to housing, women's involvement in mining, and access to water and sanitation raised compliance issues that required a response from IFC. These issues became acute after the company's 2010 Sustainable Development Report warned of the possible withdrawal of its mining licenses due to failure to deliver its SLP commitments, in particular those related to housing and women in mining. Despite Lonmin flagging these compliance concerns, CAO finds no evidence that IFC treated SLP underperformance as a Sustainability Policy compliance issue necessitating an IFC review with the client for any performance improvement opportunities.

IFC's failure to act represents non-compliance with para. 26 of the Sustainability Policy which requires IFC to review with the company any performance improvement opportunities. This failure contributed to legal, operational, and reputational risk for both the company and IFC. More substantively, IFC's review and supervision processes failed to identify, and take action to address, the substandard living conditions of employees and the social tensions that resulted.

3.2.1 CAO complaint and company responses

The community complaint to CAO raises concerns about quality of life within informal settlements around the Marikana mine and the absence of proper housing, sanitation, roads, and potable water. The complainants allege that Lonmin failed to meet its legal obligations under national law to implement its 2006 SLP, in particular the commitments related to housing, water, and sanitation and participation of women in mining.⁶¹

With respect to housing, the complainants, who included women living in the informal settlement of Ekaneng, asserted that the company:

"...promised 5000 houses by 2011. Instead, it built only three of those houses. Similarly, Lonmin promised to convert 114 hostel blocks into family units. Instead, it converted only 60 of those blocks. As a consequence, the informal settlements adjacent to the

⁶¹ Local Community Members. 2015. Complaint to CAO, pages 9-12. Available at: <http://bit.ly/3YiNgpm>.

Marikana mine have grown at an unprecedented rate, and well beyond infrastructure capacity.”⁶²

With respect to water and sanitation, the complainants alleged that the company:

“...spent only R14.5m of a promised R25m over the SLP plan period. Consequently, the provision of water and sanitation to the wider Lonmin community is substantially lacking.”⁶³

With respect to boosting women’s participation in the workforce across both core mining operations and support functions, the complainants alleged that the company:

“...promised to achieve a level of 10% for women in mining, and 11% for women at the mine, by 2011. Instead, the actual 2011 figures were 4.9% for women in mining and only 7.7% for women at the mine. Consequently, there is a continuing underemployment of women from the local communities in the mine.”⁶⁴

The complainants allege that IFC failed to respond to the company’s underperformance against all the above SLP requirements, which they state were legally binding under national law.

In its response to the complaint, provided to CAO in 2015, Lonmin did not comment on its implementation of the 2006 SLP, but asserted that by December 31, 2014 it had fully complied with all of South Africa’s 2010 Mining Charter targets for transformation of the mining industry.

The company’s response did not address the water and sanitation issues raised by the complainants nor performance against its women in mining commitments in the 2006 SLP. On housing, Lonmin acknowledged its continued obligation to contribute to alleviating housing and accommodation issues. The company stated that it held regular consultations with the Department of Mineral Resources (DMR)⁶⁵ to explain its progress and challenges in meeting SLP targets for housing and hostel conversions.

In addition, Lonmin’s response stated that implementation of its SLP commitments had been directly affected by its performance and profitability. The company cited a US\$323 million loss in 2009 which limited its capacity to meet housing objectives set during a commodity boom. As a result, Lonmin reconsidered its plan to construct 5,500 homes by 2011 and communicated this

⁶² Local Community Members. 2015. Complaint to CAO, pages 9-12. Available at: <http://bit.ly/3YiNgpm>.

⁶³ Local Community Members. 2015. Complaint to CAO, page 12, paragraph 4.11.2. Available at: <http://bit.ly/3YiNgpm>.

⁶⁴ Local Community Members. 2015. Complaint to CAO, page 12, paragraph 4.11.3. Available at: <http://bit.ly/3YiNgpm>.

As distinguished in the complaint, the term ‘women at the mine’ refers to the total number of all women who are South African citizens and who work in the technical and non-technical fields companywide, including support functions. ‘Women in mining’ refers to the total number of all women who are South African citizens and who work in core mining and processing operations.

⁶⁵ DMR is the government Department charged with oversight of South Africa’s mining and minerals sector and resources.

change to the DMR. The company stated that financial constraints had also led to the layoffs of 3,000 employees and 4,000 contractor employees during this period.

Lonmin acknowledged that its social performance had “not always been what was hoped”, arguing that shortfalls were the result of over-ambitious plans to go above and beyond Mining Charter requirements.⁶⁶

3.2.2 IFC Requirements

In addition to the IFC general investment requirements highlighted earlier, four provisions are relevant to CAO’s analysis of IFC’s review and supervision of Lonmin’s Social and Labor Plan.

First, the Sustainability Policy requires IFC to analyze “*significant historical ... impacts*” as part of its E&S review of projects. Where such impacts exist, the Sustainability Policy requires IFC to work with the client “*to determine possible remediation measures.*”⁶⁷

Second, the Sustainability Policy states that “*IFC does not finance new business activity that cannot be expected to meet the Performance Standards over a reasonable period of time.*”⁶⁸ This is relevant when clients have, or may have, difficulty meeting the obligation under the PS to comply with national legal requirements (see below).

Third, at the time of IFC’s pre-investment review in 2006-2007, the ESRP specified that for corporate investments (such as in Lonmin), IFC must review all areas of business activity that could reasonably represent a risk to IFC’s reputation by association, even if IFC was not financing them directly.⁶⁹

Fourth, to meet the requirements under the Performance Standards, IFC clients must comply with applicable national laws.⁷⁰ This is incorporated as a definitive requirement under PS1 and in IFC’s loan agreement.

- PS1 requires IFC clients to (i) conduct an assessment of project risks and impacts that takes account of applicable laws and regulations; (ii) implement a management program so that the project operates in compliance with applicable laws and regulations; and (iii) prepare and implement an action plan so that the project complies with applicable laws and regulations. In addition, the IFC E&S Review Procedures (ESRP) applicable at the time defined IFC’s E&S Requirements as including “*all applicable provisions of the national laws and regulations.*”⁷¹ In this case, legislation dealing with SLPs was among such laws and represented a binding commitment on companies such as Lonmin.

⁶⁶ Lonmin. July 10, 2015. *Lonmin response to IFC complaint by affected community members in relation to social and environmental impacts of Lonmin’s operation in Marikana.*

⁶⁷ IFC. 2006. Sustainability Policy, paragraph 13.

⁶⁸ IFC. 2006. Sustainability Policy, paragraph 17.

⁶⁹ IFC. 2006. ESRP, paragraph 3.2.9(a).

⁷⁰ IFC. 2006. “Introduction,” *Performance Standards on Social & Environmental Sustainability*, paragraph 3.

⁷¹ IFC. 2006. *Performance Standard 1: Social and Environmental Assessment and Management Systems*, paragraph 4, 14, 16. Available at: <http://bit.ly/2zfhVuH> [Hereinafter ‘IFC. 2006. PS1.’]. See also PS1, paragraphs 4 and 16 and ESRP (2006).

- Lonmin also committed to implement a Social and Labor Plan in its 2005 Environmental Management Program Report (EMPR). As IFC's loan agreement required Lonmin to implement the EMPR, implementation of a Social and Labor Plan was a legal condition of IFC's loan agreement.

Consequently, IFC was obliged to consider Lonmin's implementation of SLP commitments as part of project supervision of PS1 implementation and E&S commitments expressed in IFC's loan agreement.⁷²

The details of this obligation, and IFC's approach and actions, are addressed below in relation to the specific issues raised in the complaint including women in mining, housing, and water and sanitation.

3.2.3 Background

Policy and regulatory context

The 2002 Mineral and Petroleum Resources Development Act (MPRDA) required mining companies to convert their 'old order' mining rights to 'new order' mining rights. As part of the conversion process, mining companies were required to lodge a Social and Labor Plan (SLP) with the Department of Minerals and Energy (DME).

Under the MPRDA, holders of a converted mining right must comply with the requirements of "*the prescribed social and labor plan*" and submit an annual report to the regulator detailing the extent of its compliance with the SLP's provisions.⁷³ The legislation also provides for suspension or cancellation of mining rights if the owner of the right breaches any material condition (which includes SLP compliance).⁷⁴

The MPRDA was accompanied by the 2004 Mineral and Petroleum Resources Development Regulations (MPRDR). The MPRDR include more detailed guidelines on the content, format, and process for SLPs, and state that an SLP is valid until a closure certificate has been issued⁷⁵ and may not be amended or varied without Ministerial consent.⁷⁶ Among other provisions, SLPs were required to include mine operators' plans to achieve 10% participation of women in mining and to finance the plan's implementation.

The MPRDA required the development of a national Mining Charter to promote "*broad-based socio-economic empowerment*."⁷⁷ The 2004 Mining Charter, which was in effect when Lonmin's 2006 SLP was concluded, included provisions relevant to the complaint in two areas:

⁷² IFC's supervision considers a project's compliance with relevant Performance Standards and E&S commitments as expressed in the Action Plan or legal agreement with IFC (Sustainability Policy, para., 26).

⁷³ GoSA. 2002. MPRDA, Section 25(2)(f) and (h). The obligation in Section 25(2)(h) is additionally reinforced in Section 28(2)(c).

⁷⁴ GoSA. 2002. MPRDA, Section 47 and 25(2)(f).

⁷⁵ GoSA. 2004. MPRDR, Regulation 43.

⁷⁶ GoSA. 2004. MPRDR, Regulation 44.

⁷⁷ GoSA. 2002. MPRDA, Section 100.

- i. Housing provisions, which centered on an undertaking by stakeholders to “[e]stablish measures for improving the standard of housing including the upgrading of hostels, conversion of hostels to family units and the promotion of home ownership options for mine employees...”⁷⁸
- ii. Women in mining provisions, which directed stakeholders, including companies, to “aspire to” “a baseline of 10 percent of women participation in the mining industry within five years.”⁷⁹ This 10 percent target is also included in the MPRDR.

SLPs are the instruments for achieving transformation in terms of a company’s commitment to the Mining Charter.⁸⁰

The Mining Charter is a dynamic instrument subject to periodic review and updates. An updated 2010 Mining Charter included specific targets requiring mining companies to provide housing for mineworkers by 2014. These provisions included: convert or upgrade hostels into family units; attain an occupancy rate of one person per room; and facilitate home ownership options for all mine employees in consultation with organized labor.⁸¹ The Charter also included 2014 targets for individual mineral companies with respect to minimum representation of “Historically Disadvantaged South Africans” (HDSAs), including women, at different managerial levels and in “core and critical skills.”^{82,83}

The first five-year SLP for Lonmin’s Marikana operations, approved by the government regulator in December 2006, is central to the concerns raised in this complaint.

A follow on SLP for Lonmin’s Marikana operations was in effect from 2014 to 2018, but its commitments are not part of the complaint and their implementation largely fell outside the time period of IFC’s investment. However, CAO has considered in general terms how IFC supervised implementation of the subsequent SLP targets with respect to housing and women in mining during the life of its investment.

Operating and social context

In 2006, approximately 350,000 people lived in the Marikana district around and on the mine lease areas. Just over 100,000 people fell within the company-defined Greater Lonmin Community (GLC), incorporating a 15km radius around the Marikana operations.⁸⁴ IFC noted that there were nine villages, five informal settlements, and mine hostels housing about 9,000 workers in the area. Some of the company’s workforce lived in the informal settlements,

⁷⁸ Government of the Republic of South Africa. 2004. *Broad-Based Socio-Economic Empowerment Charter for the Mining and Minerals Industry* [Mining Charter,], paragraph 4.5 (‘Housing and Living Conditions.’). Available at: <http://bit.ly/2HiUViV>. [Hereinafter ‘GoSA. 2004. Mining Charter.’]

⁷⁹ GoSA. 2004. Mining Charter, paragraph 4.2, (‘Employment Equity’).

⁸⁰ Minerals Council of South Africa, SLPs. Available at <https://bit.ly/3l7wZOW>

⁸¹ GoSA. 2010. Mining Charter (Amended), paragraph 2.7.

⁸² GoSA. 2010. Mining Charter (Amended), paragraph 2.4.

⁸³ The MPRDR requirement for SLPs to include a plan to achieve 10% participation of women in mining within five years from the conversion of an old order mining right remained unchanged.

⁸⁴ IFC 2006. ESRS.

including at Enkaneng.⁸⁵ The company's 2006 SLP incorporated commitments to address some of the living conditions issues that were raised a decade later in the CAO complaint—most notably through a program of housing construction.

Three factors provide important social and economic context.

First, the provision of decent living conditions for mineworkers in post-apartheid South Africa draws on a charged history. Mining historically relied on migrant workers from so-called 'labor-sending areas' in rural South Africa and neighboring countries. These migrant workers were often housed in high-density single-sex hostels at compounds near mine sites, with well documented negative social impacts.⁸⁶ IFC noted in discussion with CAO that every mining company in South Africa had struggled with the issue of housing, with a majority of their workforce originating from other regions or countries. IFC therefore characterized some of its client's challenges as emblematic of those of the wider industry.

Second, in 2008 the price of platinum dropped from about US\$2,200 to about US\$800 per ounce.⁸⁷ As a result, Lonmin faced major financial constraints, reporting a US\$323 million loss in 2009.⁸⁸ At the same time, the company experienced significant management turnover, including the CEO and VP for Sustainability.⁸⁹ These internal changes impacted the continuity of Lonmin's approach to social and community affairs and its institutional memory. In its 2009 and 2010 reviews of the company's Sustainable Development Reports, IFC reported that structural and staff changes created challenges for relationship building. IFC reports of site supervision visits in 2009 and 2010 also raise these challenges. In particular, IFC noted that Lonmin's E&S team changed personnel almost entirely between 2009 and 2010, and that the company lacked awareness of IFC's role in supervising E&S performance under its investment agreements.

Third, the Marikana tragedy in August 2012 (see footnote 27) led South Africa's government to establish a judicial commission of inquiry. The Farlam Commission completed its report⁹⁰ in March 2015, when IFC still held equity in Lonmin. Several aspects are relevant to this investigation.

First, the Commission confirmed that SLPs were legally binding per South African regulatory requirements and that, once approved by the DMR, the company was legally bound to comply with their terms, unless they were amended through formal communication with the Department of Mineral Resources. In Lonmin's case, such communication did not occur.⁹¹ Second, the Commission confirmed that large numbers of Lonmin workers "*live in squalid*

⁸⁵ CAO Complaint. 2015. See Local Community Members. Available at: <http://bit.ly/3YiNgpm>. Annexure A.

⁸⁶ See e.g., C. Vosloo. 2020. 'Extreme apartheid: the South African system of migrant labour and its hostels,' *Image and Text*, 34. <https://bit.ly/3jzL4J5>

⁸⁷ See: Kitco. 2008. "One Year Platinum". Available at: <https://bit.ly/2OHkRXt>.

⁸⁸ Lonmin response to IFC complaint. July 2015.

⁸⁹ Lonmin Annual Reports and SDRs.

⁹⁰ Farlam. 2015. Marikana Commission Report.

⁹¹ *Ibid.*, page 527, paragraph 18.

informal settlements” characterized by a “*critical shortage of decent housing*”.⁹² Third, the Commission noted that Lonmin’s leadership had acknowledged the link between poor living conditions and lack of housing in the settlements and the industrial action at Marikana.⁹³ Fourth, the Commission found that Lonmin’s underperformance against its SLP commitments amounted to “*a repudiation of its housing obligations.*”⁹⁴

The Commission found that Lonmin’s “*failure to comply with its housing obligations created an environment conducive to... labor unrest, disunity amongst its employees or other harmful conduct.*”⁹⁵ It recommended that “*Lonmin’s failure to comply with the housing obligations under the SLPs should be drawn to the attention of the Department of Mineral Resources, which should take steps to enforce performance of these obligations by Lonmin.*”⁹⁶

- iii. The DMR subsequently audited Lonmin’s progress against its SLP commitments, which resulted in Lonmin’s first formal notification of non-compliance in 2017.⁹⁷ During the period of IFC’s investment, then, Lonmin did not receive a formal notification of SLP non-compliance from DMR. However, as covered below, Lonmin reported on multiple occasions challenges in SLP implementation and potential associated risks to its mining license as a result.

3.2.4 IFC review and supervision of Lonmin’s Social and Labor Plan

This section describes Lonmin’s SLP commitments and IFC’s supervision. It is divided into subsections that present a summary of (a) IFC’s pre-investment review and CAO finding; (b) IFC’s supervision of women in mining; (c) IFC’s supervision of housing; (d) IFC supervision of water and sanitation; and (e) CAO discussion and findings related to IFC supervision.

