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Office of the Compliance Advisor Ombudsman (CAO)

COMPLIANCE APPRAISAL: SUMMARY OF RESULTS

Lonmin (IFC Project #24803 and #548827)
South Africa

Lonmin-02

Lonmin Plc (“the client”) is a mining company that focuses on platinum group metals. It is a publicly traded, London Stock Exchange (FTSE 100) listed, company. IFC invested \$50 million in equity in the client on April 11, 2007. The purpose of the equity investment was to support a multi-year expansion program of the client’s operations. This consisted of: i) the development, expansion, and mechanization of the client’s South African mines; and ii) the development of a comprehensive, large-scale community and local economic development program (LEDP). A part of the equity investment, \$15 million, was specifically allocated for the implementation of LEDP. IFC exited the investment, selling its equity holding in full by December 2015.

In June 2015, CAO received a complaint from community members and a local community based organization, Sikhala Sonke – “We Cry Together” (“the complainants”). The Center for Applied Legal Studies assisted the complainants in bringing the complaint to CAO. Most of the complainants are women who live in Enkaneng, a settlement near the Marikana mine within the Bojanala District Council in the North West Province of South Africa.

The complainants raise concerns regarding three aspects: i) the lack of broad community support for the project; ii) the client’s non-compliance with its social and labor plan; and iii) the adverse environmental and health impacts from air/dust and groundwater pollution. On July 10, 2015, the client provided a response to the complaint.

The purpose of a CAO compliance appraisal is to ensure that compliance investigations are initiated only in relation to projects that raise substantial concerns regarding E&S outcomes and/or issues of systemic importance to IFC. In deciding whether to initiate an investigation, CAO weighs factors including the magnitude of the E&S concerns raised in a complaint, results of a preliminary review of IFC’s E&S performance in relation to these issues, the existence of questions as to the adequacy of IFC’s requirements, and a more general assessment of whether a compliance investigation is the appropriate response in the circumstances.

In this case the complainants provide personal accounts of the living conditions in the settlements near the mine. They provide accounts of pollution from the client’s facilities causing health problems in the local population. They also provide accounts from family members of Lonmin employees regarding the adverse impacts of poor housing conditions and lack of access to water and sanitation.

Having conducted an initial review of project documentation, CAO has identified questions as to IFC’s review and supervision of the project as relate to the issues raised by the complainants. In relation to the social impacts alleged, CAO has questions as to whether IFC properly applied its

“broad community support” requirement to the project and whether IFC assured itself that the client’s approach to stakeholder engagement was consistent with the requirements of Performance Standard 1. CAO has also identified questions as to IFC’s review and supervision of the client’s ability to comply with the social and labor plan, that was agreed as a condition of its mining license. This included commitments to upgrade housing and improve living conditions for workers in the communities around the mine, which were acknowledged to poor. In relation to the environmental impacts alleged, CAO has questions as to the framework that IFC agreed to for reporting on air and water pollution and whether this provided sufficient basis for IFC to assess project compliance with its requirements under Performance Standards 3 and 4.

Considering the accounts of adverse impact provided by the complainants and the questions CAO has identified in relation to IFC’s review and supervision of related aspects of the project, CAO concludes that the criteria for investigation are met. Terms of Reference for the investigation will be prepared in accordance with CAO’s Operational Guidelines.

About CAO

The Office of the Compliance Advisor Ombudsman (CAO) is an independent post that reports directly to the President of the World Bank Group. CAO reviews complaints from communities affected by development projects undertaken by the two private sector lending arms of the World Bank Group, the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA). The CAO's mission is to serve as a fair, trusted, and effective independent recourse mechanism and thus to improve the environmental and social performance of IFC and MIGA. CAO consists of three unique and complementary functions, dispute resolution, Compliance and Advisory, which together provide a flexible framework for handling people's complaints and addressing systemic concerns about IFC and MIGA projects.

About CAO's Compliance Function

CAO's compliance function provides oversight of IFC and MIGA investments with the objective of improving environmental and social (E&S) performance of the institutions. The compliance function is activated when either of the parties opt for it following CAO's assessment of the complaint or when the dispute resolution process does not lead to an agreement between the parties. The Compliance function can also be initiated by the CAO Vice-President, the President of the World Bank Group or IFC/MIGA senior management. Following a compliance investigation, CAO may determine that it is necessary to monitor actions taken by IFC or MIGA until such actions assure CAO that its compliance findings are being addressed.¹

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

¹ CAO, Operational Guidelines (2013) para. 4.4.6.

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Acronyms

Acronym	Definition
AMR	Annual Monitoring Report
BCS	Broad Community Support
CaSO ₃	Calcium Sulfite
CAO	Office of the Compliance Advisor Ombudsman
E&S	Environmental and Social
EHS	Environmental, Health and Safety
EMPR	Environmental Management Program Report
FTSE 100	Financial Times Stock Exchange 100
FY	Fiscal Year
GHG	Greenhouse Gas
GLC	Greater Lonmin Community
IFC	International Finance Corporation
LDT	Lonmin Development Trust
LEDP	Local Economic Development Program
MPRDA	Mineral and Petroleum Resources Development Act
MIGA	Multilateral Investment Guarantee Agency
PLC	Public Limited Company
PS	Performance Standards
SDR	Sustainability Development Report
SLP	Social and Labor Plan
SO ₂	Sulfur Dioxide
TAAS	Technical Assistance Advisory Services

I. Overview of the Compliance Appraisal Process

When CAO receives a complaint about an IFC or MIGA project, the complaint is referred for assessment. If CAO concludes that the parties are not willing or able to reach a facilitated solution, the case is transferred to the CAO compliance function for appraisal and potential investigation.

