

**INTERNATIONAL FINANCE CORPORATION**

**MANAGEMENT REPORT  
IN RELATION TO THE**

**CAO COMPLIANCE INVESTIGATION REPORT**

**ON**

**LONMIN PLC  
SOUTH AFRICA – SUB-SAHARAN AFRICA**

**(PROJECT Nos. 24803, 28400, 33170)**

November 17, 2023

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## ABBREVIATIONS AND ACRONYMS

AMR	Annual Monitoring Report
AS	Advisory Services
BCS	Broad Community Support
CALS	Center for Applied Legal Studies
CAO	Office of the Compliance Advisor Ombudsman
COC	Conditions of Commitment
COD	Conditions of Disbursement
CRDP	Contextual Risk Data Portal
CRR	Credit Risk Rating
E&S	Environmental and Social
EHS	Environmental, Health and Safety
EMPr	Environmental Management Program
ESAP	Environmental and Social Action Plan
ESIA	Environmental and Social Impact Assessment
ESRP	Environmental and Social Review Procedure
ESRS	Environmental and Social Review Summary
IFC	International Finance Corporation
MAP	Management Action Plan
MPR	Management Progress Report
MPRDA	Mineral and Petroleum Resources Development Act of 2002
MR	Management Report
NGO	Non-Government Organization
PRM	Peer Review Meeting
PS	IFC Performance Standards
SF	IFC Sustainability Framework
SLP	Social and Labor Plan
SDR	Sustainable Development Report
TOR	Terms of Reference
US\$	United States Dollar
VP	Vice President
WBG	World Bank Group
WITS	University of Witwatersrand

## EXECUTIVE SUMMARY

i. In June 2015, a complaint was lodged with the Office of Compliance Advisor Ombudsman (CAO) by a local community organization Sikhala Sonke and individual community members (the “Complainants”) regarding the Marikana mine in North West Province, South Africa, owned and operated by Lonmin PLC (“Lonmin” or the “Company”). The complaint cited concerns about contamination of air and groundwater and negative impacts on the living conditions of nearby communities, including on housing, water, sanitation, infrastructure, and employment (Lonmin-02/Marikana).<sup>1</sup> The complaint also cited concerns about the project’s environmental and social (E&S) commitments, IFC’s E&S due diligence, and the Company’s non-compliance with national law. The Center for Applied Legal Studies (CALS) of the University of Witwatersrand (WITS), South Africa, assisted the Complainants in bringing the complaint forward. The parties agreed to engage in a CAO convened dispute resolution process, but in December 2016 the complainants withdrew from this process. In December 2017, CAO concluded that the complaint met its criteria for compliance investigation. In June 2023, the CAO delivered a Compliance Investigation Report to IFC.

ii. The June 2015 complaint was submitted several years after CAO self-initiated a compliance appraisal following violent incidents between the striking Marikana mine workers and South African police that took place in August 2012 (Lonmin-01/CAO Vice President Request).<sup>2</sup> CAO refers to these events as the “Marikana tragedy”. The 2012 compliance appraisal conducted by CAO found that a nexus between the E&S performance issues and the tragic outcomes of August 2012 could not be sufficiently established. CAO decided an investigation was not warranted and closed the case.

iii. In 2006, Lonmin, at the time the world’s third largest platinum company listed on the London Stock Exchange, asked IFC to support the development, expansion, and mechanization of Lonmin’s South African mines, including its community and local economic development program.

iv. In 2007, IFC approved an investment and advisory package comprising a US\$50 million equity investment (1.1% stake) and a US\$100 million loan, which was made available on a standby basis for a period of three years (Lonmin #24803)<sup>3</sup>, as well as a US\$6 million Advisory Services (AS) program (Lonmin #548827).<sup>4</sup> In 2009 and 2012, IFC participated in two rights issues, together totaling US\$9.7 million, to maintain IFC’s proportionate share of the Company [and manage its equity value] (Lonmin #28400 and #33170).<sup>5</sup> IFC divested its equity position over time starting in 2009 with a full exit from its position achieved in December 2015. The IFC loan was never disbursed and was ultimately cancelled in 2010. The AS program was completed and closed in 2010. The Company was acquired in June 2019 by Sibanye-Stillwater Ltd, a leading South African mining company. Following this acquisition, IFC’s former client no longer exists.

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<sup>1</sup> <https://www.cao-ombudsman.org/cases/south-africa-lonmin-02marikana>

<sup>2</sup> <https://www.cao-ombudsman.org/cases/south-africa-lonmin-01cao-vice-president-request>

<sup>3</sup> <https://disclosures.ifc.org/project-detail/SPI/24803/lonmin>

<sup>4</sup> <https://disclosures.ifc.org/project-detail/AS/548827/lonmin-platinum-producer-technical-assistance-program>

<sup>5</sup> Since Lonmin #28400 and #33170 were rights issues, these project numbers are for IFC internal use.