As noted above, PS1 and IFC’s loan agreement required the client to be in compliance with applicable law and regulations, including the Social Labor Plan. It is the national authority’s role to determine compliance with national laws and regulations. In monitoring the company’s E&S performance, IFC’s ascertains evidence to assess the status of the company’s compliance with the Performance Standards. Where IFC identifies challenges or poor performance in meeting national law, IFC reviews with the company any performance improvement opportunities (SP, para. 26). Where a national authority has notified a company of non-compliance with applicable national law, IFC’s role is to work with the company to bring it back into compliance to the extent feasible.

⁹² Ibid., page 527, paragraph 20.

⁹³ Ibid., page 527, paragraph 21.

⁹⁴ Ibid., page 534, paragraph 29.

⁹⁵ Ibid., page 542, paragraph 3.7.

⁹⁶ Ibid. page 562, paragraph H(1).

⁹⁷ High Court of South Africa, Case Number: M43/2018, paragraph 16. Available at: <https://bit.ly/3mY8OJ0>

IFC pre-investment review

In 2006, Lonmin became the first major platinum company in South Africa to receive new order mining rights.⁹⁸

IFC's pre-investment review documentation noted that the company's housing program had 'aggressive' targets. However, IFC considered that risks related to SLP implementation were outside the purview of its E&S pre-investment review, both for its equity and loan investments and for the technical advisory services agreement. While the TAAS was aligned with delivery of SLP commitments on women in mining, IFC told CAO that the agreement was designed to focus on "beyond compliance" performance.

IFC staff informed CAO that they did not review the feasibility of Lonmin's SLP commitments prior to investment approval as the SLP had already been approved by South Africa's government. IFC staff added that they understood that the SLP commitments were: (a) aspirational in nature and (b) not directly related to PS compliance.

As noted above, the 2002 Mineral and Petroleum Resources Development Act (MPRDA) provides for suspension or cancellation of mining rights if the owner of the right breaches any material term or condition, which include SLP commitments.⁹⁹ At the time of IFC's pre-investment review, the Lonmin's SLP was recently approved by the government, and thus, Lonmin was in compliance with its SLP. However, IFC's failure to understand the binding nature of the SLP led to IFC missing potential legal and operational risks should Lonmin not meet its SLP commitments during the course of IFC's investment.

Financial risks associated with the then high price of platinum, and the ensuing high value of the company's equity, are clearly articulated in IFC pre-investment review documentation. However, IFC did not identify the potential social risks of Lonmin being unable to deliver on infrastructure commitments (such as housing and water and sanitation improvements) if platinum prices and/or Lonmin's profitability were to fall. Available documentation indicates that IFC did not consider the company's SLP commitments related to water and sanitation, and women's workforce participation, as part of its pre-investment E&S review.¹⁰⁰ This resulted in an IFC assessment of E&S risks that was not comprehensive.

In summary, IFC's E&S pre-investment review did not consider potential social, financial, and operational risks associated with non-implementation of the company's SLP commitments. IFC's treatment of the SLPs as non-binding meant that the pre-investment review did not provide a basis to conclude that the company could meet the requirements of PS1—which includes compliance with national law—within a reasonable period of time. In taking this

⁹⁸ IFC. 2006. SPI.

⁹⁹ GoSA. 2002. MPRDA, Section 47. Available at: <https://bit.ly/2Q4gMJM>.

¹⁰⁰ IFC's pre-investment role is to review the client's E&S assessment (Sustainability Policy, para. 15). PS1 requires that a client's E&S assessment take into account applicable laws and regulations of the jurisdictions in which the project operates that pertain to social and environmental matters, including those laws implementing host country obligations under international law (PS1, para. 4)

approach, IFC was non-compliant with its Sustainability Policy requirements in two areas. First, that IFC's review be appropriate to the nature and scale of the project, and commensurate with the level of E&S risks and impacts (para. 13). Second, that IFC does not finance new business activity that cannot be expected to meet the Performance Standards over a reasonable period of time (para. 17).

As a consequence of these omissions, IFC staff were not guided to consistently supervise SLP implementation during investment supervision, from 2007 to 2015, as discussed below.

IFC supervision: women in mining

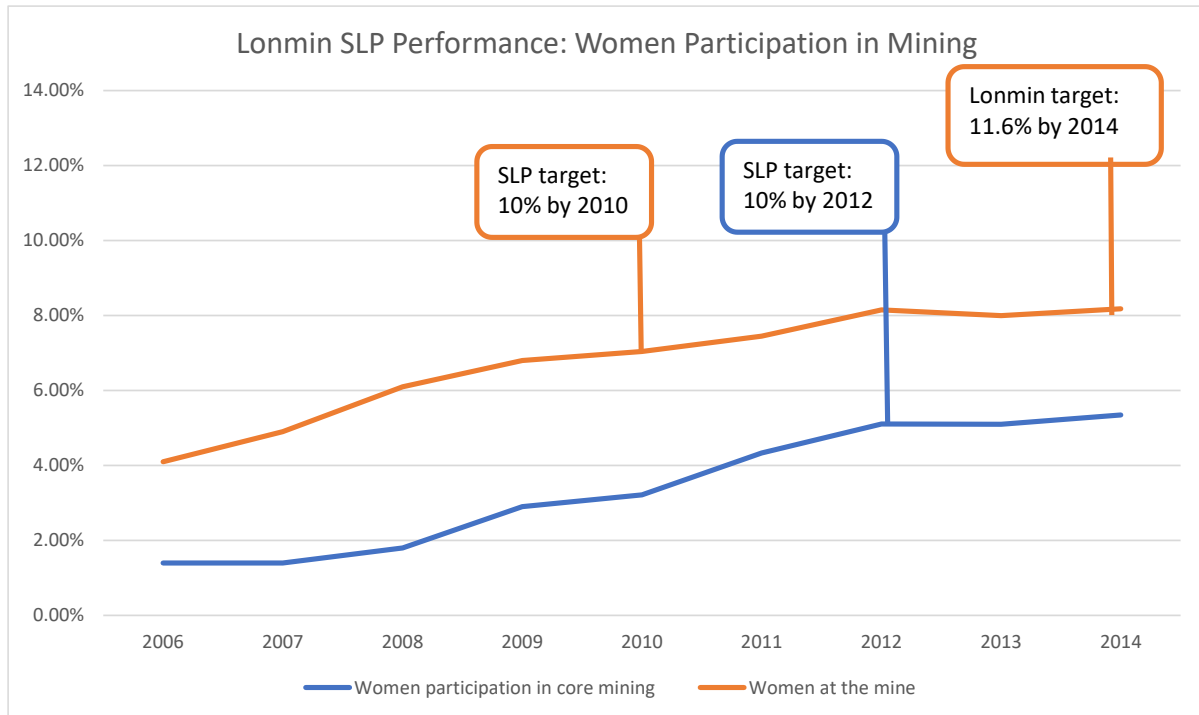
Under its 2006 SLP for its Marikana operations, Lonmin committed to achieve:

- 10% women in the employee base (“women at the mine”) by 2010
- 10% women in mining by 2012 (participation by women in core mining and processing operations).

Lonmin set interim year-on-year targets toward these overall goals and the company reported on progress in its publicly available Sustainable Development Reports (SDRs). The 2011 SDR reported new targets for 2014, though there is no evidence that the 2006 SLP commitments changed at this point.¹⁰¹

From 2006-2014, Lonmin consistently and publicly reported its SLP performance for women at the mine and women in mining. The graph below shows how the company increased women's participation during this period but did not report achieving its SLP targets.

¹⁰¹ See Lonmin, 2006. SLPs for WPL/EPL, page 43.



Source: Lonmin annual SDRs

According to CAO’s investigation, IFC’s supervision during this period does not substantively engage with the company’s performance on these indicators. While IFC’s 2008 and 2009 reviews of company performance note that Lonmin was not on track to achieve its SLP targets, no follow-up with the company was documented.

IFC’s review of Lonmin’s 2010 SDR does not comment on these indicators. This is material to the complaint as the report openly identified as a “principal risk” the possible withdrawal of Lonmin’s mining licenses resulting from failure to deliver SLP commitments, including targets for women’s participation in mining.¹⁰² Further, Lonmin also voluntarily revised its women in mining target to 11.6% by 2014, extending the binding SLP target of 10% by 2010.¹⁰³

An IFC site visit in April 2011 recorded positive achievements under IFC’s technical advisory services agreement with Lonmin for women’s participation in the workforce. However, IFC’s report of the visit does not make reference to the company’s SLP targets. This is important because the company had publicly reported that it had not met its SLP 2010 women at the mine target and was not on track to meet its 2012 women participation in core mining target.

¹⁰² The 2010 SDR noted that business risks included possible withdrawal of Lonmin’s mining license resulting from failure to i) deliver commitments made in SLP regarding housing and converting hostel units and training and empowerment of employees and communities; and ii) operate in accordance with national legislative requirement on Sulphur Dioxide emissions. See section 3.2.4.3 for discussion on Lonmin’s commitments regarding housing and converting hostel units and section 3.5.3 for discussion on Lonmin’s Sulphur Dioxide emissions.

¹⁰³ Lonmin Plc. 2010. *Sustainable Development Report*, page 35-37.

In 2012, the company again reported failure to meet its SLP targets as a principal risk to its operations and IFC again did not comment on the issue. In 2013, IFC’s supervision records commented that the company’s women participation in mining statistics had improved but not that they remained below the SLP targets.

By 2014, the 2006 SLP had been replaced by the successor plan for 2014–2018. Lonmin’s 2014 SDR stated that women at the mine had increased to 8% of employees and that the company had achieved 5.35% women in mining. The company reported that it had therefore not met its revised SLP targets for 2014. IFC’s supervision records do not provide comment on this performance.

IFC supervision: housing

The company’s 2006 SLP housing commitments were to convert 114 hostel blocks into 2,718 bachelor and family units and to construct 5,500 houses, by 2011.¹⁰⁴ The plan included annual targets with associated capital budgets (see table¹⁰⁵). The SLP stated that a more detailed breakdown of the construction programs “*will only be available once the relevant banking institution has been approached to provide the necessary funding.*”¹⁰⁶

Lonmin 2006 SLP Housing Commitment and Implementation						
	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>	<i>2011</i>	<i>Total</i>
<i>House construction commitment</i>	700	1300	1200	1200	1100	5500
<i>House construction implementation</i>	0	0	3	0	No data	3
<i>Hostel conversions commitment</i>	25	23	22	22	22	114
<i>Hostel conversions implementation</i>	No data	29	0	5	26	60

¹⁰⁴ Lonmin Plc. 2010. *Web-based Sustainable Development Report: For the year ending 30 September 2010*, page 38. Available at: <http://bit.ly/33RxQxa>. [Hereinafter ‘Lonmin. 2010. SDR.’]

¹⁰⁵ Table prepared on the basis of the Lonmin SLPs and SDR reports.

¹⁰⁶ Lonmin. 2006. Social Labor Plan.

In its 2008 SDR, Lonmin’s CEO acknowledged that the company was not on track to deliver its housing commitments—with zero houses built—and was engaging with the DME and other stakeholders on a “*revised housing strategy to address the current shortfall of housing for our employees.*”¹⁰⁷ The report stated that, following consultation, a decision was made to construct show houses initially, “*after which the remainder of the houses will be constructed in phases.*”¹⁰⁸ It disclosed that Lonmin had secured land for 2,500 houses in Marikana and that in 2009 three “show houses” would be constructed to enable future home-owners to provide feedback before further construction.¹⁰⁹ The SDR also reported that the housing construction program at Mooinooi settlement was put on hold “*due to a shift in focus to rental accommodation.*”¹¹⁰

The 2008 SDR reported informal settlements and insufficient housing as material issues, and noted that more than 2,000 Lonmin employees lived in informal settlements.¹¹¹ It stated, “*we realise that it is in the best interest of our employees to own their own homes and it is our intention to promote the ownership of these houses by the occupants.*”¹¹² This emphasis on building houses for purchase, as opposed to rent, was not uncontroversial¹¹³ and the company later changed its approach, as described below.

A year later, in the 2009 SDR, Lonmin’s CEO reported that due to the company’s financial situation it would not achieve its target of constructing 5,500 houses and undertaking 85 hostel conversions by 2011.¹¹⁴ The overall target of 5,500 houses was affirmed, but the report stated that the target date was under review and would be discussed with the Department of Minerals and Energy.¹¹⁵ The report added that the rate of construction would be based on employee demand for home ownership.¹¹⁶ At the same time, the provision of affordable housing for employees was identified as a key risk facing the company.¹¹⁷

IFC recognized in its 2007–2009 SDR reviews that the company was not on track to meet its housing targets. IFC’s review of the 2008 SDR noted a need to request further information from Lonmin on measures to improve its performance on housing. However, records of IFC supervision visits in 2008 and 2009 contain no references to housing.

¹⁰⁷ Lonmin. 2008. SDR, page 1.

¹⁰⁸ Lonmin. 2008. SDR, page 13.

¹⁰⁹ Lonmin. 2008. SDR, page 66.

¹¹⁰ Lonmin. 2008. SDR, page 13.

¹¹¹ Lonmin. 2008. SDR, page 29.

¹¹² Lonmin. 2008. SDR, page 29.

¹¹³ See e.g., the criticism of this strategy in Amnesty International, *South Africa: Smoke and Mirrors: Lonmin's Failure to Address Housing Conditions at Marikana*, 15 August 2016. Available at <http://bit.ly/2TUz4Dr>.

¹¹⁴ Lonmin. 2009. SDR, pp 01, 26 and 47. The reference to 85 conversions can be reconciled with the 2006 SLP targets by adding the 29 hostel block conversions that had by this time been reported as completed to the 85 reportedly still to be implemented.

¹¹⁵ Lonmin. 2009. SDR, page 24.

¹¹⁶ Lonmin. 2009. SDR, page 56.

¹¹⁷ Lonmin. 2009. SDR, page 47.

Following a supervision visit in 2010, IFC noted that progress on workers' housing was "quite disappointing" due to higher-than-expected program costs. No specific reference was made to Lonmin's SLP commitments or the status of its efforts to review the targets with DME.

The company's 2010 SDR clearly identified housing commitments as a principal risk to its operations. It expressed the specific risk as "*possible withdrawal of our Mining Licenses resulting from failure to deliver commitments made in our Social and Labor Plan (SLP) regarding housing and converting our hostel units.*"¹¹⁸ Underscoring the seriousness of the situation, the company noted that "*SLP commitments remain a significant challenge and a priority item on the Board agenda.*"¹¹⁹

The report also acknowledged ongoing challenges that required an adjustment to the 5,500 house target for new construction, among them financial constraints "*resulting in delay to meeting our committed targets.*"¹²⁰ The company reported that it was seeking an "extension" for its SLP housing commitments;¹²¹ that it would "*review our [SLPs] for our Marikana operations by April 2011*";¹²² and that it had embarked on a process of "*designing a long-term Integrated Human Settlement Strategy to align with the revised [2010] Mining Charter.*"¹²³

IFC's review of the 2010 SDR noted that the company was at risk of losing its mining license as a result of not meeting SLP targets for housing. Specifically, IFC recognized that the company had built only three of 4,400 houses due by 2010, and had converted only 34 hostels into bachelor and family units toward its target of 92 hostel conversions by 2010. Despite these significant performance gaps, IFC supervision records do not document any follow-up on this data with the company.

During a supervision visit in 2011, IFC visited hostels undergoing conversion, and noted that converted housing represented much-improved options for the mine's workers. IFC noted that Lonmin was making significant efforts on workers' housing and had reiterated its commitment to meet the license requirements of the SLP. The supervision report referred to a new approved target in the SLP of 26 housing blocks. It is not clear whether, or how, IFC satisfied itself that the new target had been formally approved by the regulator as required under national regulations (i.e., MPRDA and MPRDR). CAO has not found any documentation of such an amendment to the SLP targets.

IFC did not document a review of the company's 2011 SDR in which Lonmin again affirmed that "*failure to meet our SLP targets would put our mining licenses at risk*".¹²⁴ The 2011 SDR contained no reference to a transition to a new SLP with respect to housing. Instead, it contained wording that suggested the 2010 Mining Charter targets superseded the SLP targets,

¹¹⁸ Lonmin. 2010. SDR, pp 05, 07, 19, and 38.

¹¹⁹ Lonmin. 2010. SDR, page 17.

¹²⁰ Lonmin. 2010. SDR, page 38.

¹²¹ Lonmin. 2010. SDR, page 19.

¹²² Lonmin. 2010. SDR, page 17.

¹²³ Lonmin. 2010. SDR, page 38.

¹²⁴ Lonmin. 2011. SDR, page 26.

reporting that: *“The revised Mining Charter required us to establish a baseline as at 31 December 2010; and thereafter to double the conversion of our hostels to single and family units by 31 December 2014.”*¹²⁵ These Mining Charter targets were less ambitious than those Lonmin set in its 2006 SLP.

On the advice of the company, no IFC supervision site visits took place after 2012, following the Marikana tragedy. IFC’s supervision from 2012 through the sale of its equity in Lonmin in 2015 was based on review of SDRs and remote discussions with the company.