A compliance appraisal also can be triggered by the CAO vice president, IFC/MIGA management, or the president of the World Bank Group.

The focus of the CAO compliance function is on IFC and MIGA, not their client. This applies to all IFC's business activities, including the real sector, financial markets and advisory. CAO assesses how IFC/MIGA assured itself/themselves of the performance of its business activity or advice, as well as whether the outcomes of the business activity or advice are consistent with the intent of the relevant policy provisions. In many cases, however, in assessing the performance of the project and IFC's/MIGA's implementation of measures to meet the relevant requirements, it will be necessary for CAO to review the actions of the client and verify outcomes in the field.

In order to decide whether a compliance investigation is warranted, CAO first conducts a compliance appraisal. The purpose of the compliance appraisal process is to ensure that compliance investigations are initiated only for those projects that raise substantial concerns regarding environmental and/or social outcomes, and/or issues of systemic importance to IFC/MIGA.

To guide the compliance appraisal process, CAO applies several basic criteria. These criteria test the value of undertaking a compliance investigation, as CAO seeks to determine whether:

- There is evidence of potentially significant adverse environmental and/or social outcome(s) now, or in the future.
- There are indications that a policy or other appraisal criteria may not have been adhered to or properly applied by IFC/MIGA.
- There is evidence that indicates that IFC's/MIGA's provisions, whether or not complied with, have failed to provide an adequate level of protection.

In conducting the appraisal, CAO will engage with the IFC/MIGA team working with the specific project and other stakeholders to understand which criteria IFC/MIGA used to assure itself/themselves of the performance of the project, how IFC/MIGA assured itself/themselves of compliance with these criteria, how IFC/MIGA assured itself/themselves that these provisions provided an adequate level of protection, and, generally, whether a compliance investigation is the appropriate response. After a compliance appraisal has been completed, CAO can close the case or initiate a compliance investigation of IFC or MIGA.

Once CAO concludes a compliance appraisal, it will advise IFC/MIGA, the World Bank Group President, and the Board in writing. If a compliance appraisal results from a case transferred from CAO's dispute resolution, the complainants will also be advised in writing. A summary of all appraisal results will be made public. If CAO decides to initiate a compliance investigation as a result of the compliance appraisal, CAO will draw up terms of reference for the compliance investigation in accordance with CAO's Operational Guidelines.

II. Background

Investment

Lonmin Plc (“the client”) is a mining company that focuses on platinum group metals. It is a publicly traded, London Stock Exchange (FTSE 100) listed, company.² IFC invested \$50 million in equity in the client in April 2007.³ The purpose of the equity investment was to support a multi-year expansion program of the client’s operations. This consisted of: i) the development, expansion, and mechanization of the client’s South African mines; and ii) the development of a comprehensive, large-scale community and local economic development program (LEDP).⁴ A part of the equity investment, \$15 million, was specifically allocated for the implementation of the LEDP.⁵ IFC exited the investment, selling its equity holding in full by December 2015.

IFC also approved a \$100 million loan to the client, however, this was cancelled in March 2010 without being disbursed.

Advisory Services

In 2006, the client sought out IFC as a strategic development partner. IFC provided Technical Assistance Advisory Services (TAAS) to the client to support the community development program.⁶ This included, local supplier development (targeting 100 local suppliers); women in mining (targeting 10% women employed in mining); HIV/AIDS risk mitigation; and, community development through increasing capacity of local tribal authority and local government.⁷

The TAAS’s budget was US\$5.8 million, financed 50% by IFC’s donors’ funds. The Advisory project concluded on June 30, 2010, after three years of engagement and five years prior to CAO receiving the complaint. Hence, it falls outside the scope of this appraisal.

Complaint and CAO Assessment

In June 2015, CAO received a complaint from individual community members and a local community based organization, Sikhala Sonke – “We Cry Together” (referred to as “the complainants”). The Center for Applied Legal Studies assisted the complainants in bringing the complaint to CAO. Most of the complainants are women who live in Enkaneng, a settlement near the Marikana mine within the Bojanala District Council in the North West Province of South Africa. A redacted version of the complaint can be found on CAO’s website.⁸

The complainants raise concerns regarding the impacts of the client’s activities on the Enkaneng community, namely in the following respect:

1) Lack of broad community support

Complainants question whether there was broad community support (BCS) at the beginning of IFC’s investment. Moreover, the complainants allege that by 2010 any

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

³ IFC (2006) Summary Of Proposed Investment (SPI), Lonmin, <https://goo.gl/W44wYp>.

⁴ The local economic development program (LEDP) is part of the social and labor plan, which is a requirement under South Africa’s national law for the attribution of a mining license.

⁵ IFC (2006) SPI, <https://goo.gl/W44wYp>.

⁶ IFC (2006) Environmental and Social Review Summary (ESRS), <https://goo.gl/eygk7f>.

⁷ IFC-Lonmin Partnership Wins Nedbank Green Mining Award, dated October 28, 2008, <https://goo.gl/2atzUJ>.

