

## DISPUTE RESOLUTION CONCLUSION REPORT – LONMIN-02/MARIKANA

*This report summarizes the CAO Dispute Resolution process in relation to the IFC-supported Lonmin Project (#24803) in South Africa.*

### OVERVIEW

#### IFC's Project

Lonmin Plc ("Lonmin") is a large publicly traded platinum producer with operations in South Africa. In December 2006, IFC approved two investment and advisory service projects to support Lonmin's multi-year expansion program at its platinum operations. The projects consist of:

- i) the development, expansion, and mechanization of Lonmin's South African mines;
- ii) the financing of planned transactions regarding broader and more equitable ownership through Black Economic Empowerment (BEE) participation in Lonmin's development programs; and
- iii) through the IFC Advisory Service project, a comprehensive, large-scale community and Local Economic Development Program (LEDP) for the community of about 350,000 people living on and around Lonmin's main operations.

IFC's investment in the project entailed a standby 10 year loan of US\$100 million and an equity investment of \$50 million. IFC completed its involvement in the project in January 2016.



Lonmin Mine, Marikana, South Africa, 2016

#### The Complaint

In June 2015, CAO received a complaint from individual community members and a local community non-governmental organization, Sikhala Sonke (the Complainants), in South Africa. The Center for Applied Legal Studies (CALs) assisted the Complainants in lodging the complaint. Most of the Complainants are women who live in Enkaneng, an informal settlement near the Marikana mine within the Bojanala District Council in the North West Province of South Africa.

The complaint raises issues concerning the impacts of Lonmin's activities on the Enkaneng community, more particularly alleging an absence of roads, sanitation and proper housing, as well as accessible, potable, and reliable sources of water. Further, the Complainants allege that to the extent the mine offers benefits in the form of employment, less than 8 percent of employees currently are women. The complainants also allege environmental pollution, specifically relating to air and water. They further allege failure by Lonmin to provide the Enkaneng community with adequate health and educational facilities which were promised at the inception of the project.

A redacted version of the complaint can be found on CAO's website. A number of other documents were submitted to CAO in support of the complaint, including: Lonmin's Social and Labour Plan (SLP) developed in terms of the South African Minerals and Petroleum Resources Development Act (MPRDA) and the Report of the Marikana Commission of Inquiry into deaths at the Lonmin Mine in Marikana in the North West Province.



Enkaneng informal settlement, 2016

### **CAO's Assessment**

CAO determined that the complaint met its eligibility criteria in June 2015, and undertook an assessment of the complaint. The purpose of the CAO assessment is to clarify the issues and concerns raised by complainants, gather information on how relevant stakeholders view the issues raised in the complaint, and determine whether the parties prefer to initiate CAO's Dispute Resolution or Compliance role. During assessment, CAO does not gather information to make a judgment on the merits of the complaint.

Based on the original complaint and further stakeholder discussions undertaken prior to, and during, CAO's assessment, CAO identified eight broad categories of issues about which the Complainants have concerns in relation to the Enkaneng settlement. Details of these issues are contained in the assessment report which is published on CAO's website.

At the conclusion of CAO's assessment, the Complainants and Lonmin expressed willingness to engage on these issues through a CAO-facilitated dispute resolution process with a view to finding a solution.

### **THE DISPUTE RESOLUTION PROCESS**

To design the engagement between the parties, CAO held a series of bilateral meetings with each of the parties during 2016. These meetings helped to build clarity regarding the issues to be negotiated, as well as the potential structure to be utilized for ongoing dialogue. CAO was also able to explain in more detail the difference between its functions, namely dispute resolution and compliance given that the Complainants had requested both from CAO.

To build the capacity of the parties to participate in a dispute resolution process, and in an attempt to start levelling the playing field, CAO held capacity building workshops with the Complainants to provide support and build their negotiation skills. CAO also discussed its dispute resolution methodology with Lonmin.

### **Establishing Ground Rules**

As part of the dialogue process, and prior to discussing the issues for negotiation, CAO worked with Lonmin and the Complainants to draft and eventually adopt a set of principles that would govern the dialogue process. These principles are attached to the Conclusion Report as Annexure A and are published with the consent of the parties.

### **Facilitating of Joint Meetings**

Three joint meetings were facilitated, during which the parties were able to tell their stories, listen and respond to each other. They explained to each other what their issues and concerns were, as well as what their demands were in relation to the issues being discussed. Negotiations regarding some of the issues raised commenced and consideration was given to a potential

structure for the participation of other stakeholders. Some delays were experienced in the process due to availability of the parties and local government elections toward the end of 2016.

In December 2016, the Complainants advised the CAO and Lonmin that they were dissatisfied with the progress made regarding the dispute resolution process and determined to withdraw from the CAO Dispute Resolution process. Over the course of three months CAO worked with the Complainants and Lonmin to determine whether there was any scope for continued dialogue. In March 2017 the Complainants informed CAO that they were withdrawing from the dialogue process, citing, from their perspective, the lack of progress and failed implementation of undertakings given by Lonmin as part of the dialogue. The Complainants are of the view that none of their grievances have been resolved. Accordingly, the complaint will be transferred to CAO Compliance.

## **CHALLENGES AND LESSONS LEARNED: A CAO PERSPECTIVE**

### **Keeping Up the Momentum**

In many CAO cases, the issues in dispute have a long history, and parties have either been feeling the impacts or attempting to find resolution over a significant period of time. This often means that there is a certain

amount of urgency to see issues resolved and resolved quickly, not only for substantive reasons but also as a sign of good faith. It also raises the importance of all parties acting on undertakings that may be made during a dialogue process.

In the Lonmin case, the importance of keeping up the momentum was recognized, but there were several challenging factors to consider including local elections, the identified need to reach out to external parties, and internal dynamics within each party that presented delays, and ultimately did not allow the process to pick up enough momentum for the Complainants to have confidence it would address their concerns.

### **Drawing in External Parties**

Complex development issues often involve parties outside of the dispute, particularly stakeholders that have a bearing on or decision making authority over some issues. Drawing in these relevant parties can be challenging, as it immediately calls forth competing agendas, constraints and interests that need to be understood and managed. It also sets up a situation where some of the key components of the envisaged solution may be outside the control of the parties or the mediation process. This can be a real source of frustration for parties, and generate feelings of loss of control and confidence, as was expressed in this case.

*All documentation relevant to this case is available on the CAO website at*

*[www.cao-ombudsman.org](http://www.cao-ombudsman.org)*

## Annexure A: Principles for Meetings between Sikhala Sonke and Lonmin

1. These principles guide the conversations to take place between Sikhala Sonke and Lonmin, and are binding for all participants in these meetings. Should a need arise to add or amend these principles, Sikhala Sonke and Lonmin will review and conclude an addendum to these principles.
2. Sikhala Sonke and Lonmin agree that the discussions and positions of each party as expressed in the meeting are confidential for the life of the CAO mediation process. Sikhala Sonke and Lonmin additionally agree that any confidential information or documentation shared in the meeting are confidential for all times and all purposes and should not be shared with any third party, the general public or media. Sikhala Sonke and Lonmin will try their best to take all reasonable steps to ensure compliance with this provision by their respective organization/members.
3. The participants agree to act in good faith, in a non-violent, responsible and non-threatening manner, and with mutual respect. The participants also confirm that they have the necessary mandate to engage in these discussions.
4. No person will be intimidated and/or victimised as a result of their participation in these meetings or as a result of being a member or affiliate of Sikhala Sonke or Lonmin. The participants will discuss a mechanism to deal with acts of intimidation/victimisation.