Lonmin’s 2012 SDR covered the timeframe of the Marikana tragedy. The report contained extensive information on the housing and hostel conversion process but this data is difficult to reconcile against the 2006 SLP targets. The acting CEO confirmed the company’s commitment to accelerating the provision of accommodation for employees.¹²⁶

In addition, the report highlighted different aspects of the housing challenge, including shortages of water and electricity *“which is exacerbated by the spread of unplanned, informal settlements and consequent increase in pressure on services.”*¹²⁷ It noted the difficulty of home ownership-based solutions, stating that the company’s SLP commitment was now *“to convert all hostels into single or family units by 2014”*¹²⁸—effectively a three-year extension on the previous commitment. This target matched that set in the 2010 Mining Charter.

Finally, the 2012 SDR noted that 4,000, or 8 percent of, Lonmin employees remained in hostel accommodation, compared to 8,000 five years previously (at that time 33 percent of employees).¹²⁹ Of particular relevance to the complainants from the Enkaneng settlement, the report stated that Lonmin *“does not support or promote informal settlements.”* However, it also posed the question: *“To what extent can the Company or state take away the freedom of an employee or citizen to choose to live in an informal settlement...?”*¹³⁰

In the wake of the Marikana tragedy, IFC’s review of the 2012 SDR noted significant efforts by the company to try to switch employee accommodation from hostels to family apartments and houses. However, IFC’s review did not identify that the 2014 hostel conversion target was lower than in Lonmin’s 2006 SLP, although no successor SLP was in place and the 2006 plan had not been formally closed, indicating that its terms remained in effect.

In Lonmin’s 2013 SDR, the CEO’s message included a commitment that *“the living conditions of employees and the challenge of providing adequate housing and accommodation will receive more attention as we move forward.”*¹³¹ The report noted that 26,068 employees (92 percent) had chosen a living-out allowance,¹³² stating that *“the unintended consequence has been that*

¹²⁵ Lonmin. 2011. SDR, page 27.

¹²⁶ Lonmin. 2012. SDR, page 13.

¹²⁷ Lonmin. 2012. SDR, page 65.

¹²⁸ Lonmin. 2012. SDR, page 65.

¹²⁹ Lonmin. 2012. SDR, page 65.

¹³⁰ Lonmin. 2012. SDR, page 65.

¹³¹ Lonmin. 2013. SDR, page 52.

¹³² Lonmin. 2013. SDR, page 101.

*many employees have chosen sub-standard accommodation and food/nutrition in informal settlements owing to expedience, a lack of choice or as a result of affordability.*¹³³

Among continuing housing-related challenges facing the company, the 2013 report highlighted:

- *“Little or no interest in relocating, or home ownership, particularly by migrant employees and, indeed, the continued intention of migrant employees to settle in the areas of their traditional homes when they retire”;*
- *“The proliferation of informal settlements”;*
- *“Lack of land and infrastructure in which to develop new housing projects, combined with severe municipal service delivery constraints”;* and
- *“Continued migration of people to mining areas, seeking direct or indirect employment.”*¹³⁴

The same SDR reported that 1,149 houses had been constructed in Marikana for sale to employees since 1999. However, the company noted that *“[d]espite our efforts to encourage home ownership, it remains the least popular option among our employees.”*¹³⁵

At the same time, the company acknowledged that it did not have the capacity to provide accommodation for the majority of its employees. The report warned that *“the challenges related to the living-out allowance and the resistance we have seen to localized home ownership among employees mak[e] the task of finding a solution to housing increasingly critical.”*¹³⁶ It added that Lonmin continued to seek partnerships to address this challenge and had donated 50 hectares of land in Marikana to the Department of Human Settlement for building.¹³⁷

In its supervision review of Lonmin’s 2013 SDR, IFC noted the need to closely supervise the company’s target of converting 21 hostels into single or family units by the end of 2014. IFC’s review referred to the 2006 SLP as having ‘expired’ at the end of 2012, within the 2013 SDR reporting period. However, under South Africa’s Mineral and Petroleum Resources Development Regulations, SLPs continue in effect until a closure certificate has been issued.¹³⁸ Whether or not IFC was aware of this provision, CAO found no evidence that IFC asked Lonmin about the arrangements for the period between the end date of one SLP and the start of its successor. There is similarly no evidence of IFC reconciling its client’s reporting on hostel conversions over time or seeking clarification on numbers of conversions against targets.

In its 2014 SDR, Lonmin reported a significant change of direction in its housing efforts, with a new emphasis on provision of housing for rent. The report stated that, based on a pilot project and surveys, *“the overwhelming majority of employees prefer to rent... Rental options will be*

¹³³ Lonmin. 2013. SDR, page 98.

¹³⁴ Lonmin. 2013. SDR, page 99.

¹³⁵ Lonmin. 2013. SDR, page 101.

¹³⁶ Lonmin. 2013. SDR, page 101.

¹³⁷ Lonmin. 2013. SDR, page 98.

¹³⁸ GoSA. 2004. MPRDR, Regulation 43.

the leading drivers in delivering on [the company's housing initiative] to facilitate the provision of accommodation for all."¹³⁹

IFC's 2013–2014 supervision documentation recorded a commitment to engage Lonmin on implementation of this latest accommodation initiative. However, there is no documentation of any subsequent discussion before IFC sold its equity in Lonmin in 2015.

In summary, during the period of IFC's investment from 2007-2015, the company consistently reported underperformance in meeting its SLP commitments on employee accommodation. Lonmin affirmed that this represented a principal risk to retaining its mining license, and thus, its license to operate. IFC's supervision of Lonmin failed to adequately identify and take action to address this underperformance and the risks it entailed.

IFC supervision: water and sanitation

In their complaint to CAO, community members alleged that Lonmin spent less on water and sanitation projects than the sum budgeted in its Social and Labor Plan for 2006-2011. Based on the earlier analysis of the legal status of SLP commitments, CAO reviewed the company's Sustainable Development Reports (SDRs) to see whether any such underspend should have been apparent to IFC and treated as a compliance issue.

Lonmin's 2006 SLP states that the integrated development plans of Rustenburg and Madibeng Local Municipalities "*identified inadequate water supply and poor sanitation as significant areas of concern.*" The company committed to "*collaborat[e] with ... municipalities, other mining companies, appropriate government departments and other stakeholders*" to support the delivery of "*these poverty eradication initiatives.*"

Specifically, Lonmin committed to support the delivery between 2007 and 2011 of 1,000 ventilated pit latrines, 1,000 waterborne sewer systems with toilet structures, and 1,000 house/yard connections to water reticulation.¹⁴⁰ The project's cost estimate was R25 million, divided into five equal annual expenditure amounts of R5 million (then roughly equivalent to US\$710,000 per year).¹⁴¹

Between 2007-2011, the company's SDRs reported annual expenditure on these SLP commitments but not on the infrastructure delivered, as follows:

- 2008 SDR: Lonmin spent US\$265,537 on studies and tendering process for the North West water and sanitation project.¹⁴²

¹³⁹ 2014 SDR p. 44 Lonmin Plc. 2014. *Rebuilding Bridges: Sustainable Development Report*, page 44. Available at: <http://bit.ly/2MvWi1U>. [Hereinafter 'Lonmin. 2014. SDR.']

¹⁴⁰ See Lonmin, 2006. SLP WPL, page 62. Note lower commitments: 500 in each category (rather than 1000) with a cost estimate of R15 mil, (rather than R25 mil.) are contained in the EPL SLP, page 66.

¹⁴¹ While the these "cost estimates" do not suggest a binding commitment in relation to expenditures, as with the housing and women in mining commitments, the requirement to support the construction of water and sanitation infrastructure in agreed quantities are considered part of the binding SLP framework.

¹⁴² Lonmin. 2008. SDR, page 39.

- 2009 SDR: Lonmin spent US\$781,795 on the construction of 400 house/yard connections to water reticulation for the North West water and sanitation project.¹⁴³
- 2010 SDR: Lonmin spent US\$65,400 on the North West water and sanitation project with the original plan for 1,000 pit latrines replaced by a “*phased implementation strategy*” with a focus on water reticulation to “*extend through to the end of 2011.*”¹⁴⁴
- 2011 SDR: Lonmin reported US\$5million spending on local economic development plan projects including US\$0.7million for “*Modderspruit water reticulation.*”¹⁴⁵
- 2012 SDR: Lonmin reported separately on its water reticulation program and “*Modderspruit water project*”¹⁴⁶ but did not provide disaggregated annual expenditure.¹⁴⁷

IFC’s supervision reviews contain some information on aggregate expenditure against these client commitments, and IFC’s 2010 site visit summarized the status of the Modderspruit and Bapong water reticulation projects. However, in general, neither the SDRs nor IFC reviews included data that allows full tracking of Lonmin’s progress against its SLP commitments to support new community water and sanitation infrastructure.

The spending data that is available suggests that Lonmin significantly underperformed against its SLP water and sanitation infrastructure commitments and underspent its cost estimates for these projects.¹⁴⁸

3.2.5 CAO findings and conclusions regarding SLP supervision

From 2008-2013, the company’s reporting on progress against its SLP commitments with regard to housing, women in mining, and water/sanitation raised serious concerns about compliance with national law and risk-related warning signals that required a response from IFC. These issues became particularly acute after the company’s 2010 SDR reported “*a principal risk*” in the “*possible withdrawal of [Lonmin’s] mining licenses resulting from failure commitment made in the SLP*”, in particular those related to housing and women in mining.¹⁴⁹

Despite Lonmin highlighting clear indications of compliance concern with national law and operational risk, CAO finds no evidence that IFC identified SLP underperformance as a Sustainability Policy compliance issue and, thus, reviewed with the company any performance improvement opportunities. This failure to act was non-compliant with para. 26 of the Sustainability Policy.

IFC’s misunderstanding of the legal status of SLPs under South African law, and its failure to treat Lonmin’s SLP commitments as compliance requirements, contributed to legal, operational and reputational risk for the company and for IFC. More substantively, IFC’s review and

¹⁴³ Lonmin. 2009. SDR, page 78.

¹⁴⁴ Lonmin. 2010. SDR, page 69.

¹⁴⁵ Lonmin. 2011. SDR, page 32.

¹⁴⁶ Lonmin. 2012. SDR, page 71.

¹⁴⁷ Lonmin. 2012. SDR, page 69.

¹⁴⁸ CALS. 2014. Lonmin Social and Labour Plan Analysis – Quantitative Assessment. Available at: <https://bit.ly/3mY8OJO>

¹⁴⁹ Lonmin. 2010. SDR, page 19.

supervision of the company over almost a decade should have identified, and taken action to address, the known substandard living conditions endured by Lonmin employees, and the social tensions generated by these conditions.¹⁵⁰ IFC did not do this.

3.3 Broad Community Support and Community Engagement

Summary of key findings:

Supervision

IFC did not adequately assure itself that the nature and frequency of Lonmin's community engagement reflected the risks and adverse impacts of its operations on affected communities as required by Performance Standard 1, para. 19. In addition, IFC did not suggest corrective actions commensurate to risk, even when the company reported a significant deterioration in community relations and associated risk of civil unrest. These factors reflected changed project circumstances that could result in adverse social impacts, requiring IFC to work with the company to address them. IFC's failure to do this was non-compliant with para. 26 of the Sustainability Policy.

Following the Marikana tragedy, IFC continued to engage with the company and was open to discussing whether and how it could assist in the response to the events of 2012. However, IFC did not provide such assistance between 2012 and divestment in 2015, and stated to CAO that it considered Lonmin to be in compliance with IFC's material E&S standards.

CAO finds that this lack of support to Lonmin for performance improvements in community engagement following the Marikana tragedy constituted noncompliance with IFC's supervision obligations under para. 26 of the Sustainability Policy.

3.3.1 CAO complaint and company responses

The complainants questioned whether there was broad community support (BCS) for the mining operation at Marikana at the time of IFC's investment in 2007. Moreover, they alleged that by 2010 any community support that did exist had evaporated. Their complaint to CAO in 2015 points to an absence of data on community support in Lonmin's 2009 and 2010 Sustainable Development Reports. It also cites the company's 2011 SDR, which publicly

¹⁵⁰ Farlam et al. 2015. Marikana Commission Report, page 542, paragraph 3.7 noted that Lonmin's workers continued to live in "squalid informal settlements" around the mines, while the company's "failure to comply with its housing obligations [under the SLP] created an environment conducive to ... tension, labour unrest [and] disunity amongst its employees ..."

identified poor community and employee relations as a principal risk, as evidence that the project by that time lacked broad community support.¹⁵¹

Lonmin's response to the complaint, submitted to CAO in 2015, did not directly address BCS. It stated that the platinum mining boom attracted hundreds of thousands of people to Rustenburg and its surrounding area at a rate far higher than providers of social and other infrastructure were able to accommodate. The company asserted that it recognized the structural changes occurring in South Africa's mining industry and was committed to working with its stakeholders to bring about transformation.¹⁵² It added that housing, accommodation, and social upliftment were a complex "transformational necessity" in South Africa and its platinum belt and that this transition required collaboration between government, municipalities, companies, and communities.¹⁵³

3.3.2 IFC Requirements

Pre-investment review: Broad Community Support

When considering investment in projects with significant adverse impacts on affected communities, IFC must assure itself during pre-investment review "*that there is broad community support for the project within the affected communities*".¹⁵⁴ The Sustainability Policy describes broad community support as "*a collection of expressions by the affected communities, through individuals or their recognized representatives, in support of the project.*" It adds that there may be broad community support "*even if some individuals or groups object to the project,*"¹⁵⁵ and requires IFC to review client documentation of its community engagement process before presenting the project for approval.¹⁵⁶

IFC's BCS procedure is set out in its Environmental and Social Review Procedures (ESRP),¹⁵⁷ and provides for two review streams. These focus on a) whether the company conducted free, prior, and informed consultation, and enabled informed participation by affected communities¹⁵⁸ and b) establishing the level of support among affected communities.

The ESRP defines affected communities as "*those within the project's area of influence who will most likely feel the direct impacts of the project.*" It also directs that IFC's analysis include those who will directly benefit from the project, thus enabling a balanced perspective within the project's area of influence. The ESRP provides for perception surveys as a means to pose questions to affected communities and solicit their responses.¹⁵⁹ It states that objections by some

¹⁵¹ Local Community Members. 2015. Complaint to CAO, page 25. Available at <http://bit.ly/3YiNgpm>.

¹⁵² Lonmin response to IFC complaint. July 2015.

¹⁵³ Lonmin response to IFC complaint. July 2015.

¹⁵⁴ IFC. 2006. Sustainability Policy, paragraph 15.

¹⁵⁵ IFC. 2006. Sustainability Policy, paragraph 20.

¹⁵⁶ IFC. 2006. Sustainability Policy, paragraph 20.

¹⁵⁷ IFC. 2006. ESRP, Annex 3.5.3. Procedural Note on Reviewing Free Prior Informed Consultation and Determining BCS. Available at <https://bit.ly/3rkdDyr>.

¹⁵⁸ IFC. 2006. PS1, paragraph 22.

¹⁵⁹ IFC. 2006. ESRP, Annex 3.5.3. Procedural Note on Reviewing Free Prior Informed Consultation and Determining BCS, page 31.

members of affected communities will not necessarily negate a finding of broad community support for a project.¹⁶⁰

Supervision: Community engagement

After Board approval of an IFC project, IFC “*continues to monitor the client’s community engagement*” as part of its required supervision activity.¹⁶¹ Achieving broad community support is no longer a requirement for clients after IFC investment approval. CAO has therefore considered the complainants’ assertions about the period after Board approval in 2007 in relation to Lonmin’s community engagement rather than BCS.

IFC Performance Standard 1 describes community engagement as an ongoing process in which clients build and maintain over time a constructive relationship with communities. It states that the nature and frequency of community engagement will reflect the project’s risks to and adverse impacts on the affected communities.¹⁶²

3.3.3 IFC review and supervision of Broad Community Support and community engagement

As noted earlier in this report, at the time of IFC’s investment approximately 350,000 people lived around and on the mine lease areas, of whom just over 100,000 resided within a 15km radius of Lonmin’s Marikana operations in the company-defined Greater Lonmin Community. IFC noted the existence of nine villages, five informal settlements, and mine hostels housing about 9,000 workers in the area.

IFC pre-investment review

The 2006 Sustainability Policy first introduced the concept of broad community support into IFC operations. The concept was therefore new to IFC when it conducted a pre-investment review of Lonmin’s operations.

IFC considered Lonmin’s stakeholder engagement before 2004 to be poor but its review concluded that there had been a relatively positive local response to the company’s then new Social Labor Plan. While the community was impatient for Lonmin to support more community development projects, relationships appeared to IFC to be improving steadily.

IFC considered that it could help build further momentum to improve community relations, provide resources, and open new channels of communication between Lonmin and the community while at the same time provide a significant vote of confidence in the company.