⁸ A number of other documents were submitted to CAO in support of the complaint, including: Lonmin’s Social and Labour Plan (SLP) for the period 2007 – 2012 developed in accordance with the South Africa’s Mineral and Petroleum Resources Development Act (MPRDA) and the Marikana Commission’s Report of the Marikana Commission of Inquiry. See, <https://goo.gl/aBuXZG>.

community support had evaporated. The complainants point to a lack of data on community support in the 2009 and 2010 Sustainability Reports published by the client. They also point to the 2011 Sustainability Report that identifies “poor community and employee relations” being a “principal risk”, as evidence of lack of BCS.⁹

2) Non-compliance with the Social and Labor Plan

The complainants allege that the client failed to comply with its domestic legal obligations, specifically implementation of the Social and Labor Plan (SLP), which aims to support socio-economic empowerment of the affected communities. According to the complainants, the client’s obligations under the SLP included: a) providing proper housing to workers; b) improving the provision of water and sanitation to the local community; c) gender mainstreaming; and, d) improving environmental conditions.¹⁰

3) Adverse environmental and health impacts

The complainants allege that IFC did not properly monitor project emissions, including greenhouse gas (GHG). They state the client exceeded legal limits on dust and Sulphur dioxide emissions, which cause groundwater and air pollution.¹¹ They argue that there is an increase in respiratory sicknesses due to dust and air pollution.¹²

The complainants identified four Performance Standards (PSs) as relevant to this investment.¹³ Namely, PS1: Social and Environmental Assessment, PS3: Pollution Prevention and Abatement, PS4: Community Health, Safety, and Security, and PS7: Indigenous Peoples.

In relation to PS7, the complaint mentions that the Bapo Ba Mogale Traditional Authority leases land to the client. Although the complaint does not specify any adverse impacts to Bapo Ba Mogale, they argue that PS7 should be triggered. However, as the complainants do not assert to represent the Bapo Ba Mogale this report does not consider the application of PS7.

In July 2015, the client provided a response to the complaint.¹⁴ The client considered housing, accommodation, and social upliftment, a complex “transformational necessity” in South Africa and the platinum belt. The company added that some aspects require a collaborative approach between government, municipalities, companies and communities. Regarding the SLP, the company stated that the plan was created in collaboration with a number of stakeholders, including the local communities and the Department of Mineral Resources, which audits it.¹⁵

During CAO’s initial assessment, the complainants and the client stated their preference to engage in a CAO-facilitated discussion to try to resolve the complaint. Therefore, the complaint was referred to CAO’s dispute resolution function. However, in December 2016 the complainants decided to withdraw from the process citing lack of progress. This decision was confirmed in March 2017. In May 2017, the complaint was transferred to CAO’s compliance function for appraisal.¹⁶

⁹ Complaint by Affected Community Members in Relation to the Social and Environmental Impacts of Lonmin Plc’s Operations in Marikana, p. 25, <https://goo.gl/NuCz3R>.

¹⁰ Ibid, p. 12.

¹¹ Ibid.

¹² Ibid, Annexure A.

¹³ Ibid, p. 19.

¹⁴ 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, <https://goo.gl/Jfzo5y>.

¹⁵ Ibid, p. 8.

¹⁶ CAO, Dispute Resolution Conclusion Report – Lonmin-02/Marikana, <https://goo.gl/xE4J4V>.

III. Analysis

The compliance appraisal that follows is organized chronologically following the IFC project cycle. It considers IFC's pre-investment review and supervision of the project against the requirements of its Environmental and Social (E&S) policies, procedures and standards in relation to the issues raised in the complaint.

IFC Policy Framework

IFC's investment in the client was made in the context of its 2006 Policy on Environmental and Social Sustainability ("the Sustainability Policy") and Performance Standards (PSs), together referred to as the Sustainability Framework. The 2006 Sustainability Policy requires IFC's pre-investment E&S due diligence of the project to be "appropriate to the nature and scale of the project, and commensurate with the level of social and environmental risks" of the project (para. 13). IFC is also required to "monitor the client's social and environmental performance throughout the life of IFC's investment" (para. 11).

IFC's Pre-Investment Environmental and Social Due Diligence

The key question for CAO at pre-commitment phase of the project cycle is whether IFC exercised due diligence in its review of the E&S risks of the investment. As a general principle, IFC is committed to a pre-investment E&S review that "is appropriate to the nature and scale of the project, and commensurate with the level of social and environmental risks and impacts."¹⁷ Accordingly, CAO considers the adequacy of: (a) IFC's review of the E&S potential risk attached to the project; (b) IFC's approach to the assessment of the client's capacity to manage and mitigate these risks; and, (c) the measures that IFC required the client to implement to ensure appropriate management of E&S risk.

IFC 2006 Sustainability Policy Requirements

Central to IFC's development mission are its efforts to carry out its investment operations in a manner that "do no harm" to people or the environment; adding that "negative impacts should be avoided where possible, and if these impacts are unavoidable, they should be reduced, mitigated or compensated for appropriately."¹⁸ Further, "IFC seeks to ensure that the projects it finances are operated in a manner consistent with the requirements of the Performance Standards."¹⁹

IFC expects its clients to undertake an assessment of the environmental and social risks and impacts, and manage these in accordance with the Performance Standards. IFC's role is to "review the client's assessment; to assist the client in developing measures to avoid, minimize, mitigate or compensate the social and environmental impacts consistent with the Performance Standards; ... and to monitor the client's social and environmental performance throughout the life of IFC's investment."²⁰

When appraising a project, IFC undertakes an E&S review as part of its overall due diligence. The review has three components "(i) the social and environmental risks and impacts of the project as assessed by the client; (ii) the commitment and capacity of the client to manage these expected impacts, including the client's social and environmental management system; and (iii)

¹⁷ IFC Policy on Environmental and Social Sustainability, 2006, para. 13.

¹⁸ Ibid, para. 8.

¹⁹ Ibid, para. 5.