v. At the time of IFC's investment in Lonmin in 2007 the IFC's Sustainability Framework (SF), including IFC's Environmental and Social Sustainability Policy and Performance Standards (PSs) had only recently been introduced in 2006 and the processes that are standard today had not yet been fully developed. However, IFC's pre-appraisal and E&S due diligence was aligned with the IFC's 2006 Sustainability Framework (SF), and adequately determined that there was broad community support (BCS) at the time of investment.<sup>6</sup> During the time of IFC's investment, Lonmin was operating under a valid mining license in compliance with national laws. Through its AS program, IFC supported Lonmin in the implementation of its Social and Labor Plan (SLP), a requirement under national law.

vi. The ability of IFC to visit the project site was materially affected by the Marikana tragedy, with no IFC supervision visits taking place from 2012 onward. However, IFC was able to engage in discussions with the Company and review Lonmin's public reports until the time of IFC's full exit from the investment in 2015.

vii. IFC appreciates CAO's recognition that there is limited scope for a project level response to this compliance investigation, given the time that has passed since the receipt of the complaint in 2015, IFC's divestment from the project and the acquisition of the Company by another entity. IFC welcomes CAO's systemic recommendations highlighting challenges of implementation of the original 2006 Sustainability Policy and notes that they were addressed through the 2012 update of the Sustainability Policy and regular updates of the respective procedures, including the most recent update to the ESRP that captures changes in institutional arrangements and addresses recommendations from the External Review of IFC/MIGA's E&S Accountability. IFC proposes a specific, targeted and timebound action in a Management Action Plan (MAP) to strengthen guidance for IFC staff on the estimate of material resources for the implementation of Environmental and Social Action Plans (ESAP) by clients.

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<sup>6</sup> The IFC Sustainability Framework consists of the IFC Sustainability Policy and Environmental and Social Performance Standards.

## I. INTRODUCTION

1. In June 2015, a complaint was lodged with the Office of Compliance Advisor Ombudsman (CAO) by a local community organization Sikhala Sonke and individual community members (the “Complainants”) regarding the Marikana mine in North West Province, South Africa owned and operated by Lonmin PLC (“Lonmin” or the “Company”), citing concerns about contamination of air and groundwater and negative impacts on the living conditions of nearby communities, including on housing, water, sanitation, infrastructure, and employment (Lonmin-02/Marikana).<sup>7</sup> The complaint also cites concerns about the project’s environmental and social (E&S) commitments, IFC’s E&S due diligence, and non-compliance with national law. The Center for Applied Legal Studies (CALs) of the University of Witwatersrand (WITS), South Africa, assisted the Complainants in bringing the complaint forward. The parties agreed to engage in a CAO convened dispute resolution process, but in December 2016 the complainants withdrew from the process. In December 2017, CAO concluded the complaint met its criteria for compliance investigation. In June 2023 CAO delivered a Compliance Investigation Report to IFC.

2. This IFC Management Report (MR) aims to provide a reasoned response to CAO’s findings and recommendations regarding non-compliance or related harm. This MR is organized into five sections. Section I is this introduction. Section II provides background on the project, including IFC’s investment in Lonmin and summarizes events that occurred in the country, sector, and company during the IFC investment period. Section III summarizes the CAO case and Section IV presents Management’s response to CAO’s compliance findings and recommendations. Section V provides the conclusion.

## II. THE PROJECT

3. The development of the Marikana mine commenced in 1971. In 2006, Lonmin, at the time the world’s third largest platinum company listed on the London Stock Exchange<sup>8</sup>, asked IFC to support the development, expansion, and mechanization of Lonmin’s South African mines, including its community and local economic development program.

4. In 2007, IFC approved an investment and advisory package comprising a US\$50 million equity investment (1.1% stake) and a US\$100 million loan, which was made available on a standby basis for a period of three years (Lonmin #24803)<sup>9</sup>, as well as a US\$6 million Advisory Services (AS) program (Lonmin #548827).<sup>10</sup> In 2009 and 2012, IFC participated in two rights issues, totaling US\$9.7 million, to maintain IFC’s share and manage its equity value (Lonmin #28400 and #33170). IFC divested its equity position over time starting in 2009 with the full exit achieved in 2015. The IFC loan was never disbursed and was ultimately cancelled in 2010. The AS program was completed and closed in 2010. The Company was acquired in June 2019 by Sibanye-Stillwater

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<sup>7</sup> <https://www.cao-ombudsman.org/cases/south-africa-lonmin-02marikana>

<sup>8</sup> The company was acquired in June 2019 by Sibanye-Stillwater Ltd.