IFC’s pre-investment review documentation records that community support for Lonmin was growing and cited evidence of active community participation in various forums, while

¹⁶⁰ IFC. 2006. ESRP, Annex 3.5.3. Procedural Note on Reviewing Free Prior Informed Consultation and Determining BCS, page 28.

¹⁶¹ IFC. 2006. Sustainability Policy, paragraph 20.

¹⁶² IFC. 2006. PS1, paragraph 19.

conceding that formal expressions of broad community support were limited. IFC staff also asserted that both municipalities and traditional authorities were regularly represented at Lonmin's Stakeholder Forum and that both viewed community members as very supportive of the company's approach.

However, the IFC team noted that determining BCS was challenging because the company's operations had existed for over three decades, whereas BCS is most easily understood in terms of greenfield projects. As a result, IFC held a peer review meeting to discuss the BCS process for its Lonmin investment—one of the first of its kind.

As a result of the peer review meeting, IFC adopted an approach that considered BCS in relation to Lonmin's ongoing operations rather than the IFC-supported intervention. This approach was taken on the basis that a) the company's operations were brownfield rather than new and b) IFC's intervention was not easily differentiated from the totality of the company's operations. IFC decided that elements typically considered under the first review stream—free, prior, and informed consultation enabling the informed participation of affected communities—were not meaningful in the context of investment in a long-running mining operation where many of the impacts manifested in the decades prior. As a result, BCS for the investment was evaluated solely in relation to community expressions of support or opposition to Lonmin's ongoing operations (review stream two).

Subsequently, IFC addressed BCS in both its Lonmin investment disclosure (ESRS) and a summary presented to the Board in investment approval documentation.

The ESRS stated that IFC held discussions with various stakeholders and conducted site visits to several of Lonmin's community projects, a hostel, and a number of communities within 15km of the mining operation.¹⁶³ It noted that the company had engaged a consultancy firm to facilitate a new Stakeholder Engagement Forum over an initial three-year period from 2005, in order to build constructive relationships between Lonmin and its stakeholders in the Greater Lonmin Community (GLC). The consultant worked through a process known as *Lentswe* ('the voice'), and trained community members and Lonmin workers to participate in the forum.

The ESRS also addressed stakeholder perception surveys commissioned by Lonmin in 2004 and 2005 on its Marikana operations. The findings showed a year-on-year improvement in community perceptions¹⁶⁴ although the mean results on the two primary indicators remained below "acceptable" levels (see table).

¹⁶³ IFC. 2006. ESRS.

¹⁶⁴ IFC. 2006. ESRS.

Lonmin Stakeholder Perception Survey Results: Community Relations - Marikana

<u>Indicators</u>	<u>2004 Results</u>	<u>2005 Results</u>
Communication Indicators	1.6 (<i>Very Poor-Poor</i>)	3 (<i>Not acceptable</i>)
Behavioral indicators	2.3 (<i>Poor</i>)	3.1 (<i>Not acceptable</i>)
<p>The methodology applied in the perception survey distinguished between communication and behavioral ratings. Communication indicators were defined as the perceptions of the community on Lonmin's engagement with community (e.g., access, frequency of engagement, credibility etc.). Behavioral indicators were defined as the perceptions of the community on Lonmin's actions regarding behavioral elements (health, housing, HIV/AIDS, pollution etc.). The survey used ratings on a scale of 1 to 7, with 3 considered "not acceptable" and 4 "barely acceptable".¹⁶⁵</p> <p>The 2005 community satisfaction survey was based on 14 individual and 20 focus group interviews with stakeholders from around the company's Marikana operations, representing a 70% overlap with respondents in the previous 2004 survey. The report does not record how many participants took part in the focus groups or whether they reflected a representative sample of the Greater Lonmin Community or those communities most likely feel the direct impacts of the company's operations.¹⁶⁶</p>		

IFC's ESRS noted that:

*"Overall stakeholder perceptions of Lonmin were fairly negative in the 2004 Stakeholder Perception Survey. In 2005, when the [Lentswe] process had begun to make an impact, the results of the second Stakeholder Perception Survey were much improved, although Lonmin still received a relatively low overall "satisfaction" rating. Based on a number of meetings with key stakeholder groupings during the appraisal... it appears as if the forthcoming 2006 Stakeholder Perception Survey will show a further improvement in broad community support for the company and its operations..."*¹⁶⁷

In conducting its pre-investment review of broad community support, IFC was required to take into account both of Lonmin's mining operations. IFC therefore disclosed a separate perceptions survey by Lonmin for its Limpopo operations, acquired in June 2005, alongside the ESRS for the proposed investment. This survey revealed low levels of community satisfaction with the company, namely an overall mean score of 1.6 which indicates a *very poor-poor* rating on the 1-7 scale.

¹⁶⁵ The survey scale is 1: 'very poor', 2: 'poor', 3: 'not acceptable', 4: 'barely acceptable', 5: 'acceptable', 6: 'good', and 7: 'excellent'.

¹⁶⁶ Surveyed stakeholders included local communities situated within or adjacent to the footprint of Lonmin operations; the Madibeng, Rustenberg and Lepelle-Nkumpi Municipalities; the Bapo Ba Mogale, Ledwaba, Mphahlele and Kekana Traditional Authorities; farmers who own land on or adjacent to Lonmin mining areas; local businesses; labor unions; non-governmental organizations and community based organizations operating in the area; and service providers such as the South African Police, staff of local schools and staff of local health clinics. See: IFC. 2006. ESRS.

¹⁶⁷ IFC. 2006. ESRS.

Satisfaction ratings relied upon by IFC in its ESRS and subsequently reported in investment approval documentation were drawn from 14 individual and 20 focus group interviews with communities around the Marikana operations. Although IFC faced exposure to the company's Limpopo operations through its equity investment, there is no indication that the Limpopo survey's poor-very poor community satisfaction rating was factored into the BCS assessment.

IFC's investment approval documentation concluded that Lonmin's community engagement had been "solid" and that the company had been diligent in its approach, seeking the advice of community leaders, independent consultants, and IFC to assist with this engagement. Specifically, IFC's pre-investment E&S approval memo stated that BCS for Lonmin was established on the following basis:

- a) The company's well-documented efforts to identify and consult with stakeholders on an ongoing and iterative basis
- b) The outcome of several meetings held with key stakeholder groupings during appraisal
- c) Attendance by members of IFC's team at two Stakeholder Engagement Forums in November 2005 and November 2006
- d) Publicly-disclosed results of independent stakeholder perception surveys for 2004, 2005 and 2006.

Based on these considerations, IFC determined that no further action was required to demonstrate BCS for the project.

In addition, the 2006 perceptions survey results for the Marikana operations, showing an increased aggregated satisfaction rating of 4.25 ("barely acceptable" on the 7-point scale), became available prior to investment approval. IFC's report to the Board noted the apparent significant improvement from 2004-2006 in broad community support for Lonmin's operations, and stated that this was related both to Lonmin's interaction with key stakeholders and the company's perceived developmental impact, which IFC's investment was intended to further strengthen by earmarking \$15 million for Lonmin's community development initiatives. IFC stated that it considered the improving survey results important, along with the "absence of any active opposition" to the company's operations.

CAO acknowledges the challenges IFC faced in applying BCS, a new standard at the time for IFC, to a long-established project with limited survey data available. Nonetheless, upon review of IFC's documentation, CAO has identified questions that point to potential weaknesses in IFC's pre-investment approach to assuring itself that the company's operations commanded broad community support as defined by IFC at the time. These include:

- In the context of 100,000 people in the Greater Lonmin Community at Marikana, whether the survey methodology of 14 individual and 20 focus group interviews of unknown size was adequate to draw conclusions about community support for the project, in particular among those communities most likely feel its direct impacts.

- How the “very poor-poor” survey ratings from communities around Lonmin’s Limpopo mine were factored into the satisfaction ratings considered in the ESRS, and ultimately taken into account in IFC’s determination that the project had BCS.

IFC supervision of community engagement

After the Lonmin investment’s approval, IFC was required to continue monitoring the client’s community engagement process throughout the lifetime of the investment.

IFC’s Board approved the investment in March 2007, after which community satisfaction levels dropped steadily from those reported during pre-investment review.

IFC’s 2008 supervision visit record expressed concerns about community engagement, noting that Lonmin continued to struggle with the issue. The record states that the company’s 2007 community perceptions survey showed a decrease in support “for the first time” since measurement began in 2004, although no aggregate perception score was reported. IFC recorded that reduced community support might be linked to raised expectations and non-delivery of promised benefits, and reported that future IFC support might include assistance to help Lonmin improve and implement its community development strategy.

Lonmin’s Sustainable Development Reports from 2008 to 2012 openly described this clear deterioration in its community relationships. In parallel, IFC’s annual reviews of the SDRs, and supervision records during 2010–2014, reiterated that the company had identified engagement challenges. Supervision records noted that no stakeholder perceptions surveys were undertaken from 2009 onwards and that Lonmin had embarked on a new stakeholder engagement strategy. As a result, IFC identified community relations as a key issue to be examined closely during supervision—but did not make any recorded recommendations or follow-up requests of the company.

From 2012, as noted earlier, IFC’s supervision of Lonmin’s operations was hindered by the suspension of site visits following the Marikana tragedy. Nevertheless, IFC retained access to Lonmin’s publicly available SDRs which detailed its community engagement struggles and efforts to address them. IFC’s final supervision review took place in 2015 and considered the company’s 2014 SDR. This IFC supervision review was more detailed and suggested a more proactive approach on community engagement by IFC than during 2010–2014. IFC recorded plans to meet with Lonmin to identify any specific areas of collaboration on community engagement. However, no follow up activities took place prior to IFC’s divestment.

The rest of this section summarizes Lonmin’s SDR reporting on its community engagement challenges and efforts, and then presents CAO’s findings on IFC supervision of the company’s community engagement.

Lonmin’s 2008 Sustainable Development Report included the results of its annual stakeholder perceptions survey, showing an aggregate rating of 3.3 (on the 7-point scale), a rating between

not acceptable (3) and barely acceptable (4). The company attributed its “*disappointing performance*” to “*poor communication with community members*”.¹⁶⁸

The 2009 SDR reported that while no community perception surveys had been carried out that year, Lonmin had gained a “solid” understanding of community perceptions from the 2006-2008 surveys. The 2010 SDR announced a new Stakeholder Engagement Strategy and accompanying protocol, to be rolled out during 2011. The report described improving Lonmin’s relations with the Greater Lonmin Community as a priority for the coming year, and identified challenges included managing community expectations and effectively engaging with stakeholders to “*facilitate the successful outcome of the SLP*.”¹⁶⁹

Lonmin’s 2011 SDR noted “*community unrest and industrial action*” which “*highlighted the importance of pro-active stakeholder engagement*”. Presciently, Lonmin identified stakeholder engagement as a “*principal risk*” for its business, observing that “*poor community relations ... could result in civil unrest*.”¹⁷⁰ In response, the company said it had refreshed its stakeholder engagement program and by September 2012 aimed to conduct more frequent community stakeholder forum meetings, facilitated by a third party, to track issues and concerns.¹⁷¹ Critically, IFC supervision records do not document a review of the 2011 SDR. It is therefore unclear whether IFC was aware of Lonmin’s warning flags on community relations or the company’s plans to update its community engagement.

The industrial action at Lonmin’s Marikana facilities in August 2012, and the resulting violence and fatalities, was a major blow to the company’s community engagement efforts. It also provided an important opportunity, and responsibility, for IFC to engage more closely with its client on improving community relations. However, while IFC reviewed the 2012 SDR information summarized below, and held discussions with Lonmin on whether and how it could assist in responding to the tragedy, there is no supervision record of meaningful follow-up with the company.

In the company’s 2012 SDR, Lonmin’s acting CEO reflected that “*the biggest challenge facing us today is winning back trust, and most notably the trust of our employees and the communities in which we operate*.”¹⁷² He added that the company’s “*strategic priority is to reinvest in the establishment of trusted relationships through regular, transparent and meaningful communication with our employees in the first instance*”, and that a “*higher level of engagement*” would be pursued in order to align company and community understandings of success.¹⁷³ His statement acknowledged that “*despite our current engagement strategies we may not be getting to the real needs of the communities around us, and perhaps we may need*

¹⁶⁸ Lonmin. 2008. SDR, page 86.

¹⁶⁹ Lonmin. 2010. SDR, page 65.

¹⁷⁰ Lonmin. 2011. SDR, pages 10 and 14.

¹⁷¹ Lonmin. 2011. SDR, page 14.

¹⁷² Lonmin. 2012. SDR, page 13.

¹⁷³ Lonmin. 2012. SDR, page 13.

*to shift our focus from big projects to more meaningful projects, no matter how small. This is an issue on which we intend to focus.*¹⁷⁴

Specifically, the 2012 SDR stated that “[t]wo areas in particular which are housing and our relationships with our employees and the communities in which we operate, will receive specific and great attention.”¹⁷⁵ The company also reported that it was further updating its stakeholder engagement process and protocol and the SDR recorded arrangements for regular community engagement meetings.

Despite these pledges and efforts, Lonmin’s 2013 SDR indicated that community relations risks had remained unchanged since 2012¹⁷⁶ and reported several incidents of violence adjacent to its operations.¹⁷⁷ The company reported spending significant time in 2013 “*working towards developing a revised stakeholder engagement plan*” and described several kinds of engagement with communities.¹⁷⁸ These included a new quarterly stakeholder engagement forum and efforts to develop a “Community Value Proposition” (CVP) to help mitigate risk and identify community projects. The report stated that the CVP would address “*gaps that may have been missed in prior engagement. We have realized that the real issues often do not arise in community meetings and that sometimes the scale of projects envisaged does not match municipal capacity.*”¹⁷⁹ In addition, Lonmin transferred management of stakeholder concerns to a newly appointed Executive Vice President: Communications and Public Affairs, reporting directly to the CEO.

Despite these ongoing efforts by Lonmin, its workers took part in a five-month strike from January-May 2014, which resulted in mining industry-wide negotiations with unions and adoption of a new wage scale.

The company’s 2014 SDR identified community relations among its sustainability risks, again noting that poor relationships with local communities “*as a result of inadequate services and high unemployment can result in civil unrest which could severely disrupt our operations.*”¹⁸⁰ It added that “[t]he failure to deliver social upliftment projects (triggering protests or violence) and corporate reputational damage can result if communication with these stakeholders is not managed effectively.”¹⁸¹

This SDR also stated that Lonmin had produced a separate internal report detailing its stakeholder engagement.¹⁸² However, as Lonmin was a public company, neither IFC nor CAO had access rights to this report.

¹⁷⁴ Lonmin. 2012. SDR, page 13.

¹⁷⁵ Lonmin. 2012. SDR, page 13.

¹⁷⁶ Lonmin. 2013. SDR, page 74.

¹⁷⁷ Lonmin. 2013. SDR, page 93.

¹⁷⁸ Lonmin. 2013. SDR, page 57.

¹⁷⁹ Lonmin. 2013. SDR, page 95.

¹⁸⁰ Lonmin. 2014. SDR, page 64.

¹⁸¹ Lonmin. 2014. SDR page 64.

¹⁸² Lonmin. 2014. SDR page 22.

IFC's final supervision review took place in 2015 and considered the company's 2014 SDR. As stated previously, the 2015 review was more detailed than in previous years and suggested a more proactive approach on community engagement by IFC than over the 2010–2014 period, but did not result in follow up activities prior to divestment.

3.3.4 CAO findings and conclusions regarding BCS review and supervision

Pre-investment review

Based on the context described above, CAO notes that:

- The perception survey's ranking scale, under which the company had reached an aggregate 'barely acceptable' level for its Marikana operations at the time of Board approval, may not have supported IFC's conclusion that there was 'broad community support'.
- The rationale of "absence of any active opposition" presented in IFC investment approval documents does not equate to a proxy for 'support'. This is reinforced by IFC's ESRP at the time, which explicitly stated that "*BCS is about whether affected communities are in support of the project and not about whether there is a lack of opposition to the project.*"¹⁸³

In light of these points, CAO notes weaknesses in IFC's approach in this investment to assessing BCS per its obligations under paragraphs 15 and 20 of the Sustainability Policy and Annex 3.5, paragraph 3.5.3 of the 2006 ESRP.

Supervision

Lonmin's reporting from 2008 to 2012 describes clear deterioration in its community relationships. IFC reviews of the SDRs reiterated company-identified challenges but IFC did not follow up with the company to address these issues.

This failure to engage is most apparent following publication of Lonmin's 2011 SDR in which the company acknowledged poor community relations and warned that this presented a principal risk to its operations and could lead to civil unrest. IFC did not take any action in response to this critical determination. IFC's environmental staff explained to CAO that no follow up requests or suggestions were made in relation to these issues because the company's proposed solutions were considered in line with IFC requirements. However, the basis upon which IFC staff reached this conclusion is unclear since IFC did not review the 2011 SDR and there is no record of any IFC review of Lonmin's stakeholder engagement activities throughout the investment supervision period.