²⁰ Ibid, para. 11.

the role of third parties in the project's compliance with the Performance Standards."²¹ When the project involves existing business activities, social and/or environmental audits may need to be performed to determine any areas of concern.²²

Based on its review and expected impacts, IFC assigns the project an E&S risk categorization. IFC uses a system of environmental and social categorization to reflect the magnitude of impacts expected and to specify public disclosure requirements prior to presenting a project to the Board for approval.²³ Direct investment E&S risk categories range from Category A to Category C, representing the highest to lowest E&S risk.

IFC's E&S Appraisal of the Project

IFC's appraisal of the project took place between May 2006 and March 2007. IFC reviewed the client's platinum operations, focusing on its Safety, Health, Environment, Community and Security (SHECS) management, organization and systems. This included the client's: i) environmental management system, information and documentation related to management of environmental, social and labor issues; ii) Environmental Management Program Reports (EMPRs) for each operation; iii) environmental impact assessments prepared for new developments; iv) closure plans; v) key monitoring data; and, vi) the new era labor agreement. Discussions were held with the client's management (including the SHECS department), representatives of the local municipality, the Bapo Ba Mogale traditional authority, local health workers, local school teachers and other stakeholders.²⁴

IFC conducted site visits to a number of the client's facilities, including: mechanized and non-mechanized shafts; tailings dams; a smelter and a base metal refinery; concentrators; a precious metal refinery; and several of the client's community projects (schools, clinics, agricultural operation), and a hostel. Several communities within the Greater Lonmin Community (GLC) were also visited.²⁵

In July 2006 prior to investing, IFC held a peer review meeting to determine the E&S risk category on the project. IFC categorized the project as Category A. This means that the project had potential for significant adverse environmental or social impacts that are diverse, irreversible or unprecedented.

IFC noted that this was an unusual investment, as the client was an FTSE 100 company in the London Stock Exchange. As explained by IFC, London Stock Exchange rules require all shareholders to be provided with access to the same information about a listed company's operations. As a result, IFC formed the view that it was limited in the level of information, including E&S reporting, that it could request from the client.

Broad community support

The Sustainability Policy, PS1, and the Environmental and Social Review Procedures outline IFC's requirements for BCS. As noted in the Sustainability Policy, in the case of projects with significant adverse impacts on affected communities, IFC is required to assure itself that there is BCS for the project within the affected communities.²⁶ The policy defines BCS as "a collection of

²¹ Ibid, para. 15.

²² IFC (2006) Performance Standard 3, para. 8.

²³ IFC (2006) Policy on Environmental and Social Sustainability, para. 18.

²⁴ IFC (2006) ESRS, <https://goo.gl/eygk7f>.

²⁵ Ibid.

²⁶ IFC (2006) Policy on Environmental and Social Sustainability, para. 15.

expressions by the affected communities, through individuals or their recognized representatives, in support of the project.”²⁷

To ensure the client’s commitment to BCS, IFC is required to review “the client’s documentation of the engagement process. In addition, through its own investigation, IFC assures itself that the client’s community engagement is one that involves free, prior, and informed consultation and enables the informed participation of the affected communities, leading to broad community support for the project within the affected communities, before presenting the project for approval by IFC’s Board of Directors.”²⁸

In addition, for projects with significant adverse impact, PS1 requires engagement with affected communities early in the E&S assessment process and on an ongoing basis.²⁹ IFC’s responsibilities include assessing “how the client has met or will meet its disclosure and consultation obligations,” as outlined in the IFC policy framework.³⁰ IFC determines the level of support and dissent related to the project among such significantly impacted communities.³¹

IFC identified BCS as a potential risk at appraisal. IFC reviewed various measures that the client was taking in order to transform their relationship with surrounding communities and stakeholders, such as commissioning and following up on community perception surveys, establishing stakeholder engagement forums, and engaging with traditional authorities and local municipalities on a regular basis.

IFC confirmed the presence of BCS on the basis of: (a) the sponsor’s documentation of efforts to identify and consult with stakeholders on an ongoing and iterative basis in a free, prior and informed manner; (b) the outcome of several meetings held with key stakeholder groupings during appraisal; (c) attendance at two Stakeholder Engagement Forums (in November 2005 and November 2006) and (d) the results of the independent stakeholder perception surveys for 2004, 2005 and 2006.

Implementation of the SLP

IFC’s PSs require that clients “comply with applicable national laws.”³² Under PS1, the client is required to “conduct a process of Social and Environmental Assessment that will consider in an integrated manner the potential social and environmental (...) risks and impacts of the project.” The Assessment also needs to consider “applicable laws and regulations of the jurisdictions in which the project operates that pertain to social and environmental matters.”³³

According to South Africa’s Mineral and Petroleum Resources Development Act (MPRDA) 28 of 2002, applicants seeking to obtain mining rights are required to submit a social and labor plan.³⁴ In 2006, the client submitted an SLP to the Department of Mineral Resources to convert its old mining rights of the Marikana mine into new mining rights.³⁵

Relevant to the complaint, the commitment to reach 10% women employment at the mine by 2010 and 10% of women working in mining by 2012, was part of the SLP. The SLP committed the client to converting a total of 114 existing hostels into single and family units by 2011. The client also

²⁷ Ibid, para. 20.

²⁸ Ibid.

²⁹ IFC (2006) Performance Standard 1, para 19.

³⁰ IFC (2006) Environmental and Social Review Procedures, para. 3.2.12(d).

³¹ Ibid, para. 3.5 Annex.

³² IFC (2006) Performance Standards on Social and Environmental Sustainability, Introduction, para. 3.

³³ IFC (2006) Performance Standard 1, para 4.

³⁴ Mineral and Petroleum Resources Development Act (MPRDA), 23(1)(e), <https://goo.gl/9LHJ6f>.