<sup>9</sup> <https://disclosures.ifc.org/project-detail/SPI/24803/lonmin>

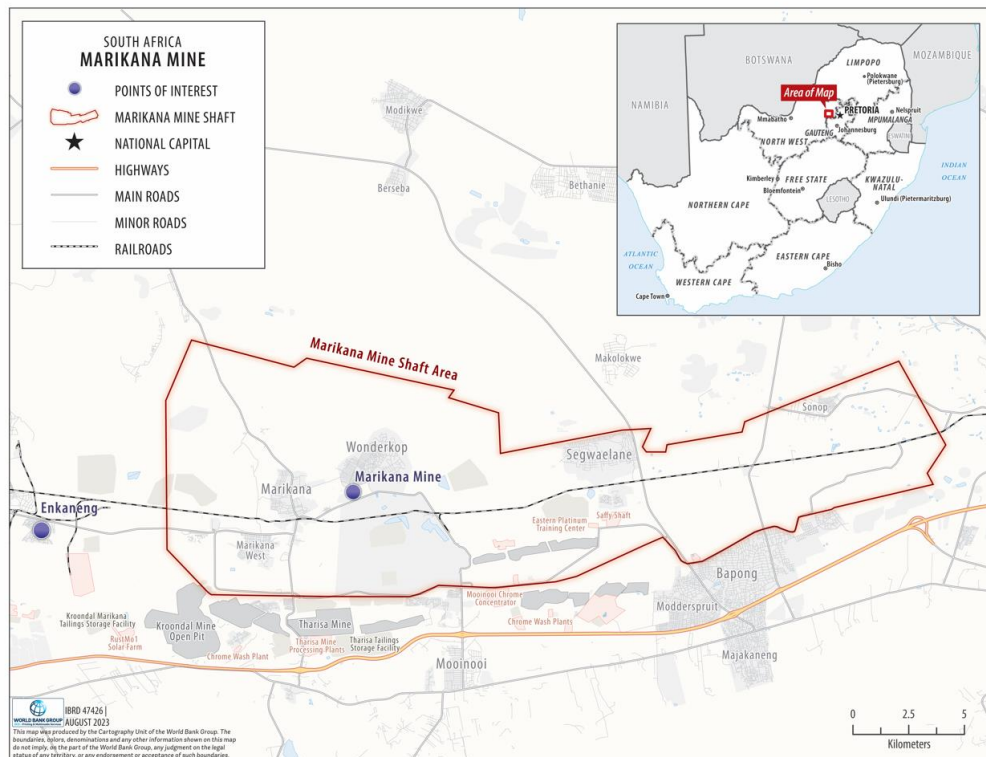
<sup>10</sup> <https://disclosures.ifc.org/project-detail/AS/548827/lonmin-platinum-producer-technical-assistance-program>

Ltd, a leading South African mining company. Following this acquisition, IFC's former client no longer exists.<sup>11</sup>

5. In 2006, prior to IFC's investment in Lonmin, a due diligence process assessed the Company's financial health, environmental practices, and social impacts. The environmental and social (E&S) due diligence included dialogue with the local community, whose concerns were considered in the investment decision making. Upon investment, IFC's supervision extended until it fully divested in 2015, involving regular assessments of Lonmin's financial, environmental, and social performance. During the supervision period, the project encountered numerous challenges, including labor unrest, environmental issues, and financial instability. Regular engagement with Lonmin's management and the local community facilitated informed decision making and strategic adaptations.

6. Following the Marikana tragedy in 2012 that resulted in substantial loss of life, the ability of IFC to visit the project site was materially affected, with no IFC supervision visits taking place from 2012 onward. However, IFC was able to engage in discussions with the Company and review Lonmin's public reports until IFC was able to gradually divest its equity and finally exit in December 2015.

7. Figure 1 provides a map indicating the project location and points of interest.



<sup>11</sup> [https://www.sec.gov/Archives/edgar/data/1786909/000120561321000040/sibanye\\_release.htm](https://www.sec.gov/Archives/edgar/data/1786909/000120561321000040/sibanye_release.htm)

### III. CAO CASE

8. In June 2015, CAO received a complaint from community members living near Lonmin's Marikana operations (Lonmin-02/Marikana).<sup>12</sup> The individuals submitted their complaint along with a local community-based organization Sikhala Sonke "We Cry Together" (collectively the "Complainants"). They were assisted by the Center for Applied Legal Studies (CALS) of the University of Witwatersrand (WITS), South Africa. Most of the Complainants were women who lived in Enkaneng, an informal settlement within the Bojanala District Council of North West Province. Figure 1 above shows the location of Enkaneng in relation to the Marikana mine.

9. The complaint raised issues concerning the impacts of Lonmin's activities on the Enkaneng community, more specifically alleged absence of proper housing, sanitation, reliable and safe electricity and roads, and accessible, potable, and reliable water. Further, the complaint alleged that to the extent the mine offered benefits in the form of employment, those benefits were offered least to women and, despite the promises from IFC that its advice to Lonmin would substantially increase employment opportunities for women at the mine, they alleged that less than 8 percent of employees were women.

10. The June 2015 complaint did not center on the 2012 Marikana tragedy and was submitted several years after the 2012 CAO compliance appraisal initiated by the CAO Vice President (VP) (Lonmin-01/CAO Vice President Request).<sup>13</sup> The 2012 compliance appraisal conducted by CAO found that a nexus between the E&S performance issues and the tragic outcomes of August 2012 could not sufficiently be established. CAO decided an investigation was not warranted and closed the case.

11. Following CAO's assessment of the June 2015 complaint,<sup>14</sup> a CAO-facilitated dispute resolution process began in September 2015, shortly before IFC completed its divestment of Lonmin shares. In March 2017, the Complainants formally withdrew from the dispute resolution process citing a lack of progress.<sup>15</sup> The complaint was transferred to CAO's compliance function for appraisal.<sup>16</sup> CAO accounts for the subsequent five-year gap before publication of the CAO investigation report as the result of several factors including CAO staff turnover, the COVID-19 pandemic, and a backlog of compliance investigation cases.