After conducting a supervision visit to Lonmin's Marikana facilities in 2008, IFC recorded the hope that its advisory services program (TAAS) would help Lonmin address declining community satisfaction. However, as the IFC investment team was focused on PS compliance

¹⁸³ IFC. 2006. ESRP, paragraph 3.5.3.

while the IFC TAAS team’s focus was “beyond compliance”, integration of insights across the two sets of activities was not readily enabled. Furthermore, according to supervision records, IFC did not offer support to help Lonmin improve community engagement performance between the end of the TAAS program in 2010 and the Marikana tragedy in 2012, despite the deterioration of community relations.

In this context, CAO finds that IFC did not adequately assure itself that the nature and frequency of community engagement by the company reflected the risks and adverse impacts of the company’s operations on affected communities as required by PS1,¹⁸⁴ In addition, IFC did not develop corrective actions commensurate to risk, even when the company was reporting a significant deterioration in its community relations and associated risk of civil unrest. This deterioration in relations represented a change in project circumstance, which should have triggered action by IFC. In accordance with the Sustainability Policy, if a change in project circumstances would result in adverse E&S impacts, IFC must work with the client to address these changes.¹⁸⁵ IFC’s failure to do this was therefore non-compliant.

After the Marikana tragedy at its facilities, Lonmin faced a very challenging atmosphere in which to build positive company-community relations. In the 2012 SDR, the company noted that it “*continued to grapple with the social ramifications of the Marikana tragedy*”, had lost the trust of key stakeholders, and needed to regain its social license to operate.¹⁸⁶

After 2012, IFC ceased site visits on Lonmin’s advice. Nevertheless, given the context described above, it was imperative that IFC meet its continuing obligation under para. 26 of the Sustainability Policy to supervise Lonmin and where relevant, review with the company any performance improvement opportunities. Despite this obligation, there is no record that IFC reviewed community engagement-related performance improvement opportunities with Lonmin. Moreover, when IFC disbursed additional capital to the company via a rights issue in December 2012, it did not attach any E&S commitments or action plan items for Lonmin to address. IFC’s view at the time was that the company was in material compliance with its E&S requirements.

Between 2012-2015, during the course of its E&S supervision, IFC did hold E&S-related discussions with Lonmin with a view to supporting the company in its response to the Marikana tragedy. However, supervision records indicate that IFC took the decision to divest in 2015 without having provided any such concrete assistance. CAO therefore finds that IFC’s failure to adequately work with the company to address adverse E&S impacts with respect to community engagement following the Marikana tragedy represented a noncompliance with its supervision obligations under para. 26 of the Sustainability Policy.

¹⁸⁴ IFC. 2006. Performance Standard 1, paragraph 19.

¹⁸⁵ IFC. 2006. Sustainability Policy, paragraph 26.

¹⁸⁶ Lonmin. 2012. SDR. Message from Acting CEO

3.4 Living Conditions in Informal Settlements

Summary of key findings:

Pre-investment review

The informal settlements around Lonmin's Marikana operation developed as a result of labor influx for mining and fell within the project's "area of influence" for the purpose of IFC Performance Standard 1. Poor living conditions in these informal settlements, including Enkaneng, where many of the complainants lived, were associated with significant adverse social and health impacts. IFC acknowledged that its prospective client's operations were linked to the growth of informal settlements. However, IFC's pre-investment review did not include an adequate E&S assessment of risks and impacts from the company's operations within the project's area of influence as required by PS1. Living conditions in the informal settlements presented a highly significant E&S project risk, to which IFC's pre-investment review gave minimal attention. The review was therefore also non-compliant with para. 13 of the Sustainability Policy, which requires IFC to conduct an E&S review commensurate to the level of a project's risk and impacts.

Supervision

Between 2006 and 2012, the percentage of people around Lonmin's Marikana mine living in informal settlements increased from 32 to 67 percent. This amounted to changed project circumstances which IFC was required to address. However, there is no evidence that IFC worked with Lonmin to ensure that the growth of informal settlements where residents faced squalid conditions was assessed and mitigated in accordance with PS1 and PS4. Accordingly, CAO finds IFC's supervision non-compliant with para. 26 of the Sustainability Policy, which directs IFC to work with the company to address a changed project circumstance.

3.4.1 CAO complaint and company responses

The complainants living around the mine alleged that IFC did not conduct any qualitative assessment of local living conditions. They asserted that effective monitoring of the mine's E&S impacts should have included such a review, and that even the most basic assessment would have identified very serious, detrimental impacts on the local community. They linked these adverse impacts to the labor influx citing workers living in shacks close to pit toilets and stagnant refuse water, insufficient access to potable water, and unsanitary toilet conditions.¹⁸⁷

¹⁸⁷ CAO. 2015. Assessment Report, p.6-7.

The complaint includes testimony from community members who moved to Enkaneng in hope of employment at the mine. Many of these individuals have close family members employed by Lonmin.¹⁸⁸

The company's response did not address this aspect of the complaint directly.

3.4.2 IFC requirements

Under its Sustainability Policy, IFC commits that, regarding its investments, *“the costs of economic development do not fall disproportionately on those who are poor or vulnerable”*.¹⁸⁹

IFC's client responsibilities in this regard are set out in PS1, which states that risks and impacts, including on communities, *“will be analyzed in the context of the project's area of influence.”* Relevant to this case, IFC guidance on PS1 notes the importance of considering in-migration during the social impact assessment process (see PS1, GN16). The informal settlements around the Marikana operation, including Enkaneng, are within the project's “area of influence” for purposes of PS1. Similarly, IFC guidance on PS4 notes the relevance of housing, water and sanitation, and of labor influx to the analysis of project health impacts (see PS4, GN6).

3.4.3 IFC review and supervision

Pre-investment review

As noted in section 1.2, IFC earmarked US\$15 million of its equity investment to fund Lonmin's community development initiatives, with the objective of having a positive impact on the communities around the Marikana mine.

During pre-investment review, IFC reviewed the company's 2005 Environmental Management Program Report (EMPR) for the mine. The EMPR listed ways in which mining activities had socio-economic impacts on the surrounding communities in brief bullet points. These points included *“formal accommodation”*, *“increase in the influx of job-seekers to the local and surrounding areas”*, and *“informal housing settlements.”*¹⁹⁰ Lonmin also committed in the report to assess its impacts on the region and local communities by the end of 2005. It is unclear to CAO whether this follow-up assessment was completed since it is not retained in IFC records or cited in its pre-investment review.

In addition, Lonmin's Social and Labor Plan provided limited information relevant to living conditions in the GLC.¹⁹¹ The SLP noted that the *“influx of job seekers ... has increased informal settlements, crime and HIV/AIDS”* and has had a negative impact on the communities surrounding Lonmin's operations as a result of the mining in the area.¹⁹² While not addressing

¹⁸⁸ Local Community Members. 2015. Complaint to CAO, Annexure A.

¹⁸⁹ IFC. 2006. Sustainability Policy, paragraph 8.

¹⁹⁰ Eastern Platinum Mine. 2005. *Environmental Management Programme Report*, paragraph 6.4.14, page 372/409., section 6.4.14.

¹⁹¹ In assessing Lonmin's mining impacts in the municipality area, Lonmin's SLP notes that a desktop scan was conducted. Lonmin envisaged conducting a proper socio-economic impact assessment study once the then current impacts were mitigated and progress tracked.

¹⁹² Lonmin. 2004. *Marikana Social Labor Plan*, page 28.

living conditions in the GLC directly, the SLP provides some relevant socio-economic data on the surrounding municipalities that suggests poor living conditions. This includes data on household poverty as well as limitations on access to electricity, potable water, and hygienic sanitation facilities.¹⁹³

Regarding living conditions in the settlements around the mine, IFC's pre-investment review included the following relevant information:

- IFC's ESRS noted that the GLC included 11 informal settlements.
- The ESRS reported concerns from farmers about the number of informal settlements, and associated security risks, as well as land take.
- The ESRS noted that Traditional Authorities had issues with *"the phenomenon of informal settlements associated with mining operations and the construction of housing for migrants on or near traditional lands."*¹⁹⁴
- IFC's site visit to Marikana recorded challenges with the company's housing allowance system, with "many" workers moving into informal settlements with poor housing conditions to save money. IFC noted that this problem was difficult to counter.

Supervision

During the years that IFC's investment in Lonmin was active, the platinum company's annual Sustainable Development Reports (SDRs) pointed to potentially significant risks and impacts connected to informal settlements in the project's area of influence. IFC was aware of changes in the company's financial circumstances after the 2008 financial crisis and the subsequent collapse in the platinum price. It was also aware, through data disclosed in the SDRs, of the company's significant underperformance against its SLP housing commitments.

In 2006, Lonmin reported that 32 percent of people in the Greater Lonmin Area lived in informal housing. In its 2009 SDR, the company reported that this proportion had increased to 50 percent, and acknowledged that the *"magnitude of this challenge for the company is underlined by statistics indicating that a significant number of its own employees reside in these informal settlements."*¹⁹⁵ Three years later, the 2012 SDR reported that the proportion of people living in informal housing in the GLC had reached 67 percent.¹⁹⁶ After the Marikana tragedy, Lonmin acknowledged the need to give special attention to housing, and its relationship with employees and communities, in order to retain its social license.¹⁹⁷ The 2014 SDR noted that the challenges of improving employee relations following the Marikana tragedy were

¹⁹³ See e.g., Lonmin. 2006. *WPL SLP*, page 54, paragraph 3.5.3.4

¹⁹⁴ IFC. 2006. "Lonmin: Environmental and Social Review Summary," *IFC Project Information Portal*. Available at: <https://bit.ly/2LV5ZX1>.

¹⁹⁵ Lonmin. 2009. SDR. Page 57.

¹⁹⁶ Lonmin. 2012. SDR, page 110. SDR 2009 reported 50% of people living in informal housing in the GLC.

¹⁹⁷ Lonmin. 2012. SDR, page 13.

*“aggravated by infrastructural and service delivery-related shortcomings affecting employees’ home environments.”*¹⁹⁸

According to its supervision documentation, IFC did not address living conditions at informal settlements, or the impact of the company’s Marikana operations on them. Despite Lonmin flagging the growth of informal settlements and related social challenges, IFC did not analyze the increase in informal housing or the challenges this presented for the company given the number of employees residing in these settlements.

3.4.4 CAO findings and conclusions

Lonmin openly acknowledged that the living conditions in the settlements which surrounded its Marikana operations were very poor and that people living there lacked basic social services.¹⁹⁹ This assessment was confirmed in 2015 by the Farlam Commission, which found that: *“...large numbers of Lonmin workers live in squalid informal settlements surrounding the Lonmin mine shafts...”*²⁰⁰

IFC acknowledged that the company’s operations were associated with the growth of informal settlements during its pre-investment review. However, IFC relied for information on a short bullet-point list of mining impacts in the company’s EMPR with a future commitment to a risk and impact assessment. As a result, IFC’s pre-investment review did not include an adequate E&S assessment of risks and impacts from the company’s operations within the project’s area of influence as required by PS1. Living conditions in the informal settlements presented a highly significant E&S project risk, to which IFC’s pre-investment review gave minimal attention. The review was therefore also non-compliant with para. 13 of the Sustainability Policy to conduct an E&S review commensurate to the level of a project’s risk and impacts, related in this case to labor influx and living conditions in informal settlements.

Following investment approval, IFC was aware, based on annual company reporting, that the proportion of the community living in informal settlements was increasing and included a significant number of Lonmin workers. Company reporting identified this as a growing concern for its social license to operate. CAO concludes that this represented a changed project circumstance (as per Sustainability Policy para. 26), thus requiring IFC to work with Lonmin to address the issue. However, there is no evidence that IFC worked with Lonmin to ensure that this situation was assessed and mitigated in accordance with the requirements of PS1 and PS4. Accordingly, CAO finds IFC’s supervision non-compliant with para. 26 of the Sustainability Policy to work with the company to address a changed project circumstance.

In addition, based on the Farlam Commission’s description of the mine’s surrounding communities as *“squalid informal settlements”* where *“living conditions [were] very poor and the people ... lack basic social services...”*, CAO concludes that project outcomes in this

¹⁹⁸ Lonmin. 2014. SDR, page 102.

¹⁹⁹ Lonmin. 2012. SDR, page 51. Lonmin’s Chief Operating Officer (2007 to 2010) testimony to the Farlam Commission, Farlam et al. 2015. Marikana Commission Report, page 527, paragraph 20.

²⁰⁰ Farlam et al. 2015. Marikana Commission Report, page 527, paragraph 20.

investment were inconsistent with IFC's commitment in its Sustainability Policy (para. 8) to ensure that *"the costs of economic development do not fall disproportionately on those who are poor or vulnerable"*.²⁰¹

3.5 Environmental Impacts and Community Health: Air and Water Pollution

Summary of key findings:

Pre-investment review

The complainants allege that Lonmin's mining operation polluted local air and groundwater. In relation to these environmental concerns, CAO finds that IFC's pre-investment review was non-compliant with its governing Sustainability Policy (para. 13) and Environmental and Social Review Procedures (ESRPs), in three respects:

- a) IFC accepted Lonmin's Environmental Management Program Report (EMPR) on Marikana, which was prepared to national standards under South African law. IFC did not present an analysis that the EMPR was comparable to a PS1 E&S audit, and that South African national law was comparable to PS requirements. This was non-compliant with ESRP requirements to "to review the quality and adequacy of the client's Project Assessment" and document "key decisions and supporting analysis" as part of the pre-investment review process (ESRP 2006, paras. 2.2.5 and 3.2.1).
- b) 2005 environmental legal compliance audit reports on Lonmin's Marikana operations found significant weaknesses in the company's Environmental and Social Management System. These included non-compliance with national pollution control requirements and exceedances in dust fall and groundwater pollution. However, there is no record that IFC identified or followed up with the company on associated risks or assured itself that the shortcomings identified by the audit had been corrected prior to investment.
- c) Records that Lonmin provided to IFC during pre-investment review made clear that the company was disposing of calcium sulfite waste at one of two dams at its Marikana site. However, neither the ESRS or other internal pre-investment records indicate that IFC identified or responded to potential associated environmental or community health risks.

Supervision

IFC's supervision did not meet its obligation to assess the company's performance against PS requirements in two areas. These were: possible community impacts of fugitive

²⁰¹ IFC. 2006. Sustainability Policy, paragraph 8.

emissions of sulfur dioxide from 2008 onwards; and reported exceedances of dust fallout limits in residential areas. Furthermore, Lonmin's Sustainable Development Reports did not provide sufficient information for IFC to assess the company's performance in relation to dust emissions in residential areas. Yet, IFC's supervision documentation does not indicate that IFC followed up with Lonmin to ascertain sufficient evidence of PS compliance. Thus, CAO finds IFC non-compliant with its supervision duties in relation to the project's potential environmental impacts under para. 26 of the Sustainability Policy

3.5.1 CAO complaint and company responses

The complainants alleged that the company's operations polluted air and groundwater surrounding the mine operations.²⁰² Their complaint stated that the company "regularly" exceeded legal limits on emission of dust and sulfur dioxide (SO₂), and claimed that Lonmin's solution to these problems appeared to cause groundwater pollution.²⁰³ To support their argument, the complainants cited a 2013 research report²⁰⁴ that asserts that calcium sulfite (CaSO₄),²⁰⁵ a waste product from Lonmin's efforts to capture SO₂, was stored in dams at Marikana. The same report asserts that these dams began to leak calcium sulfite, causing groundwater, surface water, and soil contamination. The authors also claimed that the surface of the Marikana dams can dry out, resulting in calcium sulfite dust as a source of air pollution.²⁰⁶

Testimony from individuals living near the mine asserted that the air in Enkaneng was polluted or filled with smoke and dust. For example, one complainant asserted that smelter smoke and dust from Lonmin's operations made people cough. Another maintained that pollution and illness had increased over their time living at the informal settlement.²⁰⁷

The company's response to the complaint did not address its environmental or community health aspects. However, Lonmin's annual SDRs during IFC investment acknowledged environmental impacts and described commitments and actions to mitigate these.

3.5.2 IFC requirements

Three IFC Performance Standards are relevant to the environmental component of the complaint.

²⁰² Local Community Members. 2015. Complaint to CAO, page 1.

²⁰³ Local Community Members. 2015. Complaint to CAO, page 12. The complaint cites the Benchmarks Foundation report: *Coping with Unsustainability – Lonmin 2003 – 2012*

²⁰⁴ Bench Marks Foundation. 2013. *Coping With Uncertainty*

²⁰⁵ Human exposure to calcium sulfite can cause "irritation of the eyes, skin, mucous membranes and upper respiratory tract. United States Center for Disease Control, available at <https://bit.ly/31fVA1g> and <https://bit.ly/3D3e0j2>.