³⁵ Amnesty International, Smoke and Mirrors: Lonmin’s Failure to Address Housing Conditions at Marikana, South Africa, <https://goo.gl/SuwJkn>.

committed to build 5,500 new housing units and service 4,800 stands (including with water and sanitation) by 2011.³⁶

Towards the end of 2006, as IFC was conducting the project's appraisal, the client received its new mining license. IFC project appraisal documentation noted that the client's social development commitments included an aggressive housing program and hostel conversion. At the time, the client had set a target to build up to \$100 million worth of additional local housing stock by 2009.³⁷ IFC identified the housing conversion process as a potential risk that might pose social challenges due to the high number of migrant workers.

Environmental and health impacts

PS3 (2006) on Pollution Prevention and Abatement requires the client to "apply pollution prevention and control technologies and practices (techniques) that are best suited to avoid or, where avoidance is not feasible, minimize or reduce adverse impacts on human health and the environment" throughout the lifecycle of a project.³⁸ The client is also required to "avoid the release of pollutants or, when avoidance is not feasible, minimize or control the intensity or load of their release."³⁹ Similarly, release of hazardous materials resulting from project activities must be avoided or when avoidance is not feasible, minimized or controlled.⁴⁰

PS3 requires that project-specific pollution prevention and control techniques be applied during the project life-cycle and be tailored to the hazards and risks associated with project emissions consistently with good international industry practice, as reflected in various internationally recognized sources, including IFC's Environmental, Health and Safety Guidelines (the EHS Guidelines).⁴¹ The client is required to refer to the EHS Guidelines when evaluating and selecting pollution prevention and control techniques. These Guidelines contain the performance levels and measures that are normally acceptable and applicable to projects.⁴²

In terms of greenhouse gas (GHG) emissions, the client is required to promote reduction of project-related emissions "in a manner appropriate to the nature and scale of project operations and impacts."⁴³ If the project will produce significant quantities of GHGs, the client is required to quantify its direct and indirect emissions on an annual basis. Additionally, the client is to "evaluate technically and financially feasible and cost-effective options to reduce or offset project-related GHG emissions during the design and operation of the project."⁴⁴

With regards to Community Health, Safety and Security, PS4 requires the client to "avoid or minimize adverse impacts due to project activities on soil, water, and other natural resources in use by the affected communities."⁴⁵ However, when there are risks or adverse impacts on the health and safety of affected communities, the client is required to disclose any "relevant project-related information to enable the affected communities and relevant government agencies to

³⁶ Conversion of Old Order Mining Right Social and Labour Plan, Easterns Platinum Limited, August 2006 (SLP 2006). "Servicing stands refers to ensuring that plots of land on which houses will be built are connected to infrastructure for electricity, water and sewage." Amnesty International, Smoke and Mirrors: Lonmin's Failure to Address Housing Conditions at Marikana, South Africa, <https://goo.gl/SuwJkn>.

³⁷ IFC (2006) ESRS, <https://goo.gl/eygk7f>.

³⁸ IFC (2006) Performance Standard 3, para. 3.

³⁹ Ibid, para. 4.

⁴⁰ Ibid, para. 6.

⁴¹ Ibid, para. 3.

⁴² Ibid, para. 8.

⁴³ Ibid, para. 10.

⁴⁴ Ibid, para. 11.

⁴⁵ IFC (2006) Performance Standard 4, para. 9.

understand these risks and impacts, and will engage the affected communities and agencies on an ongoing basis consistent with the requirements of Performance Standard 1.⁴⁶

At appraisal, IFC reviewed the client's Environmental Management Program Reports (EMPRs).⁴⁷ IFC reviewed environmental documents made available by the client.⁴⁸ IFC noted that the client had received ISO 14001 and OHSAS 18001 certification for all its Marikana operations, while the certification process for Limpopo was expected to be complete in 2007.

IFC reported that the client assessed its GHG emissions. Certain areas of the project were identified as having the potential to impact ambient conditions (at tailings dams or the smelter). Appropriate strategies to minimize these impacts were considered to have been taken (e.g., minimizing dust or reduction of sulfur oxides emissions).⁴⁹

IFC reported that the client's approach to waste management encompassed avoidance, minimization, recovery, reuse and environmentally sound disposal.⁵⁰

IFC noted that each operation had several tailings dams. The EMPRs were considered to provide full details of all dams together with management and monitoring protocols. All dams were noted as being managed by professional dam contractors and independently monitored by suitably qualified consultants in line with IFC Performance Standards.⁵¹

Following its review, IFC concluded that the client's pollution prevention and control, and its waste management practices were consistent with international good practice. IFC also concluded that the client's plans and management systems identified and addressed key environmental issues, and demonstrated that the client's operations complied with the environmental, health & safety and social regulations, policies and guidelines of South Africa and the IFC.⁵²

Conclusion

CAO notes that IFC correctly identified that PS1 to PS6 and PS8 were relevant to the project.

In relation to IFC's assessment of BCS, CAO notes that IFC's review considered the results of stakeholder engagement surveys as well as client documentation of stakeholder engagement meetings. Based on a review of this documentation CAO notes that it is unclear whether BCS for the project was established as required by the Sustainability Policy.

Further, CAO notes that IFC did not consider the client's commitments under the SLP as compliance requirements. As a result, IFC made no assessment as to whether targets in the SLP were attainable and did not include SLP targets in an Environmental and Social Action Plan despite identifying challenges the client might face in meeting these targets, particularly in relation to housing. In this context, CAO has questions as to whether IFC's pre-investment review of the client's ability to implement the SLP was commensurate to risk.