12. The Terms of Reference (TOR) of the compliance investigation required CAO to assess whether IFC's investment in the Company was appraised, structured, and supervised in accordance with applicable IFC policies, procedures, and standards. Considering the issues raised in the complaint, the TOR stated that the investigation would focus on:

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<sup>12</sup> <https://www.cao-ombudsman.org/sites/default/files/downloads/ComplaintbyAffectedCommunityMembersinRelationtoSocialandEnvironmentalImpactsofLonmin20150615.pdf>

<sup>13</sup> <https://www.cao-ombudsman.org/cases/south-africa-lonmin-01cao-vice-president-request>

<sup>14</sup> [https://www.cao-ombudsman.org/sites/default/files/downloads/CAOAssessmentReport\\_October1.pdf](https://www.cao-ombudsman.org/sites/default/files/downloads/CAOAssessmentReport_October1.pdf)

<sup>15</sup> [https://www.cao-ombudsman.org/sites/default/files/downloads/Lonmin02DRConclusionReport\\_May252017\\_1.pdf](https://www.cao-ombudsman.org/sites/default/files/downloads/Lonmin02DRConclusionReport_May252017_1.pdf)

<sup>16</sup> [https://www.cao-ombudsman.org/sites/default/files/downloads/CAOAppraisalLonmin\\_Dec4.pdf](https://www.cao-ombudsman.org/sites/default/files/downloads/CAOAppraisalLonmin_Dec4.pdf)



- 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 directed that the investigation should aim to document lessons learned for future operations.<sup>17</sup>

13. In June 2023, CAO released its final compliance investigation report documenting its findings and recommendations regarding IFC’s E&S performance in relation to investments in Lonmin and the 2015 complaint (the “CAO Investigation Report”).

14. While the CAO compliance investigation was conducted under the CAO 2013 Operational Guidelines, IFC applies the CAO Policy, effective July 1st, 2012, to its MR, in line with the agreed transitional agreement.<sup>18</sup>

15. To our knowledge, at the time of submission of this MR, CAO did not have any further contact with the complainants or their representatives for some time, therefore they could not be consulted in the preparation of this report.

#### **IV. MANAGEMENT RESPONSE TO CAO FINDINGS AND RECOMMENDATIONS**

16. IFC Management wishes to express its appreciation to the Complainants for raising these issues and to highlight that they have been taken seriously since the complaint was filed in 2015. Management wishes to thank the CAO for its detailed analysis of IFC's approach to E&S management of its investment in Lonmin.

##### **A. IFC Responses to CAO Findings**

17. This section is structured to respond to CAO findings related to Investment Structure and Pre-Investment Review and CAO findings related to IFC Supervision.<sup>19</sup>

##### ***CAO Findings in Relation to Investment Structure and Pre-Investment Review***

##### **Environmental and Social Impact and Risk Assessment**

18. IFC disagrees with CAO’s findings related to E&S risk assessment and considers that it was appropriate to accept the E&S risk assessment instruments required by national law to assess E&S impacts and risks (CAO Finding 7). The investment was a brownfield project that had been in operation since the early 1970s. Without an extension to be financed, a traditional Environmental and Social Impact Assessment (ESIA) described in the IFC SF would not have

<sup>17</sup> [https://www.cao-ombudsman.org/sites/default/files/downloads/TORforLonminInvestigation\\_Jan2018.pdf](https://www.cao-ombudsman.org/sites/default/files/downloads/TORforLonminInvestigation_Jan2018.pdf)

<sup>18</sup> <https://www.cao-ombudsman.org/sites/default/files/downloads/CAOPolicy-TransitionalArrangements.pdf>

<sup>19</sup> See CAO Compliance Investigation Report, 2023, Annex A, for a list of CAO’s findings.

been an appropriate instrument to assess E&S risks. IFC reviewed the Environmental Legal Compliance Audits, Environmental Management Program (EMPr) Performance Audits and multiple EMPr component specific environmental assessments that were required under national law and available at the time, which was deemed adequate. These instruments collectively constituted a complete E&S impact and risk assessment of the project to the standards at that time.

### **Living Conditions in the Informal Settlements**

19. IFC agrees the pre-investment review as per the standards at that time gave insufficient attention to the living conditions in the informal settlements in the Company's sphere of influence, including in Enkaneng where many of the Complainants lived (CAO Finding 5). IFC acknowledges that its prospective client's operations were linked to the growth of informal settlements in the region presenting a significant contextual risk to the project.

### **Social Labor Plan**

20. The South African regulatory framework set by Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA) and the Broad-Based Socio-Economic Empowerment Charter for the South African Mining Industry, 2004 (Mining Charter, 2004) require companies to develop and implement a Social Labor Plan (SLP) to obtain a mining license and define the socio-political objectives of the SLPs as promoting employment, enhancing social and economic welfare, transforming the mining industry, and facilitating the socio-economic development of mining areas.