²⁰⁶ Bench Marks Foundation. 2013. *Coping With Uncertainty*.

²⁰⁷ Local Community Members. 2015. Complaint to CAO, Annexure A.

PS1 sets out requirements for the client's E&S assessment of its business operations. Where a client's E&S assessment does not meet these requirements, during its pre-investment review, IFC must require the client to undertake or commission additional assessment.²⁰⁸

In addition, PS1 provisions state that IFC clients must establish procedures to monitor and measure the effectiveness of their E&S management programs. The extent of this monitoring should be commensurate both with the project's risks and impacts and with the project's compliance requirements, and monitoring should be adjusted according to performance experience and feedback.²⁰⁹

PS3 on Pollution Prevention and Abatement requires IFC clients to apply pollution prevention and control technologies and techniques best suited to avoid, minimize, or reduce adverse impacts on human health and the environment throughout the life of the project. Clients are further required to tailor "*project-specific pollution prevention and control techniques applied during the project life-cycle to the hazards and risks associated with project emissions consistent with "good international industry practice" (GIIP), as reflected in various internationally recognized sources.*"²¹⁰ During operations, clients are required to avoid the release of pollutants or minimize or control the intensity or load of their release.²¹¹ Release of hazardous materials resulting from project activities must be avoided or when avoidance is not feasible, minimized or controlled.²¹²

PS4 on Community Health requires clients to evaluate risks and impacts to the health and safety of the affected community throughout the project cycle, stating that clients "*will establish preventive measures to address them in a manner commensurate with the identified risks and impacts.*" The client must also disclose any relevant project-related information to enable affected communities and government agencies to understand these risks and impacts, and is expected to engage affected communities on a regular basis.²¹³

In regard to Lonmin, CAO's compliance investigation considered IFC's pre-investment review and supervision of the following specific matters:

- Emissions to air from the company's operations at Marikana, including SO₂ and dust
- IFC's review and supervision of potential community health impacts associated with emissions to air and groundwater pollution resulting from the production and storage of calcium sulfite.

²⁰⁸ IFC. 2006. Sustainability Policy, paragraph 15.

²⁰⁹ IFC. 2006. PS1, paragraph 24.

²¹⁰ IFC. 2006. PS3, paragraph 3.

²¹¹ IFC. 2006. PS3, paragraph 4.

²¹² IFC. 2006. PS3, paragraph 6.

²¹³ IFC. 2006. PS4, paragraph 9.

3.5.3 IFC pre-investment review

Hazardous air and waste emissions generated by the Marikana mine at the time of IFC's investment included sulfur dioxide (SO₂) and calcium sulfite (CaSO₄) from smelting operations and particulate matter (dust, PM₁₀ and PM_{2.5}) produced in various mining operations.²¹⁴

SO₂ is produced by combustion processes during smelting and generally emitted through a stack which supports dispersion. However, under certain atmospheric conditions plumes can rapidly fall to ground level within a plant and community, causing high localized concentrations. This phenomenon was noted during CAO's investigation visit to Marikana in 2018. Raised ground-level concentrations can cause irritation to the nose and throat, and be particularly serious for asthma sufferers working outdoors. SO₂ is converted into sulfate particles which can be widely dispersed.

Marikana's combustion processes also produced calcium sulfite emissions—as a byproduct of the de-sulfurization of flue gases (FGD) from smelter operations. Specifically, Lonmin used hydrated lime or gypsum to remove SO₂ from flue gases by converting it to calcium sulfite. Calcium sulfite is potentially harmful to humans both as a dust and when suspended or dissolved in groundwater. Breathing it in can cause wheezing, with potentially severe symptoms in asthmatics. For this investigation, CAO considered the potential impacts of two calcium sulfite dams at Lonmin's Marikana operations in close vicinity to communities.

The complainants also raised concerns about dust (particulate matter), which can have well established adverse health effects.²¹⁵ Smaller particles (pm 2.5) can cause long-term effects on lung function and particularly affect people with respiratory or cardio-vascular problems. At Marikana, both SO₂ and calcium sulfite from company operations were potential sources of dust-related health issues in addition to particulates.

Pre-investment review of pollutant emissions

In relation to the company's management of sulfur dioxide, calcium sulfite, and particulate matter emissions, IFC's pre-investment review considered (a) the regulatory framework, (b) the company's environmental control process, and (c) its environmental performance.

Regarding the regulatory framework, IFC reviewed Lonmin's 2005 Environmental Management Program Report (EMPR), the South African equivalent of an Environmental and Social Impact Assessment. While the EMPR was not prepared with IFC standards in mind, IFC concluded that it assessed the risks and impacts of company operations to PS requirements. On this basis, IFC concluded that Lonmin's operations complied in all material respects with the Performance Standards.

²¹⁴ Lonmin. 2010. SDR

²¹⁵ Ostro, Bart; Awe, Yewande; Sanchez-Triana, Ernesto. 2021. When the Dust Settles : A Review of the Health Implications of the Dust Component of Air Pollution. Published by the World Bank Group.

In reviewing Lonmin's environmental control process at the Marikana operations, IFC reviewed Environmental Legal Compliance Audits from the previous year (2005) as well as ISO 14001 and OHSAS 18001 certification.²¹⁶ The pre-investment review reported that the company had extensive E&S management capacity²¹⁷ and followed pollution prevention and control practices consistent with good international industry practice (GIIP). IFC also concluded that plans and management systems Lonmin had presented identified and addressed key environmental issues and demonstrated that the Marikana operations complied with the EHS regulations, policies, and guidelines of South Africa and the IFC.²¹⁸

However, the same 2005 Environmental Legal Compliance Audit of Lonmin's Marikana mine concluded that operational control was poor and that Lonmin's ISO 14001 system was not maintained. The third-party auditor noted that they were asked by Lonmin not to audit the legal compliance of the mine site's Environmental Management System (EMS)—which included pollution prevention and control practices—as the EMS was not maintained. The audit report concluded that environmental performance at the site had worsened since the previous audit, and ascribed this to a change in corporate structure and reallocation of environmental responsibilities and positions of authority.

In terms of Lonmin's environmental performance, IFC's pre-investment review stated that dust from tailing dams and smelter emissions had the potential to impact ambient conditions. IFC also noted that independent consultants monitored the effect of noise, air quality, and water pollution on surrounding communities and the results were generally within applicable limits with occasional breaches due to climatic conditions. The pre-investment review did not include quantitative analysis of dust or SO₂ emissions against national standards.

However, the same third-party 2005 Environmental Legal Compliance Audit referenced above documented non-compliance by Lonmin at Marikana against national environmental requirements relevant to the complaint. The auditor noted dust fallout above national standards at most sample locations, water quality that was poorer than then national standards, unlicensed discharge of wastewater, and leakage from a dam wall. While the auditors noted that Lonmin planned measures to address the non-compliance findings, they also referenced non-compliance findings from 2003 and 2004 audits. Of these earlier findings, a number remained in non-compliance or partial compliance in 2005.

IFC also reviewed the company's approach to community engagement on health and safety issues. IFC noted that Lonmin was extremely open and transparent in its relations with stakeholders, highlighting several initiatives to enable community participation and access to

²¹⁶ International Organization for Standardization (ISO) 14001 is an environmental management system standard that a company can commit to apply and be certified by an external auditor. Occupational Health and Safety Assessment Series (OHSAS) 18001 is an occupational health and safety management system standard that a company can commit to apply and be certified by an external auditor.

²¹⁷ IFC. 2006. ESRS.

²¹⁸ IFC. 2006. ESRS.

information on environmental and health issues. IFC concluded that no supplemental actions with respect to PS4 were required.

CAO found no records demonstrating that IFC considered pollution or community health issues related to the storage of calcium sulfite waste at Marikana during its pre-investment review. The ESRS recorded the company's approaches to management of waste rock dumps, tailings dams, and slag dumps.²¹⁹ However, it did not address the two existing calcium sulfite dams at Marikana and risks associated with their management. As discussed below, Lonmin was aware at the time of pollution concerns regarding these dams. IFC's documentation included a retrospective license application by the company for the construction and utilization of the two dams to dispose of calcium sulfite. This retrospective application indicated that one dam had been closed as it had reached capacity, while the other continued to receive waste. It stated that construction and use of the dams had been undertaken in accordance with the EMPR, as approved by the national authorities.

CAO findings and conclusions: pre-investment review

In relation to the complainants' environmental concerns, CAO finds IFC's pre-investment review not appropriate to the nature and scale of the project or commensurate with the level of E&S risks and impacts (Sustainability Policy, para. 13) and the ESRPs, in three respects:

- IFC accepted Lonmin's Marikana EMPR under South African law in lieu of a PS1 E&S audit. However, IFC did not document the basis or reference an analysis for reaching the conclusion that Lonmin's EMPR was aligned with PS requirements and that national law was aligned to PS requirements. This was non-compliant with ESRP requirements to "review the quality and adequacy of the client's Project Assessment" and document "key decisions and supporting analysis" as part of pre-investment review (ESRP 2006, paras. 2.2.5 and 3.2.1).
- An environmental legal compliance audit report of Lonmin's Marikana operations in 2005 found non-compliance with pollution control requirements under national law and exceedances in dust fall and groundwater pollution. However, there is no record that IFC identified or followed up with the company on associated risks or assured itself that the shortcomings identified by the audit had been corrected prior to investment.

Records that Lonmin provided to IFC during pre-investment review made clear that the company was disposing of calcium sulfite waste at an onsite dam. However, there is no record in the ESRS or other internal pre-investment records that IFC identified or responded to associated environmental or community health risks.

3.5.4 IFC supervision

At various points during supervision, following site visits and review of Lonmin's Sustainable Development Reports (SDRs), IFC reiterated the view that environmental management

²¹⁹ Slag dump is an area where by-products from the smelting process are disposed of.

regulations in South Africa matched or exceeded IFC's own requirements. IFC also recorded on several occasions that when Lonmin breached permitted emission levels, the company took corrective actions which it documented and submitted to relevant authorities in South Africa.

In successive reviews of Lonmin's SDRs during 2008–2010, IFC concluded that the lack of detailed reporting on emissions and effluent monitoring data for surface and groundwater and air pollutants (other than SO₂) did not present reputational risks to IFC. This was because IFC considered that South Africa's E&S regulatory framework was of a high standard.

The 2012 SDR included the results of a study the company commissioned on the health status of the Greater Lonmin Community. Based on data from 3,631 individuals in seven communities, the company noted a number of health conditions that were reported as potentially resulting from poor living conditions.²²⁰ The SDR did not report that the survey considered potential links between emissions or pollution from the Marikana operations and health impacts on surrounding communities such as Enkaneng.

The subsections below discuss key environmental and community health issues during IFC's investment in Lonmin that were raised in the complaint. These include dust and emissions to air, and the management of calcium sulfite which the complaint links to groundwater pollution.

Dust

Each year between 2008 and 2014, Lonmin reported either breaches of dust compliance with national standards for dust fallout or the absence of monitoring data at its South Africa operations.

The company reported dust fallout against South African National Standards (1929:2005) with threshold limits of 600mg/m²/day for residential areas and 1200mg/m²/day for industrial areas. When Lonmin exceeded a target, the company logged the incident and reported its percentage compliance with the standards in its annual SDR. In 2008, Lonmin reported having 57 monitoring points within its facilities and in residential areas to record non-directional dust fallout from its Marikana operations. The 2008 SDR stated that when dust limit exceedances were recorded at residential monitoring points, it was not possible to link the fallout to a particular source. Instead, the company investigated the cumulative impact of nearby sources and meteorological conditions observed during the relevant period.²²¹ As tailing facilities are considered a source of mine dust fallout, Lonmin implemented dust suppression measures at these facilities.²²²

²²⁰ Lonmin. 2012. SDR, page 110. Lonmin's 2012 SDR noted the following conditions being reported as potential results of poor living conditions: diarrhea; respiratory conditions; marasmus (malnutrition characterized by energy deficiency); HIV; TB; physical abuse, as well as alcohol and drug abuse, and sexually transmitted infections.

²²¹ Lonmin. 2008. SDR, page 75

²²² Lonmin. 2009. SDR, page 70. Lonmin 2013, SDR, page 180

The table below details Lonmin’s reported compliance with its dust fallout in residential and industrial areas.

Annual Dust Fallout at Marikana operations (unless otherwise stated)								
% of monitoring data where dust fall out is in compliance with national standards								
	2007	2008	2009	2010	2011	2012	2013	2014
Residential	74%	83%	No Data*	No Data**	92%	89%***	No Data	No Data
Industrial	91%	92%	92%	89%	86%	91%***	No Data	No Data

* % data not reported. Lonmin reported 1 residential exceedance recorded at Marikana.
 ** % data not reported. Lonmin reported a total of 17 residential exceedances recorded at Marikana and Limpopo.
 *** data reported by Lonmin is Marikana and Limpopo operations combined.
 A residential exceedance is a recording above 600mg/m²/day.
 A industrial exceedance is a recording above 1200mg/m²/day.
 Data from Lonmin annual SDR 2007-2014

In 2011 and 2013, the company reported that it had tested particulates from its tailing dams and the results showed that the chemical composition did not present a danger to people living in the area.²²³

The 2012 and 2013 SDRs state that dust had been recorded as a concern in engagement with both community stakeholders and the government’s Department of Environment Affairs and Department of Health.²²⁴

Despite these persistent non-compliances and the concerns of stakeholders, IFC’s supervision documentation presents limited discussion of Lonmin’s reporting on dust fallout from its operations. An IFC supervision visit in 2009 noted that the company’s dust monitoring system represented industry best practice. Subsequent IFC reviews of the company’s SDRs or site visits do not comment on performance in this area.

Sulfur dioxide (SO₂)

Lonmin’s smelter and base metal refinery boiler at its Marikana operations were the main source of sulfur dioxide (SO₂) emissions.²²⁵ The smelter emissions were regulated to 8.3 tonnes per day until 2011. After the regulatory standard changed, Lonmin was granted an Atmospheric Emissions License for the smelter and boiler, which regulated emissions at 17.9 tonnes per day between 2011 and 2013, and 16.5 tonnes per day in 2014.

²²³ Lonmin. 2011. SDR, page 46. Lonmin. 2013. SDR, page 180.

²²⁴ Lonmin. 2012. SDR, page 32. Lonmin. 2013. SDR, page 66.

²²⁵ Lonmin. 2012. SDR, page 83.

The table below details average SO₂ tonnes per day emissions at the site from 2006-2014.

Lonmin Average sulfur dioxide (SO₂) emissions (average tonnes per day)									
	2006	2007	2008	2009	2010	2011	2012	2013	2014
Regulated standard	8.3					17.9			16.5
Sulfur dioxide emissions (average per day)	7.4	11.3	9.1	11.1	14.1	10.58	8.5	11.9	7.16
Lonmin's reported emissions for 2006-2010 relate to its smelter. Lonmin's reported emissions for 2011-2014 related to its smelter and base metal refinery boiler. Data from Lonmin annual SDR 2007-2014									

In relation to reported exceedances in 2007 and 2008, Lonmin stated that management of fugitive emissions²²⁶ remained challenging and it was investigating measures for their capture and treatment.²²⁷ In 2009, Lonmin reported implementing an advanced control system to improve SO₂ absorption levels.²²⁸ The company's 2010 SDR reported SO₂ emissions from its smelter operations at 14.1 tonnes/day,²²⁹ flagging that this presented a risk to its operating license if legislative requirements for SO₂ reductions were not met. This was the first time Lonmin identified air pollution as a key risk.²³⁰

IFC's internal supervision documentation noted Lonmin's challenges in managing fugitive emissions of SO₂, which accounted for the majority of SO₂ emissions at the Marikana operations. IFC's 2008 and 2009 SDR reviews noted that the lack of progress required discussion with the company, and fugitive emissions of SO₂ were discussed during IFC's 2009 supervision visit. That year IFC recorded that fugitive emissions of SO₂ exceeded regulated limits. In 2010, IFC also noted that a fugitive emissions mitigation project had been delayed for one year due to budget restrictions.

IFC's 2011 supervision visit noted that the company had upgraded its sulfur fixation plant but that fugitive emissions of SO₂ continued to exceed regulatory limits, adding that corrective actions and responsible parties had been identified.

In 2013, the company reported completion of corrective measures to fit converters with secondary hoods at the Marikana smelter. These hoods were designed to capture 80% of the smelter's fugitive emissions, including SO₂, and to convert captured sulfur into calcium sulfite (see discussion below). Lonmin's 2013 SDR reported significant observed reductions in average

²²⁶ Fugitive emissions occur from excavation operations, valves, pumps, compressors, flanges, connectors and other structural components. The Government of South Africa, National Climate Change Response, considers fugitive emissions as a significant source of greenhouse gas emissions, which account for about 9% of South Africa's emissions. National Climate Change Response, Government of South Africa, n.d. "Mining and Mineral Resources." Available at: <https://bit.ly/2OChksl>.