With regards to environmental and health impacts, following a review of the client's documentation and a site visit, IFC reached positive conclusions about client's environmental and health

⁴⁶ IFC (2006) Performance Standard 4, para. 5.

⁴⁷ The ESRS describes the Environmental Management Program Reports (EMPRs) as the South African equivalent of Environmental & Social Impact Assessments (ESIAs).

⁴⁸ The review included the September 2005 Environmental Legal Compliance Audit of the Limpopo Division; the Environmental Legal Compliance Audits of the client's: Assay lab, eastern platinum mine, opencast, metallurgical services, western platinum refinery, western platinum mine, Mooiooi town, and Karee mine, all dated November 2005; and the client's SHES Report for May 2006.

⁴⁹ IFC (2006) ESRS, <https://goo.gl/eygk7f>.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² IFC (2006) ESRS, <https://goo.gl/eygk7f>.

management systems. IFC's due diligence concluded that the client's practices met the South African regulatory framework and IFC Performance Standards. While CAO notes that IFC's review of these issues appears to have been thorough, pollution related issues that arose during project supervision raise questions as to the robustness of IFC's review.

IFC's Supervision of the Project

IFC is required to monitor its clients' E&S performance throughout the life of an investment. The Sustainability Policy commits IFC to "require the project to submit periodic Monitoring Reports on its social and environmental performance as agreed with IFC" and "conduct site visits of certain projects with social and environmental risks and impacts." IFC also commits to "review project performance on the basis of the client's commitments in the Action Plan, as reported by the client's Monitoring Reports, and, where relevant, review with the client any performance improvement opportunities."⁵³ For Category A projects, the client is required to "retain qualified and experienced external experts to verify its monitoring information."⁵⁴

PS1 underscores the importance of managing social and environmental performance "throughout the life of a project."⁵⁵ PS1 requires the client to establish and maintain a Social and Environmental Management System that incorporates monitoring and reporting.⁵⁶

General Supervision of the Project

For IFC, the client being a publicly listed company, meant that all shareholders had to be provided with the same access to information about the company's performance. In this context, IFC determined that it would base its E&S supervision on the client's publicly disclosed Sustainable Development Reports (SDR), and not require separate Annual Monitoring Reports (AMR).⁵⁷ IFC's reviews consistently noted that the SDRs did not contain the type of monitoring data that an AMR would normally contain, particularly relating to compliance with PS3: Pollution Prevention and Abatement. Information noted as lacking included specific emissions and effluent monitoring data for surface and groundwater, and air pollutants (other than sulfur dioxide – SO₂). Nevertheless, IFC considered that the strength of the South African regulatory and monitoring framework meant that the lack of such detailed information did not present reputational risks.

Ongoing community engagement

According to the 2006 Sustainability Policy, after Board approval of the project, IFC is required to continue monitoring the client's community engagement process.⁵⁸

In 2008, the client was reporting challenges in terms of maintaining community support. The 2008 community perceptions survey showed that the results were well below the target of 60%.⁵⁹ This result was attributed to raised expectations in the community and non-delivery of promised benefits. In 2010, the client prioritized improving its relations with the Greater Lonmin Community

⁵³ IFC (2006) Policy on Environmental and Social Sustainability, para. 26.

⁵⁴ IFC (2006) Performance Standard 1, para. 24.

⁵⁵ IFC (2006) Performance Standard 1, para. 1.

⁵⁶ Ibid, para. 3.

⁵⁷ IFC E&S staff undertook four supervision missions, yearly between 2008 and 2011 and prepared a back-to-office report following each visit.

⁵⁸ IFC (2006) Policy on Environmental and Social Sustainability, para. 20.

⁵⁹ Lonmin Plc, Web-Based Sustainable Development Report for the year ending 30 September 2008 (SDR 2008), p. 84.

(GLC) and the government and noted that it was holding an Environment Stakeholder Forum twice a year.⁶⁰ The outcomes of these forums were not reported.

In 2011, the company aimed to roll-out a stakeholder engagement strategy in order to facilitate, among other things, the successful outcome of the SLP's implementation.⁶¹ In August and September 2012, violent clashes occurred between striking miners and police near the client's Marikana mine claiming 44 lives (the Marikana events).⁶² A five-month strike took place between January and June 2014, leading to industry-wide negotiations with unions and a new wage scale being adopted. The strike affected the estimated 186,000 people living within the GLC. CAO notes that community engagement remained a challenging area for the client.

Implementation of the SLP

The SLP was first approved in 2006 and included, among others, targets for housing and women in employment.⁶³ In 2011, the housing targets in the SLP were revised. In 2014, a new 5-year SLP was finalized and submitted after the previous one expired in December 2012.

a) Housing and hostel conversion

The client's original commitment was to convert 114 hostel blocks into bachelor and family units and construct 5,500 houses by 2011.⁶⁴

In 2010, the client reported that it was not on track to meeting its housing commitments in the SLP and, as a result was at risk of withdrawal of its mining license.⁶⁵ In light of this, housing targets under the SLP were revised to convert 26 hostel blocks by 2014.⁶⁶ In 2011, IFC visited the hostels that were undergoing conversion and observed the new construction. IFC noted that the new converted housing represented much improved options for workers. However, the client reported that since it was offering a living-out allowance, as an alternative to the company-provided accommodation, migrant workers preferred to save money by taking the living-out allowance and renting living space with poor conditions.⁶⁷

Between 2003 and 2012, the client converted a total of 97 hostel blocks, creating 937 single units and 695 family units that employees rented for R350 (US\$43) per month, still falling short of its commitments.⁶⁸ The client acknowledged that it did not meet its initial SLP housing targets due to a number of factors, including a sudden and dramatic decline in the platinum price at the time of the global economic downturn, which severely impacted revenues.⁶⁹

⁶⁰ Lonmin Plc, Web-based Sustainable Development Report for the year ending 30 September 2010 (SDR 2010), p. 94.