21. Lonmin's SLP included commitments to build employee housing, improve access to water and sanitation in communities around the Marikana mine, employ more women in its workforce, as well as improve air emission and groundwater pollution standards. These commitments speak to broader socio-economic development objectives and do not address E&S risk and impacts from Lonmin's mining operations.

22. The 2006 IFC Sustainability Policy aimed to help clients manage and improve their E&S performance by avoiding adverse impacts on workers, communities, and the environment, or if avoidance is not possible, to reduce, mitigate, or compensate for the impacts, as appropriate. IFC disagrees that the implementation of Lonmin's SLP should have been an E&S requirement for the project (CAO Finding 2).

23. During the E&S pre-investment review, the IFC team had extensive and detailed discussions about the South African regulations on SLPs and what it entailed. Therefore, IFC concluded that, while certainly a legal requirement under national law, the SLP was not, in intent and in content, an E&S requirement within the scope of the PSs. Hence, IFC considers that paragraphs 13 and 17 of the Sustainability Policy as well as PS1 do not apply in this context.

24. A 2016 study by CALS, a legal research unit within WITS that also supported the Complainants in submission of their case in 2015, underscores this perspective. The study

concluded that SLPs are primarily tools for addressing social and economic disparities, rather than mechanisms for managing E&S risks.<sup>20</sup>

### **Investment Structure**

25. CAO Finding 1 explains that IFC's equity investment did not have an adequate legal covenant that would have required Lonmin to operate in accordance with IFC Performance Standards.

26. Under the 2006 Sustainability Policy, IFC emphasized the necessity for its clients to operate in a socially responsible manner and to adhere to the Performance Standards on Environmental and Social Sustainability. However, the policy did not specifically require E&S covenants in all investment agreements. The Environmental and Social Review Procedure (ESRP) 2006 required inclusion of a general covenant requiring client compliance with the IFC Performance Standards but went on to note that in the type of listed equity that IFC invested in here, IFC's remedy lies in market exit.<sup>21</sup> This understanding of the ESRP 2006 requirement has been reflected in the project documentation where different approaches were taken for the debt and equity investments in Lonmin. The IFC loan agreement included covenants mandating the client's compliance with IFC's PS, while the equity subscription agreement did not. It is important to note that the current 2012 IFC SF now explicitly provides that all IFC's investment agreements include E&S covenants without making a distinction between debt or equity investments (listed or otherwise).

27. Ultimately, the IFC loan was never disbursed and was cancelled in 2010, the same year when the AS program was completed and closed. While IFC did not have any contractual commitment from the Company to operate in compliance with the PSs after cancellation of the IFC loan, in practice, IFC continued to receive quarterly supervision reports as part of Lonmin's commitments under the equity investment, which was deemed sufficient at that time.

### ***CAO Findings in relation to Supervision***

#### **Supervision Method**

28. Contrary to CAO's Finding 7 and 8, Management would like to highlight that selecting Lonmin's Sustainable Development Reports (SDR) instead of project specific Annual Monitoring Reports (AMRs) as a key source for E&S monitoring was adequate given the large scale and geographically distributed operations of Lonmin, as well as the project scope (Advisory Services, loan, and equity). This is still the practice today for similarly structured IFC investments for clients with wide-ranging operations. IFC's supervision was not limited to the SDRs but also included

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1. <sup>20</sup> Center for Applied Legal Studies (2016) states that an SLP is "a vehicle for rectifying the unequal relationship between companies on the one hand and communities and workers on the other" (p. 15) as well as "a development tool (which) needs to be viewed in the context of the laws and policies framing government's local, provincial and national development agenda" (p. 25). It also notes that "SLPs can be viewed as part of a broader project aimed at addressing the legacy of colonialism and apartheid, reconstructing society along egalitarian lines, and building a sense of common nationhood" (p. 23). Finally, according to CALS, "the SLP system cannot be viewed outside of the context of the laws and policies enacted to promote the participation in the economy by Historically Displaced Persons" (p. 25).

<sup>21</sup> Paragraph 4.2.15(c) of the 2006 ESRP.

review of detailed monitoring and environmental performance reports, which included not only measurements and assessments on emissions and dust fallout, but also on water use, groundwater pollution, waste reduction targets and resource efficiency among other aspects, for all project sites.

29. IFC's supervision also included site visits until the time of the Marikana tragedy, as well as direct and continuous support to Lonmin's E&S management. It is noteworthy that the Company, its operation, and resources for E&S management were severely affected by the 2008 global financial crisis. Following the Marikana tragedy in 2012, the ability for IFC to visit the project site was materially affected, and no further IFC site visits were permitted to take place. However, IFC continued to engage with the Company and review Lonmin's public reports. This, combined with a lack of contractually binding E&S requirements tied to IFC's remaining equity investment, made effective E&S supervision challenging from 2012 until IFC's full divestment in 2015.