²²⁷ Lonmin. 2008. SDR, page 75.

²²⁸ Lonmin. 2009. SDR, page 71.

²²⁹ Lonmin. 2010. SDR, page 15.

²³⁰ Lonmin. 2010. SDR, page 8.

ground level concentrations next to the smelter and at a sampling site located further out “in the community” but did not state whether these recordings were within limits for residential areas. IFC’s review of the SDR did not comment on this progress but noted one SO₂ exceedance.

Lonmin’s 2014 SDR recorded a significant drop in SO₂ emissions to an average 7.16 tonnes/day, which the company attributed to the smelter’s non-operation due to strike action.²³¹ IFC’s review of that SDR did not include specific comment on fugitive emissions.

Calcium sulfite

As stated earlier, calcium sulfite (CaSO₃) is a hazardous waste²³² that was generated at Marikana as a result of the intentional capture of SO₂ from the gas stream emitted during the smelting process.²³³ CaSO₃ is a corrosive irritant that can be potentially harmful to humans both as dust and when suspended or dissolved in groundwater.

IFC’s supervision records first highlight calcium sulfite following the 2009 supervision visit, when IFC noted a prior issue the company had with the chemical’s disposal.²³⁴ This involved CaSO₃ being sent to a tailings dam in December 2008 and January 2009, resulting in the dam’s contamination.

In late 2009, Lonmin received authorization from the Department of Mineral Resources (DMR) to conduct a trial on co-disposal of CaSO₃ at one of its Marikana tailings dams. The 2010 SDR reported that this trial was under way and noted that the dam’s stability and pollution of water resources with CaSO₃ were concerns that Lonmin was continuously monitoring for verification purposes.²³⁵

In parallel, the company reported in 2010 that in 2011 it would implement a temporary remediation plan for two historic (pre-IFC investment) CaSO₃ disposal dams with measures to address dust and water contamination. These measures included temporary capping to prevent water ingress and control dust, and construction of a cut-off trench to intercept the contaminated water moving away from the dam, which would then be pumped and reused.²³⁶

IFC subsequently discussed calcium sulfite disposal with Lonmin during a July 2011 supervision visit to Marikana. By this time, the company had been authorized to dispose of CaSO₃ underground in mined areas on a trial basis. However, IFC noted that this process had been stopped due to safety concerns about potential migration of hazardous chemicals from the underground disposal location.

²³¹ Lonmin. 2014. SDR, page 91.

²³² Breathing Calcium Sulfite is harmful to people. New Jersey Department of Health and Senior Services, available at <https://bit.ly/3JfsOls>.

²³³ Lonmin. 2010. SDR, page 57

²³⁴ Flue-gas desulfurization is a set of technologies used to remove SO₂ and other oxides of sulfur from atmospheric emissions.

²³⁵ Lonmin. 2010. SDR, page 59.

²³⁶ Lonmin. 2010. SDR, page 59.

IFC's 2011 supervision visit team recorded the status of remediation efforts at the two historic CaSO₃ dams, Lonmin's disposal of CaSO₃ at an offsite hazardous waste landfill, and Lonmin's co-disposal of CaSO₃ at one of its tailings facilities. IFC noted that the latter process had been challenging as Lonmin was not generating sufficient mine waste tailings to mix with CaSO₃ at the ratio acceptable for co-disposal. In addition, IFC noted the potential concern over CaSO₃ pollution of water resources and noted Lonmin's continuous monitoring during the trial period.

The company's 2011 SDR reported that rehabilitation of the two existing CaSO₃ storage dams had commenced.²³⁷ Its 2012 report included a case study on the "temporary remediation of two calcium sulfite (CaSO₃) dams", referencing problems dating back to 2003. The report acknowledged "groundwater, surface water and soil contamination" from the dams as well as "windblown CaSO₃ dust affecting the surrounding environment" and described recent measures to mitigate these impacts.²³⁸

Lonmin's 2013 SDR provided an update on the completed remediation work, noting that the measures taken would remain in place for some 20 years. The report added that these measures "have shown a range of improvements in key areas such as the dust generated from the surface of the dams, the precipitation generated around the site and the quality of the surrounding groundwater."²³⁹ The 2014 SDR did not provide further information on either the historic CaSO₃ dams or co-disposal efforts.

Despite this ongoing activity, IFC's review of its client's 2012-2014 SDRs did not include any specific comment or analysis on the company's performance with respect to CaSO₃ disposal.

CAO findings and conclusions: supervision

IFC supervision documents noted that the company's yearly SDRs did not contain the type of monitoring data that IFC would normally need to assess compliance with PS3: Pollution Prevention and Abatement. For example, IFC reviews of the 2008-2010 reports noted the absence of emissions and effluent monitoring data for groundwater and air pollutants (other than SO₂).

The downturn in Lonmin's financial performance following the global economic crisis in 2008 resulted in delayed implementation of planned environmental improvement programs, including reduction in fugitive emissions of SO₂. These delays compounded the challenges already identified in the 2005 third party Environmental Legal Compliance Audit in relation to poor operational controls and worsening environmental performance at Marikana. On several occasions, IFC's internal records of supervision visits and reviews of SDRs noted the company's slow progress implementing mitigation measures related to SO₂ fugitive emissions and disposal and remediation of CaSO₃ waste. These issues were subsequently raised with the company and IFC noted the company's attentiveness to matters raised during supervision visits.

²³⁷ Lonmin. 2011. SDR, page 51.

²³⁸ Lonmin. 2012. SDR "Temporary remediation of calcium sulfite dams."

²³⁹ Lonmin. 2013. SDR, page 193.

After the Marikana tragedy in 2012, IFC's supervision was based solely on review of the SDRs and discussions with the company. The quality of supervision was therefore heavily dependent on data Lonmin reported in its SDRs and subsequent follow-up by IFC.

Delays in environmental mitigation and corrective measures at the Marikana operations presented IFC with a highly unsatisfactory situation. CAO formed the view during interviews that IFC clearly expected to see more progress from Lonmin on pollution related issues such as SO₂ emissions. However, IFC did not ensure that the company's commitments to address such issues were reflected in binding action plans and had limited leverage to press Lonmin to prioritize environmental management issues during a financial downturn.

With respect to groundwater pollution risks related to onsite disposal of CaSO₃, and associated community health issues, CAO finds that IFC was not fully compliant with its monitoring and supervision responsibilities under Performance Standard 4.

IFC's 2009 supervision report, its review of Lonmin's 2010 SDR, and its 2011 supervision visit report all demonstrate that IFC noted risks and/or remediation measures associated with the company's CaSO₃ dams. It does not appear, however, that IFC sought further information on specific risks or asked for dust and groundwater monitoring data related to the dams. Neither is it clear that IFC was in a position to reach an informed view on the corrective actions developed and implemented by the company or opportunities for further performance improvements. Although company reporting refers to potential CaSO₃ dust fall and ground water impacts, there is no record that IFC followed up with Lonmin, or offered advice, with respect to possible implications of the CaSO₃ dams for community health.

Regarding oversight of community health, records of IFC's supervision visits during 2008–2011 incorporated analysis and remarks relevant to several Performance Standards, including PS1, PS2 and PS3. However, company performance with respect to community health relevant to Performance Standard 4: Community Health, Safety and Security over this period was not separately considered. IFC was aware that community health could potentially be at risk, including through Lonmin's reporting on SO₂ emissions and on measurements of emissions of dust in residential areas. Further, the company's SDRs indicated that dust was a concern raised in discussions with communities. Despite this context, CAO found no record that IFC considered the community health implications of its client's performance concerning risks associated with CaSO₃ dams or SO₂ emissions, or that IFC considered the health impact of dust on surrounding communities a matter for concern.

Lonmin presented conclusions in its 2011 and 2013 SDRs that the chemical composition of dust from its tailings dams had been tested and did not pose a health risk. However, these statements do not provide full assurance with respect to potential health risks posed to community members from all sources of dust, particularly when coupled with recorded exceedances in residential areas. Neither does it provide assurance of the company's compliance with PS4 regarding community health impacts of fugitive SO₂ emissions. Despite these questions, IFC did not record a review of Lonmin's 2011 SDR and did not comment on dust issues from 2012–2014.

This is particularly concerning for 2013 and 2014, years in which the company did not report any data on its dust emissions.

The documentary evidence does not support a conclusion that IFC reviewed the company's efforts to assess the potential health impacts of SO₂ emissions, dust levels (as relevant, due to exceedances), or groundwater contamination on the surrounding communities, including at Enkaneng. Similarly, there is no documented evidence of IFC working with Lonmin to ensure it took steps to adequately assess those impacts or improve performance.

CAO concludes that IFC's supervision did not meet its obligation to assess the company's performance against PS requirements with respect to a) possible community impacts of fugitive emissions of SO₂ from 2008 onwards and b) exceedances of dust fall out limits in residential areas reported by the company. Lonmin's SDRs did not provide sufficient data for IFC to assess the company's performance on dust emissions in residential areas, and IFC supervision records do not indicate follow up with the company to ascertain sufficient evidence of Performance Standard compliance. Thus, CAO finds that IFC was non-compliant with its supervision duties in relation to the potential environmental impacts of the project, and as a result failed to ensure assessment of any community health impacts, under para. 26 of the Sustainability Policy.

3.6 Summary: IFC Supervision of Lonmin on Complaint Issues

In summary, on the basis of the evidence presented in sections 3.2-3.5, CAO finds IFC's investment supervision of the company materially non-compliant with its duties under the Sustainability Policy (para. 26).

Specifically, in relation to the complaint brought by local community residents, IFC oversight of Lonmin fell short in the following areas:

- **Social and Labor Plan Implementation:** From 2008-2013, the company reported significant shortfalls against its SLP commitments on housing, participation of women in mining, and investments in water and sanitation infrastructure. This raised a risk of non-compliance with applicable E&S national law that required a response from IFC. These issues became particularly acute in 2011 after the company reported that failure to meet its SLP targets put its mining license at risk. IFC did not adequately engage Lonmin on this underperformance and work with Lonmin to review any performance improvement opportunities to support compliance with applicable national laws and regulations.
- **Community Engagement:** IFC monitoring of Lonmin's community engagement failed appropriately to identify and respond to emerging community engagement risks even when the company flagged their potential to generate civil unrest. IFC was required to work with the company to address these factors, which reflected changed project circumstances that could result in adverse social impacts, but failed to do so.
- **Living Conditions in Informal Settlements:** The increase in people living in informal settlements around the Marikana mine, from 32 percent to 67 percent between 2006 and 2011, amounted to changed project circumstances that would result in adverse E&S impacts. There is no evidence that IFC worked with its client to address the impacts of this influx on communities in its area of influence, particularly those who were most vulnerable.
- **Environmental Impacts and Community Health:** IFC did not obtain sufficient client environmental reporting to assess compliance with relevant national or IFC standards for groundwater pollution, sulfur dioxide, calcium sulfite, and dust emissions. Further, IFC did not require the company to assess the community health risks and impacts associated with reported pollution exceedances.

During IFC's investment supervision, there were repeated, explicit indications of serious challenges at the project, with potential impacts on communities and risks for IFC and its client. Yet IFC failed to adequately respond to the issues Lonmin flagged, instead continuing to rate the company as compliant. In 2010, the company publicly reported in its annual SDR that failure to meet its SLP commitments and SO₂ emissions requirements risked possible withdrawal of its Mining License. Lonmin's 2011 SDR expanded the principal risks to its operations to include: (a) poor community relations due to internal and external factors that could result in civil unrest; (b) difficulties in land management including informal settlements; and (c) SO₂ emissions levels

impacting the environment and communities.²⁴⁰ In August 2012, the company's mine was the site of industrial action which concluded with the Marikana tragedy. Subsequently, IFC continued to state that it considered Lonmin's performance materially compliant with IFC's E&S requirements. The basis for this view is not sufficiently substantiated in IFC's supervision documents.

3.6.1 IFC participation in Lonmin equity rights issue

In November 2012, Lonmin announced an equity rights issue to raise over US\$800m to repay debt. The rights issue offered all existing shareholders additional equity in the company at a significantly discounted rate.²⁴¹ As an existing shareholder, IFC considered and approved its participation in the rights issue at a cost of US\$5 million. IFC's approval documentation for this additional investment summarized Lonmin's E&S performance, noting IFC's 2011 determination of the company's satisfactory performance. IFC concluded in its equity subscription agreement that Lonmin remained in material compliance with covenanted E&S requirements (including Performance Standard 2: Labor and Working Conditions). This statement was misleading since IFC's investment at that time did not include any covenanted E&S requirements. In addition, IFC's approval documentation for the rights issue did not reference the significant E&S risks reported by Lonmin in its 2011 SDR, including potential loss of its mining license.

At the time, there were no IFC operational procedures that required an E&S review for IFC's participation in the rights issue. IFC's operational procedure only required a financial and credit risk analysis prior to approval.²⁴²

CAO concludes that available information at the time did not support the IFC determination that Lonmin's E&S performance was satisfactory. While E&S clearance for the rights issue was not required, this represented an opportunity for IFC to work with the company and other shareholders to address E&S compliance and performance issues that were live at the time, including the lack of E&S requirements in IFC's investment agreement with Lonmin. There is no evidence that IFC sought to leverage its participation in the rights issue in this way.

²⁴⁰ 2010 SDR page 19 and 2011 SDR page 11.

²⁴¹ Financial Times, November 9 2012. *Lonmin rejects takeover bid by Xstrata*.

²⁴² IFC's Operational Procedures have since been updated and now provide for IFC E&S staff input to Rights Issue decisions where the client's performance is considered to be non-compliant with IFC's E&S requirements.

4. Conclusion

This compliance investigation was prepared in response to a 2015 complaint from people living in the communities surrounding the Marikana mine then owned and operated by Lonmin. Most of the complainants are women who live in Enkaneng, an informal settlement near the company's operations. The complainants raised issues concerning: lack of broad community support for the company's activities; Lonmin's alleged non-compliance with its Social and Labor Plans (particularly in relation to housing and infrastructure and increased participation of women in mining); and the environmental impacts (air, groundwater, and dust pollution) of the company's activities on the Enkaneng community.

CAO's investigation considered whether IFC's investment in Lonmin was appraised, structured, and supervised in accordance IFC E&S requirements starting from IFC's pre-investment review in 2006 through to divestment in 2015. Specifically, CAO considered IFC's:

- (a) Incorporation of E&S standards and reporting requirements into its investment
- (b) Review and supervision of the company's Social and Labor Plan implementation
- (c) Review of Broad Community Support for the project and IFC's supervision of community engagement
- (d) Review and supervision of living conditions in informal settlements within the project's area of influence
- (e) Review and supervision of environmental impacts and risks to community health.

IFC's investment in Lonmin involved both technical assistance, packaged with a loan facility, and an equity investment in a publicly listed company. The objective was to support a multi-year expansion in the company's operations, along with a comprehensive community and local economic development program.

From the outset, IFC acknowledged that exposure to a large platinum mining and processing operation involved significant E&S risks. IFC's pre-investment review of the project included a field visit and a review of relevant company E&S documentation. This approach was broadly consistent with the requirement to conduct an E&S review "*appropriate to the nature and scale of the project*" and "*commensurate to [its] level of social and environmental risks and impacts.*"²⁴³ However, IFC gave insufficient attention to historical and other contextual risk factors, including the complex relationships between the mine, its workers, and conditions at surrounding informal settlements. This lack of contextual risk analysis is an underlying cause of many of the non-compliances identified in this report.

²⁴³ IFC. 2006. Sustainability Policy, paragraph 13.

Key Gaps in IFC Approach to Project E&S Risks and Impacts

CAO identified the following key gaps in IFC's approach to the identification and management of E&S risks and impacts associated with this project.

Pre-investment review

First, while the overall structure of the investment was in line with IFC requirements, IFC did not include a Performance Standards covenant in its equity agreement. This was inconsistent with ESRP requirements that IFC include “*a general covenant requiring client compliance with the IFC PS*”. While IFC did include a Performance Standards covenant in its loan agreement with Lonmin, the absence of a similar covenant in the equity agreement meant that IFC was exposed to a business involving significant E&S risks without the remedies for non-compliance that are anticipated by the Sustainability Policy (para. 26). This situation persisted from 2010, when the loan agreement lapsed, through IFC's divestment in 2015. A related issue was the lack of company E&S reporting against IFC's E&S standards. Though this did not in itself constitute IFC non-compliance, IFC's agreement to accept Lonmin's public Sustainable Development Reports in lieu of E&S monitoring reports tailored to the IFC Performance Standards made it more difficult to supervise the company's E&S performance against the PS.