⁶¹ Ibid, p. 65.

⁶² CAO, Appraisal Report, Ref. Code: C-I-R4-Y12-F171, dated August 30, 2013, <https://goo.gl/SrN8KU>. CAO considered these issues in the context of a CAO initiated compliance appraisal. CAO decided not to proceed with a compliance investigation at that point noting that the nexus between IFC's E&S performance and the outcomes of the August 2012 dispute was insufficiently established absent a complaint from affected workers.

⁶³ Lonmin Plc, SLP 2006, p. 9.

⁶⁴ Lonmin Plc, SDR 2010, p. 38.

⁶⁵ Ibid, p. 05. By then, housing facilities comprised 1,798 houses, 544 family units, 92 bachelor units, and three hostel complexes.

⁶⁶ Ibid, p. 38.

⁶⁷ Lonmin Plc, SDR 2012, p. 11.

⁶⁸ Ibid, p. 11.

⁶⁹ Lonmin Plc, Sustainable Development Report for the year ending 30 September 2015 (SDR 2015), p. 21.

In 2015, the client reported that an independent commission,⁷⁰ established following the Marikana events, found that the client was legally obligated to complete the hostel conversion process and the building of 5,500 houses, by September 2011. The independent commission found the client's failure to comply with its housing obligations "created an environment conducive to tension, labor unrest, disunity among employees or other harmful conduct." The complainants' substantive concerns regarding the condition of housing for the migrant workforce living in communities around the mine are also substantiated by the commission.⁷¹

CAO notes that throughout the period of the investment, IFC reviewed the client's SDRs and reiterated the information they contained, including reporting on SLP targets. In 2010, after it was questionable whether the client would be able to retain its mining license, IFC's reporting became more descriptive and detailed. However, prior to that, IFC did not seem to have identified the client's risk of failure to meet its housing targets as a compliance issue, or to have engaged with any associated social risks.

b) Water and sanitation

The 2006 SLP targeted the servicing of 4,800 stands (including with water and sanitation) by 2011.⁷² In 2012, the client reported that it provided access to water for 1,100 households and sanitation to 605 households.⁷³ In 2014, the client reported on improvements of water delivery through repairs to pipelines.⁷⁴ In 2015, the client reported that bulk infrastructure projects focused on improving access to potable water during 2014 and 2015.⁷⁵

CAO notes that throughout supervision IFC reported on the client's budgeting for service provision. These services included investments in infrastructure, schools, water, sanitation and other development programs. IFC did not provide specific details on the implementation of water or sanitation related projects or engage with the client's performance against the targets mandated by the SLP.

c) Gender-equity employment

The client's original commitment in the 2006 SLP was to increase the proportion of women working at the mine to 10% by 2010 and for those working in mining to 10% by 2012.⁷⁶ It later pushed the target of women in core mining operations to 10% and of women at the mine to 11.6% by 2014.⁷⁷

In 2009, the client noted that it was not on track to meet its commitments for the participation of women at the mine and in core mining operations.⁷⁸ In 2014, the client reported that the percentage of women in core mining operations had reached 5.4% and the percentage of women at the mine was at 8.20%, which was still short of the original commitments. By 2015, when IFC

⁷⁰ Marikana Commission of Inquiry (2015) p.522ff. <https://goo.gl/CgrRRR> The Marikana Commission of Inquiry was appointed by Mr. Jacob Zuma, the President of the Republic of South Africa, on 23 August 2012 to investigate "matters of public, national and international concern arising out of the tragic events at the Lonmin Mine in Marikana."

⁷¹ Lonmin Plc, Sustainable Development Report for the year ending 30 September 2015 (SDR 2015), p. 20.

⁷² Amnesty International, Smoke and Mirrors: Lonmin's Failure to Address Housing Conditions at Marikana, South Africa, <https://goo.gl/SuwJkn>.

⁷³ Lonmin Plc, SDR 2012, p. 18.

⁷⁴ Lonmin Plc, Sustainable Development Report for the year ending 30 September 2014 (SDR 2014), p. 71.

⁷⁵ Lonmin Plc, SDR 2015, p. 78.

⁷⁶ Lonmin Plc, SLP 2006, p. 43.

⁷⁷ Lonmin Plc, SDR 2010, p. 36.

⁷⁸ Lonmin Plc, SDR 2009, p. 22.

exited the investment, women in core mining operations had reached 6.0% and the percentage of women at the mine was at 8.8%.⁷⁹

Environmental and health impacts

During supervision, IFC considered the environmental management regulations in South Africa as matching or exceeding its own requirements. IFC noted that where the client was not compliant with levels of emission, corrective actions were taken, documented and submitted to the relevant authorities.

a) Tailings dams, dust, groundwater, and hazardous waste

IFC noted that all tailings dams were managed by professional dam contractors and independently monitored by suitably qualified consultants in line with IFC Performance Standards, requiring the retention of qualified and experienced external experts to verify monitoring information. IFC's reporting, based on the client's SDRs, included incidents that had adverse environmental impact. In 2008 the client reported seven 'moderate impact on environment' incidents and one 'high impact on environment' incident.⁸⁰ Remediation measures were not described.