### **Compliance with National Laws**

30. In Findings 2 and 3 CAO suggests IFC should have monitored the implementation of Lonmin's SLP to ensure the client's compliance with national law as part of E&S supervision of the loan and equity investments. Management wishes to highlight that during the time of IFC investment Lonmin always held a valid mining license in compliance with national law. IFC does not provide oversight function on behalf of any local regulatory agency or seek to impose our opinions on how local regulatory requirements are monitored or enforced by these agencies.

31. As mentioned above, the implementation of Lonmin's SLP was not part of E&S requirements under the PSs. However, IFC also supported Lonmin with an AS program, which is not part of CAO's investigation, in which IFC's role was to support Lonmin in realizing its socio-political development objectives under the SLP through defined development impact targets under that AS program.

32. IFC agrees it did not adequately monitor contextual risk resulting from the living conditions in informal settlements in the Company's sphere of influence (CAO Finding 6). While the issue of growing informal settlements was identified and monitored by IFC through review of the SDRs as well as site visits, a specific worker influx study to fully understand social dynamics to inform Lonmin's stakeholder engagement strategy would have been adequate.

### **Broad Community Support and Community Engagement**

33. IFC agrees it did not adequately supervise BCS and community engagement (CAO Finding 4). IFC verified BCS during project appraisal and identified deteriorating community relations during supervision through the client's reporting and IFC site visits. However, actions to address the situation and mitigate risk of social conflict were not agreed upon and implemented consistently. Changes in Lonmin's E&S management and engagement strategy were a contributing factor.

34. Management would like to highlight that the project and related informal settlements were not a causal factor of the Marikana tragedy in 2012. The tragic event was the result of a complex interplay of factors extending beyond the reach of IFC's investment and Lonmin's operations.<sup>22</sup>

## **B. IFC Responses to CAO Recommendations**

35. Given the time that has passed since the complaint was received, IFC's divestment from the project and the subsequent change in ownership of the Company, CAO does not present project specific recommendations. CAO makes systemic recommendations on the basis of IFC policies, procedures and guidance in place at the time of IFC's investment in Lonmin to ensure that the lessons learned from this investment are captured and institutionalized.

36. Management appreciates the systemic recommendations presented by the CAO and would like to highlight that these recommendations have been substantially implemented since IFC's divestment in 2015 and are embedded in institutional practices. Recommendations 1-5 have already been addressed through the 2012 update of the Sustainability Framework and regular updates of the respective procedures, including the most recent update to the ESRP to capture changes in institutional arrangements and address recommendations from the External Review of IFC/MIGA's E&S Accountability. To address Recommendation 6, IFC proposes a specific, targeted and timebound action in a Management Action Plan (MAP) (See Section V and Annex A).

***CAO Recommendation 1: 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.***

37. In response to the External Review of IFC/MIGA E&S Accountability, including CAO's Role and Effectiveness in 2020, IFC mainstreamed contextual risk assessment in due diligence and supervision and rolled out a framework for contextual risk assessment, that draws upon country vulnerabilities with respect to rule of law, curbing of civil liberties, including freedom of the press and open civic space and existing issues related to workplace exclusion, community unrest as well as reprisals.

38. IFC's ESRP, dated January 2022, specifically requires continuous identification and management of contextual risks during all project phases, starting with a screening during the project concept stage, followed by further identification and characterization of contextual risks during the appraisal and management review phases, monitoring and management actions from appraisal to supervision.

39. For the purposes of overall contextual risk analysis, IFC developed and launched an internal risk analysis tool, the Contextual Risk Data Portal (CRDP). CRDP provides score based contextual risks assessments for all countries and is utilized for all projects together with other internal tools such as the Gender Based Violence Risk Screening Tool, among others. The

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<sup>22</sup> South African Human Rights Commission, 2015, Marikana Commission of Inquiry Report, <https://www.sahrc.org.za/home/21/files/marikana-report-1.pdf>

screening also utilizes multiple external sources including a third-party E&S data tool that systematically identifies and assesses any negative media and civil society coverage.

***CAO Recommendation 2: Review operational procedures to ensure the inclusion of robust E&S covenants in all investment agreements, including equity agreements.***

40. In contrast to the 2006 Sustainability Policy, the current version, IFC Sustainability Policy 2012, and related procedures already ensure the inclusion of robust E&S covenants in all investments. The current policy specifically states in paragraph 24 that “IFC’s agreements pertaining to the financing of clients’ activities include specific provisions with which clients undertake to comply. These include complying with the applicable requirements of the Performance Standards and specific conditions included in action plans, as well as relevant provisions for environmental and social reporting, and supervision visits by IFC staff or representatives, as appropriate.” This requirement has been included in IFC’s ESRP (dated January 2022), in particular, that at commitment IFC confirms that there are appropriate E&S covenants in the legal agreements for IFC’s investments, including equity investment. In that regard, IFC specimen documentation (for both debt and equity – listed or otherwise) includes detailed provisions for E&S covenants and drafting notes, which are reviewed and amended as E&S procedures and requirements evolve.

41. Prior to commitment for any project, the E&S specialist will review the E&S covenants in the legal agreements to ensure they are appropriate and proportional to E&S risks. Together with the project counsel, the E&S specialist may tailor or supplement the requirements to the specific E&S risks. Where an investment does not use specimen documentation, the project counsel will ensure that required E&S provisions are inserted in the documentation, following the process described above.