Second, IFC's pre-investment review overlooked the fact that Lonmin's operational license from the South African government was dependent on implementation of its Social and Labor Plan (SLP). Lonmin's 2006 plan included ambitious commitments to address housing issues in the communities around its mining operation and address gender equity in its workforce. Compliance with national law is required under the Performance Standards. Although the Mineral and Petroleum Resources Development Act clearly stated that a holder of a mining right must comply with its SLP requirements, IFC's pre-investment review did not consider the company's ability to do so as a compliance issue. IFC's failure to consider the legally binding nature of the SLPs from the outset gave rise to a blind spot in relation to regulatory compliance risks that persisted throughout the lifetime of the investment.

Third, informal settlements around the mine, including at Enkaneng, fell within the project's “area of influence” for purposes of PS1. IFC was aware of issues related to labor influx and the poor living conditions in these settlements. Nevertheless, IFC relied during pre-investment review on Lonmin's Environmental Management Program Report in lieu of an ESIA or environmental and social audit, and failed to adequately review the company's 2006 SLP prior to project approval. As a result, IFC did not adequately assure itself that Lonmin had analyzed risks and impacts related to informal settlements, as PS1 requires.

IFC concluded that there was broad community support (BCS) for the platinum mining company within affected communities—a precondition for investments with significant E&S risks and impacts. However, CAO's review revealed weaknesses in the analysis that led to this conclusion. These included: (a) insufficient consideration of very low community satisfaction scores for Lonmin's Limpopo operations; (b) IFC's conclusion that community perception

survey results indicating “barely acceptable” support for the company in Marikana indicated BCS; and (c) IFC’s reference to the “absence of any active opposition” to the company as significant in determining BCS. This last approach was not aligned to IFC’s Environmental and Social Review Procedures which state that BCS is about whether affected communities are “*in support of the project,*” not whether there is a lack of opposition to the project.

In this context, CAO notes weaknesses in IFC’s role to assure itself of broad community support for Lonmin within the affected communities in accordance with the requirements of paras. 15 and 20 of the Sustainability Policy. Consequently, IFC sought Board approval for, and proceeded with, the investment with an overly favorable view of community support for the client’s operations.

Supervision

Challenges in the application of IFC’s social standards to this project persisted throughout the life of IFC’s investment, both before and after the 2012 Marikana tragedy. An overarching challenge during IFC’s supervision of Lonmin was the steep fall in the price of platinum which occurred in 2008, with dramatic impacts on the company’s profitability and ability to finance its SLP commitments.

From 2007 to the 2012 Marikana tragedy, Lonmin’s limited progress in addressing its SLP commitments with regard to housing, participation of women in mining, and water and sanitation infrastructure raised issues of non-compliance that required a response from IFC. These issues became particularly acute after 2011 when the proportion of people living in informal housing in the project area doubled. At the same time, the company reported to IFC that failure to meet the SLP targets for housing and participation of women in mining could put its mining license at risk. Despite these accumulating risks, CAO finds no evidence that IFC supervision identified its client’s underperformance against its SLP commitments as compliance concerns or that IFC worked with Lonmin to address these issues.

IFC also lacked assurance that the nature and frequency of the company’s community engagement reflected the project’s risks and potential impacts on affected communities as required by PS1 (para. 19). While there were indications that Lonmin’s community relationships were improving at the time of IFC’s investment, IFC was also aware that a legacy of distrust between Lonmin and local communities was a key project risk and that community relations started to deteriorate immediately after its investment in 2007. IFC’s overall monitoring of the company’s community engagement did not appropriately identify or respond to emerging risks even when flagged by the company, in 2011, as generating potential for civil unrest. These factors reflected changed project circumstances that would result in adverse social impacts, a situation which IFC was required to work with the company to address.

Following the Marikana tragedy, the Farlam Commission noted the persistence of very poor living conditions in settlements around the mine. The report stated that Lonmin’s “*failure to comply with its housing obligations created an environment conducive to the creation of*

tension, labor unrest, disunity amongst its employees, or other harmful conduct.” While IFC’s supervisions documentation shows that IFC offered to support Lonmin’s community outreach following the tragedy, there are no records of follow up or specific actions.

Environmental performance

This investigation also finds gaps in IFC’s review and monitoring of the company’s environmental performance during both pre-investment review and supervision. These included a lack of engagement with weaknesses in the company’s environmental performance that were clearly identified in two audit reports available to IFC prior to investment. In addition, IFC displayed a lack of attention to risks and potential impacts associated with the company’s disposal of calcium sulfite in two onsite dams at Marikana. Though concerns regarding community health impacts persisted during project supervision, CAO finds no record that IFC addressed the community health implications of the company’s management of its calcium sulfite dams, SO₂, or dust emissions even when exceedances were reported. In particular, the company’s reporting in 2010 and 2011 that its mining license was at risk due its SO₂ emission should have triggered a response from IFC.

On Lonmin’s advice, IFC made no supervision site visits in 2012 or later years following the Marikana tragedy. As a result, IFC’s supervision during the final three years of its investment was based solely on review of the company’s SDRs and discussions with Lonmin. Because the company’s SDRs presented limited information on its E&S performance, the inability to visit the mining operation meant that IFC was not in a position to fully ascertain evidence of E&S performance. Combined with the lack of contractually binding E&S requirements tied to IFC’s remaining equity investment, IFC’s ability to effectively supervise the project was limited.

CAO Recommendations to IFC

Given the time that has passed since IFC’s divestment from the project and the subsequent change in ownership of the company, there may be limited scope for a project level response to this compliance investigation.

As a result, CAO recommends that IFC’s response focus on measures to ensure that the lessons learned from this investment are captured and institutionalized. In reviewing its policies, procedures and guidance notes for investments,²⁴⁴ CAO recommends that IFC:

- Review its approach to contextual risk analysis as required by the Sustainability Policy and Performance Standard 1 to ensure significant historical grievances that may exist between a company and its workforce or affected communities are assessed;
- Review operational procedures to ensure the inclusion of robust E&S covenants in all investment agreements, including equity agreements;

²⁴⁴ CAO makes these recommendations on the basis of IFC’s policies, procedures, and guidance notes applied to IFC’s investment in Lonmin.

- Prior to making an equity investment in a publicly listed company, ensure that client reporting will align with IFC E&S requirements to evidence compliance;
- Develop systematic approaches to identifying and supervising critical E&S compliance requirements under national law, as required by Performance Standard 1;
- Where emissions and/or discharges exceed permissible standards, ensure that these are promptly addressed, and, as relevant, ensure that potential health impacts on communities are assessed and mitigated in the project's area of influence; and
- Ensure that client E&S commitments are costed and resourced, as required by Performance Standard 1, in order to reduce their vulnerability to financial downturns.

CAO Case Status

As of the date of this report, CAO finalized its investigation report and sent it to IFC Management. In accordance with CAO Policy, IFC prepares a Management Report which includes a Management Action Plan (MAP) for the purposes of addressing CAO's findings. Once the IFC Board approves the MAP, CAO publishes this investigation report and IFC's Management Report. CAO's role thereafter is to verify effective implementation of the actions set out in the MAP.

Annex A: CAO Compliance Findings, Recommendations and Monitoring Framework

This Annex presents CAO compliance findings, assessment of related Harm, CAO recommendations in relation to each finding and, as determined by CAO, CAO Systemic Recommendations.

In accordance with the CAO Policy, in response to this compliance investigation, IFC management is required to prepare a Management Report (CAO Policy, para 130). For the purposes of addressing CAO findings of non-compliance and related Harm, if any, the Management Report will include, for Board approval, a MAP comprising time-bound remedial actions proposed by Management (para. 131). Alternatively, the Management Report should also include a reasoned response to CAO’s findings or recommendations regarding non-compliance or related Harm that IFC is unable to address in the MAP (para. 132). Where a MAP is approved by the Board, CAO’s monitoring will verify effective implementation of the actions set out in the MAP (para. 140). CAO compliance monitoring will not consider non-compliance findings for which there is no corresponding corrective action in the MAP.

Given the time that has passed since IFC’s divestment from the project and the subsequent change in ownership of the company, there may be limited scope for a project level response to this compliance investigation.

As a result, CAO recommends that IFCs response focus on measures to ensure that the lessons learned from this investment are captured and institutionalized.

No.	CAO Findings	As relevant, IFC MAP Action
1	<p><u>Investment Structure</u> IFC structured its investment in Lonmin in a manner consistent with Sustainability Policy requirements and Environmental and Social Review Procedures with one important exception. The equity agreement did not include “a general covenant requiring client compliance with the IFC Performance Standards” as required by ESRP para. 4.2.15 (v.1). As a result, between 2010 and 2015, IFC was exposed to business activities with significant E&S risks without (a) a legal covenant that required Lonmin to operate in accordance with IFC’s Performance Standards or (b) remedies for client non-compliance under the Sustainability Policy. This situation persisted despite IFC’s purchase of additional equity in Lonmin in 2012 and represented a breach of Sustainability Policy requirements (para. 5, 11, 26) designed to safeguard against adverse environmental and social impacts on communities.</p>	

<p>2</p>	<p><u>Social and Labor Plan Implementation</u> Pre-Investment Review IFC’s pre-investment review did not consider the possible risks if Lonmin failed to implement its Social and Labor Plan (SLP) commitments because IFC considered these commitments to be outside the review’s purview, aspirational, and not directly related to PS compliance.</p> <p>IFC took this approach despite the existence of national law mandating that Lonmin’s continued mining license was dependent on SLP implementation. Since adherence to IFC Performance Standard 1 includes compliance with the E&S requirements of national law, IFC’s E&S pre-investment review did not provide a basis to conclude that the company could meet PS1 requirements within a reasonable period of time.</p> <p>IFC’s approach was therefore non-compliant with its Sustainability Policy in two areas. First, the requirement that IFC’s review be appropriate to the nature and scale of the project and commensurate with the level of E&S risks and impacts (para. 13). Second, the requirement that IFC does not finance new business activity that cannot be expected to meet the PS over a reasonable period of time (para. 17).</p>	
<p>3</p>	<p><u>Social and Labor Plan Implementation</u> Supervision Lonmin’s annual reporting on progress against its SLP commitments with regard to housing, women’s involvement in mining, and access to water and sanitation raised compliance issues that required a response from IFC. These issues became acute after the company’s 2010 Sustainable Development Report warned of the possible withdrawal of its mining licenses due to failure to deliver its SLP commitments, in particular those related to housing and women in mining. Despite Lonmin flagging these compliance concerns, CAO finds no evidence that IFC treated SLP underperformance as a Sustainability Policy compliance concern necessitating an IFC review with the client for any performance improvement opportunities.</p> <p>IFC’s failure to act represents non-compliance with para. 26 of the Sustainability Policy which requires IFC to review with the company any performance improvement opportunities. This failure contributed to legal, operational, and reputational risk for both the company and IFC. More substantively, IFC’s review and supervision processes failed to identify, and take action to address, the substandard living conditions of employees and the social tensions that resulted.</p>	
<p>4</p>	<p><u>Community Engagement</u> Supervision IFC did not adequately assure itself that the nature and frequency of Lonmin’s community engagement reflected the risks and adverse impacts of its operations on affected communities as required by Performance Standard 1 para. 19. In addition, IFC did not suggest corrective actions commensurate to risk, even when the company reported a significant deterioration in community relations and associated risk of civil unrest. These factors reflected changed project circumstances that could result in adverse social impacts, requiring IFC to work with the company to address them. IFC’s failure to do this was non-compliant with para. 26 of the Sustainability Policy.</p> <p>Following the Marikana tragedy, IFC continued to engage with the company and was open to discussing whether and how it could assist in the response to the events of 2012. However, IFC did not provide such assistance between</p>	

	<p>2012 and divestment in 2015, and stated to CAO that it considered Lonmin to be in compliance with IFC’s material E&S standards. CAO finds that this lack of support to Lonmin for performance improvements in community engagement following the Marikana tragedy constituted noncompliance with IFC’s supervision obligations under para. 26 of the Sustainability Policy.</p>	
5	<p><u>Living Conditions in Informal Settlements</u> <i>Pre-Investment Review</i> The informal settlements around Lonmin’s Marikana operation developed as a result of labor influx for mining and fell within the project’s “area of influence” for the purpose of IFC Performance Standard 1. Poor living conditions in these informal settlements, including Enkaneng, where many of the complainants lived, were associated with significant adverse social and health impacts. IFC acknowledged that its prospective client’s operations were linked to the growth of informal settlements. However, IFC’s pre-investment review did not include an adequate E&S assessment of risks and impacts from the company’s operations within the project’s area of influence as required by PS1. Living conditions in the informal settlements presented a highly significant E&S project risk, to which IFC’s pre-investment review gave minimal attention. The review was therefore also non-compliant with para. 13 of the Sustainability Policy which requires IFC to conduct an E&S review commensurate to the level of a project’s risk and impacts.</p>	
6	<p><u>Living Conditions in Informal Settlements</u> <i>Supervision</i> Between 2006 and 2012, the percentage of people around Lonmin’s Marikana mine living in informal settlements increased from 32 to 67 percent. This amounted to changed project circumstances which IFC was required to address. However, there is no evidence that IFC worked with Lonmin to ensure that the growth of informal settlements where residents faced squalid conditions was assessed and mitigated in accordance with PS1 and PS4. Accordingly, CAO finds IFC’s supervision non-compliant with para. 26 of the Sustainability Policy, which directs IFC to work with the company to address a changed project circumstance.</p>	

7	<p><u>Environmental Impacts and Community Health: Air and Water Pollution</u> <i>Pre-Investment Review</i></p> <p>The complainants allege that Lonmin’s mining operation polluted local air and groundwater. In relation to these environmental concerns, CAO finds that IFC’s pre-investment review was non-compliant with its governing Sustainability Policy (para. 13) and Environmental and Social Review Procedures (ESRPs), in three respects:</p> <p>a) IFC accepted Lonmin’s Environmental Management Program Report (EMPR) on Marikana, which was prepared to national standards under South African law. IFC did not present an analysis that the EMPR was comparable to a PS1 E&S audit, and that South Africa national law was comparable to PS requirements. This was non-compliant with ESRP requirements to “to review the quality and adequacy of the client’s Project Assessment” and document “key decisions and supporting analysis” as part of the pre-investment review process (ESRP 2006, paras. 2.2.5 and 3.2.1).</p> <p>b) 2005 environmental legal compliance audit reports on Lonmin’s Marikana operations found significant weaknesses in the company’s Environmental and Social Management System. These included non-compliance with national pollution control requirements and exceedances in dust fall and groundwater pollution. However, there is no record that IFC identified or followed up with the company on associated risks or assured itself that the shortcomings identified by the audit had been corrected prior to investment.</p> <p>c) Records that Lonmin provided to IFC during pre-investment review made clear that the company was disposing of calcium sulfite waste at one of two dams at its Marikana site. However, neither the ESRs or other internal pre-investment records indicate that IFC identified or responded to potential associated environmental or community health risks.</p>	
8	<p><u>Environmental Impacts and Community Health: Air and Water Pollution</u> <i>Supervision</i></p> <p>IFC’s supervision did not meet its obligation to assess the company’s performance against PS requirements in two areas. These were: possible community impacts of fugitive emissions of sulfur dioxide from 2008 onwards; and reported exceedances of dust fallout limits in residential areas. Furthermore, Lonmin’s Sustainable Development Reports did not provide sufficient information for IFC to assess the company’s performance in relation to dust emissions in residential areas. Yet, IFC’s supervision documentation does not indicate that IFC followed up with Lonmin to ascertain sufficient evidence of PS compliance. Thus, CAO finds IFC non-compliant with its supervision duties in relation to the project’s potential environmental impacts under para. 26 of the Sustainability Policy.</p>	

	<p>CAO Project Level Recommendations</p>
	<p>Given the time that has passed since IFC’s divestment from the project and the subsequent change in ownership of the company, there may be limited scope for a project level response to this compliance investigation. Accordingly, CAO does not propose any project level recommendations. At the same time, CAO notes that IFC consultation with the complainants and the company may lead to project level MAP commitments.</p>

		As relevant, IFC MAP Action
	CAO Systemic Recommendations to Prevent Future Non-Compliance	
	Review its approach to contextual risk analysis as required by the Sustainability Policy and Performance Standard 1 to ensure significant historical grievances that may exist between a company and its workforce or affected communities are assessed;	
	Review operational procedures to ensure the inclusion of robust E&S covenants in all investment agreements, including equity agreements;	
	Prior to making an equity investment in a publicly listed company, ensure that client reporting will align with IFC E&S requirements to evidence compliance;	
	Develop systematic approaches to identifying and supervising critical E&S compliance requirements under national law, as required by Performance Standard 1;	
	Where emissions and/or discharges exceed permissible standards, ensure that these are promptly addressed, and, as relevant, ensure that potential health impacts on communities are assessed and mitigated in the project's area of influence;	
	Ensure that client E&S commitments are costed and resourced, as required by Performance Standard 1, in order to reduce their vulnerability to financial downturns.	