In March 2009, groundwater monitoring data for certain sites indicated exceedances against regulatory standards for nitrates, chlorides and electrical conductivity, of up to 20-35 times the permitted limit. This was linked to unlined tailings facilities and the lack of a comprehensive groundwater management strategy, among other factors. According to IFC, corrective actions and progress on mitigation was recorded, though mitigation performance was mixed. In 2010, there were three unauthorized discharges at return water dams due to heavy rainfall, unlined settling and containment dams.⁸¹ Corrective measures taken were not specified.

As for hazardous waste management, in 2009 IFC was concerned that the client would not meet its target for reducing the amount sent to landfills. IFC considered that the client had an issue with disposal of the hazardous calcium sulfite (CaSO₃).

b) Emissions

The client's target was to reduce aggregate energy consumption per unit of production by 10% by 2012.⁸² It is unclear to CAO from IFC's reporting whether this target was met.

IFC considered that the client applied specific pollution prevention and control practices consistent with good international practice and compliant with IFC guidelines.⁸³ As of 2008, it noted the need to conduct an audit to benchmark energy performance against industry standards and the development of a carbon footprint. It is unclear to CAO as to whether this audit was completed.

IFC noted that sulfur dioxide (SO₂) emissions had initially decreased from 2007. In 2008 and 2009 IFC noted that a lack of progress on fugitive emissions (which account for the majority of total SO₂ emissions). In 2009, IFC noted that a fugitive emissions mitigation project had been delayed for one year. A year later, the client began implementing an SO₂ reduction strategy and fugitive emissions management plans, citing the risk of the possible withdrawal of its operating license if

⁷⁹ Lonmin Plc, SDR 2015, p. 43.

⁸⁰ Lonmin Plc, SDR 2009, pp. 57 and 59. In this context, an impact on the environment is considered moderate when it is confined to the mine property and the natural processes are notably altered but continue in a modified way with impacts being reversible within lifetime of operation. The impact is considered high when the natural processes is totally disrupted for the duration of the activity, but resume functioning afterwards with possible irreversible impacts.

⁸¹ Lonmin Plc, SDR 2010, p. 45.

⁸² Lonmin Plc, SDR 2010, p. 8.

⁸³ IFC (2006) ESRS, <https://goo.gl/eygk7f>.

legislative requirements for SO₂ reductions were not met.⁸⁴ CAO notes that while IFC reported on the emissions resulting from the client's mining operations, it is unclear whether it provided any guidance to help the client achieve its objectives.

Conclusion

While recognizing restrictions that listed companies may have in terms of reporting to particular shareholders, CAO has questions as to whether the reporting requirements IFC agreed to with the client were sufficient to support supervision against IFC's E&S requirements.

CAO notes that IFC identified challenges the client faced in meeting its E&S commitments, and in turn sustaining community support, in the face of an economic downturn. Nevertheless, it is unclear to CAO whether IFC provided support to the client in terms of meeting its requirements, and managing community expectations, as the client's financial situation became more constrained. This is of particular concern, in a context where the client's failure to meet its housing commitments under the SLP was identified by the Marikana commission as creating an environment conducive to tension, labor unrest, and disunity among employees.

CAO notes that throughout supervision IFC's reporting on the client's water and sanitation projects was limited. As for the target on women employment, CAO notes that it is unclear whether IFC provided advice to the client, especially after the conclusion of the TAAS, such as would support it to meet the commitments set out in the legally mandated SLP.

On the issue of environmental and health impacts, it is unclear to CAO whether IFC considered the environmental or health risks stemming from the recognized monitoring gap and provided guidance to mitigate it.

CAO notes that IFC identified several times the slow progress in the implementation of various mitigation measures. However, it is unclear to CAO whether IFC reviewed with the client any performance improvement opportunities that would be commensurate to the risks identified.

IV. CAO Decision

The purpose of a CAO compliance appraisal is to ensure that compliance investigations are initiated only in relation to projects that raise substantial concerns regarding E&S outcomes and/or issues of systemic importance to IFC. In deciding whether to initiate an investigation, CAO weighs factors including the magnitude of the E&S concerns raised in a complaint, results of a preliminary review of IFC's E&S performance in relation to these issues, the existence of questions as to the adequacy of IFC's requirements, and a more general assessment of whether a compliance investigation is the appropriate response in the circumstances.

In this case the complainants provide personal accounts of the living conditions in the settlements near the mine. They provide accounts of pollution from the client's facilities causing health problems in the local population. They also provide accounts from family members of Lonmin employees regarding the adverse impacts of poor housing conditions and lack of access to water and sanitation.

Having conducted an initial review of project documentation, CAO has identified questions as to IFC's review and supervision of the project as relate to the issues raised by the complainants. In relation to the social impacts alleged, CAO has questions as whether IFC properly applied its "broad community support" requirement to the project and whether IFC assured itself that the client's approach to stakeholder engagement was consistent with the requirements of

⁸⁴ Lonmin Plc, SDR 2010, p. 8.

Performance Standard 1. CAO has also identified questions as to IFC's review and supervision of the client's ability to comply with the social and labor plan, that was agreed as a condition of its mining license. This included commitments to upgrade housing and improve living conditions for workers in the communities around the mine, which were acknowledged to poor. In relation to the environmental impacts alleged, CAO has questions as to the framework that IFC agreed to for reporting on air and water pollution and whether this provided sufficient basis for IFC to assess project compliance with its requirements under Performance Standards 3 and 4.

Considering the accounts of adverse impact provided by the complainants and the questions CAO has identified in relation to IFC's review and supervision of related aspects of the project, CAO concludes that the criteria for investigation are met. Terms of Reference for the investigation will be prepared in accordance with CAO's Operational Guidelines.