42. It is important to consider the different legal implications for the E&S covenants in a debt and equity project. Where an E&S covenant is breached in a debt investment, IFC has recourse by way of acceleration, which usually can create significant leverage to promote compliance with the E&S provisions. In an equity project there is no such recourse.

43. IFC does use redemption rights and put options for its equity investments, where available and appropriate, to enhance E&S covenant enforceability. Listed investments also have the advantage of liquidity, providing IFC with a more effective exit mechanism in the event of breach than an unlisted equity. The exit through market liquidity in the case of an investment in listed equity generally is available to IFC even if the investment agreement does not contain any E&S covenants. The negative market signal that would be caused by IFC’s exit can create leverage to enhance E&S compliance.

44. In conclusion, IFC’s operational procedures now require the inclusion of appropriate E&S covenants in investment agreements to which IFC is a party, including in the case of equity investments, and this requirement is implemented through documentation as a matter of IFC standard practice today.

***CAO Recommendation 3: 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.***

45. When IFC invests in listed equity, there are often restrictions on the way in which IFC may contract with the investee company, such as the requirement for equal treatment of shareholders, protection of market sensitive information, and related party transaction rules. This may translate to limitations in E&S reporting and the reliance on publicly available data (available to all shareholders indiscriminately). Under the current Sustainability Policy, IFC now requires E&S covenants in listed equity investments, which can be tailored to account for these restrictions.

46. As per IFC's current ESRP, dated January 2022, E&S teams are specifically required to review the E&S content within draft legal agreements. This includes consideration of specific covenants and reporting requirements not addressed by standard clauses. The team works with clients to establish a reporting format and content that corresponds with IFC's E&S requirements.

47. Further, the ESRP defines the process for determining necessary Conditions of Commitment (COC) and Conditions of Disbursement (COD), of which the latter are incorporated in the relevant investment agreements. Adhering to this procedural framework aids in maintaining alignment with IFC's E&S requirements and provides a structure for working with clients.

***CAO Recommendation 4: Develop systematic approaches to identifying and supervising critical E&S compliance requirements under national law, as required by Performance Standard 1.***

48. Performance Standard 1 defines responsibility for client adherence to national and international laws stating, "*the client will comply with applicable national law, including those laws implementing host country obligations under international law*". Further, IFC's 2012 Sustainability Policy defines the corporation's responsibility to provide support for clients to effectively manage their environmental and social risks. IFC respects the sovereignty of host nations' regulatory processes, while assisting clients in managing their environmental and social risks effectively.

49. In the years following IFC's Lonmin investment, IFC has enhanced its procedures to include legal templates that require agreements between IFC and clients to contain provisions mandating clients to affirm their adherence to host nation laws. IFC requires proof of applicable national permits, for example environmental licensing, to be current and in force. In circumstances where compliance is inadequate, or there is a shift in compliance status, clients are contractually obligated to notify IFC. Similarly, IFC's Annual Monitoring Report (AMR) templates, provided to clients, include a requirement for the disclosure of any non-compliance with host nation law. These requirements enhance IFC's capability to assist clients in swiftly addressing their environmental and social risks and impacts.

50. The above-mentioned tools for contextual risk analysis, especially third-party E&S data tools, also allow for monitoring aspects of compliance with national laws as well as dynamics or changes in the broader domestic regulatory framework related to requirements under the IFC SF.

***CAO Recommendation 5: 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.***

51. IFC recognizes the importance of addressing instances where emissions and/or discharges exceed permissible standards promptly and is dedicated to ensuring the mitigation of potential health impacts on communities within a project's sphere of influence. As mentioned above, IFC requires proof of applicable national permits, for example environmental licensing, to be current and in force.

52. The WBG General EHS Guidelines and the WBG Industry Sector Guidelines for mining in those guidelines defined and stringent standards for emissions and discharges were introduced in April 2007, after the Lonmin project was disclosed, presented to the Board, and signed.

53. Independently, IFC remains committed to continuously improving its policies to ensure the most effective environmental and social safeguards. This commitment is evident in the 2012 Sustainability Policy which further developed IFC's institutional requirements on project non-compliance. Where a client fails to adhere to its E&S commitments, IFC actively engages with the client to restore compliance where feasible. If non-compliance persists, IFC is prepared to exercise suitable remedies.

54. The procedural enhancements operationalized through the ESRP support the actualization of these policy commitments and guidelines. The ESRP, which has been significantly updated in the years following the appraisal and investment in the Lonmin project, defines how IFC operates in assessing, managing, and monitoring the environmental and social aspects of projects. This refined procedure underscores IFC's role during the supervision phase and necessitates our engagement with clients to ensure a swift response to non-compliances against the Performance Standards or the applicable WBG EHS Guidelines.

***CAO Recommendation 6: 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.***

55. IFC is in agreement with CAO that costing of E&S commitments is a requirement under the Sustainability Framework. Performance Standard 1, para 16 requires that:

56. 'The management programs will establish environmental and social Action Plans, which will define desired outcomes and actions to address the issues raised in the risks and impacts identification process, as measurable events to the extent possible, with elements such as performance indicators, targets, or acceptance criteria that can be tracked over defined time periods, and with estimates of the resources and responsibilities for implementation.'

57. IFC is responsible for verifying that the client's E&S commitments have cost estimates, particularly those in the Environmental and Social Action Plan (ESAP). IFC requires cost estimates, particularly in projects with material E&S management costs (e.g., wastewater treatment



plants, resettlement action plans or biodiversity action plans) or projects with new clients that do not yet have an E&S management track record.

58. In 2022 IFC updated its Environmental and Social Review Procedures (ESRP) and corresponding ESRP Handbook, which specifies that cost estimates for material cost items should be requested when defining and negotiating the ESAP.

59. IFC does seek to verify its client's financial resilience through financial modeling and stress testing (sensitivity scenario appropriate for the sector, market and project), to ascertain that the project is likely to be successful, including regarding the client's ability to provide for its E&S commitments.

60. Management appreciates the CAO's forward looking systemic recommendation. To support a more consistent review by IFC of estimates of resources required for the implementation of ESAPs by clients, IFC proposes a Management Action Plan (MAP) in Annex A.

## **V. MANAGEMENT ACTION PLAN (MAP)**

61. In response to CAO recommendation 6, IFC worked with relevant parties and prepared a MAP that is presented in Annex A. The MAP's overall objective is to strengthen guidance for IFC staff to support a more consistent review by IFC of estimates of resources required for ESAP implementation by clients. The MAP offers a specific, targeted and timebound action to (i) provide guidance and training for IFC staff on the estimate of material resources for ESAPs implementation by clients and (ii) include consistent review of these resource estimates as part of the investment processing cycle.

62. The CAO Policy requires Management to consult a MAP with complainants. However, the complainants withdrew from the CAO process in 2016 and CAO was not able to engage with them during the investigation. Therefore, the proposed MAP has not been consulted with complainants.

## **VI. CONCLUSION**

63. Management appreciates CAO's constructive engagement and the detailed assessment in CAO's Investigation Report and acknowledges CAO's findings that underscore significant risks of investing in the mining industry facing increasingly complex challenges in operating in contexts of social conflict and economic vulnerability.

64. Management would like to thank CAO for its suggestions in terms of identifying areas of improvement in IFC practices and implementation of IFC's Sustainability Policy and Performance Standards that could benefit future operations for similar types of investments. IFC agrees with CAO on not proposing any project level actions given that IFC exited this investment in 2015 and the investee company no longer exists. IFC is continuously aiming to bring improvements to its E&S management practices and to revise procedures and guidance as necessary utilizing lessons learned from current and past investments.

65. We would like to note that IFC practices and procedures, specifically IFC Sustainability Policy and Performance Standards, have evolved substantially since the time of IFC's original investment in Lonmin in 2007. Management would like to highlight that systemic actions recommended by CAO—including requirements to have a general PS compliance covenant in all legal agreements, enhancing contextual risk assessment both pre-investment and during supervision, establishing more stringent standards for management of emissions and discharges, strengthening documentation of client's compliance with national law—have substantially been implemented and are now common practice in IFC operations as described above. Management proposes a MAP to strengthen guidance for IFC staff to support a more consistent review by IFC of estimates of resources required for ESAP implementation by clients.

## VII. ANNEX A: MANAGEMENT ACTION PLAN

Management proposes actions in relation to the CAO recommendations and the corresponding findings that Management is able to address. The MAP below specifies actions that IFC will implement within the proposed timeframe.

As per CAO policy, in determining these actions, IFC would be required to hold consultations with the Company and the Complainants. However, at this point in time the company no longer exists, and complainants are no longer engaging with CAO on the investigation.

<b>CAO Recommendation/ Area of Improvement</b>	<b>Action</b>	<b>Deliverable / expected outcome  Timeframe</b>
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.	<p>Develop guidance and strengthen internal controls process i) to review adequacy of client’s estimates of resources for the implementation of the Environmental and Social Action Plan (ESAP) as required in PS1 (2012), paragraph 16, and ii) to document the review as part of the appraisal documentation.</p> <p>The guidance will include the development of a risk-based approach to support IFC staff in reviewing such ESAP estimates and assessing the client’s ability to provide financial resources for its E&amp;S commitments.</p>	<p>Updated and disseminated ESAP guidance as part of the Environmental and Social Review Procedures (ESRP) Handbook</p> <p>Timeframe: By end of Q4FY24</p> <p>IFC to integrate guidance in E&amp;S and investment staff training.</p> <p>Timeframe: By end of Q2FY25</p> <p>Internal controls process effective as part of the ESRP implementation.</p> <p>Timeframe: By end of Q1FY25</p>

## **Disclaimer**

The IFC Management Report and Management Action Plan is provided in response to the Investigation Report of the Office of the Compliance Advisor Ombudsman (CAO) relating to complaints of alleged non-compliance by IFC with its E&S Policies (as defined in the IFC/MIGA Independent Accountability Mechanism (CAO) Policy) in a project supported by IFC finance or investment.

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