



January 16, 2018

Office of the Compliance Advisor Ombudsman (CAO)

TERMS OF REFERENCE

*CAO Compliance Investigation of IFC Financing of Lonmin (IFC Project #24803), South Africa
Complaint 02*

About CAO

CAO's mission is to serve as a fair, trusted, and effective independent recourse mechanism and to improve the environmental and social accountability of IFC and MIGA.

CAO (Office of the Compliance Advisor Ombudsman) 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 arms of the World Bank Group, the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA).

If CAO concludes that the parties are not willing or able to reach a facilitated solution, the case is transferred to the compliance function of CAO, to appraise whether the concerns raised in the complaint merit a compliance investigation of IFC/MIGA.

The focus of the CAO compliance mandate is on the performance of IFC and MIGA, not their client. This applies to all IFC's business activities including the real sector, financial markets, and advisory services. CAO assesses how IFC or MIGA assured itself 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.

CAO discloses the findings of its compliance investigation in an investigation report to inform the President and Board of the World Bank Group, senior management of IFC/MIGA, and the public about its decision.

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

Background to the 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. 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.

The Complaint

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.

In regards to this investment, the complaint raises concerns about: i) the lack of broad community support for the project; ii) the client’s non-compliance with its social and labor plan (SLP); 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.

CAO determined that the complaint was eligible and carried out an assessment. During which the complainants and the client stated their preference to engage in a CAO-facilitated discussion to try to resolve their differences. The complaint was then referred to CAO’s dispute resolution function. In December 2016, the complainants withdrew 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.

In December 2017 CAO released its compliance appraisal in relation to the complaint, and decided to conduct a compliance investigation of IFC’s E&S performance in relation to the project.

Scope of the Compliance Investigation

The focus of this CAO compliance investigation is on IFC, and how IFC assured itself of the environmental and social performance of its investment at appraisal and during supervision.

The approach to the compliance investigation is described in the CAO Operational Guidelines (March 2013), and states that the working definition of compliance investigations adopted by CAO is as follows: *“An investigation is a systematic, documented verification process of objectively obtaining and evaluating evidence to determine whether environmental and social activities, conditions, management systems, or related information are in conformance with the compliance investigation criteria.”*

As set out in CAO’s appraisal report, CAO will conduct a compliance investigation of IFC’s investment in the client in relation to the issues raised in the complaint.

The compliance investigation will consider whether IFC’s investment in the client was appraised, structured and supervised in accordance with applicable IFC policies, procedures and standards.

Given the issues raised by the complainants, the investigation will focus on the adequacy of:

- IFC's review of: (a) the company's stakeholder engagement, (b) the company's ability to implement the SLP, and (c) the company's assessment of environmental impacts and consideration of mitigation measures; and
- IFC's supervision of the client's E&S performance, through to the decision to divest, as it relates to these same areas of concern.

Where relevant, CAO will consider the context and underlying causes of any non-compliance found. Given that IFC divested from the client in 2015, the investigation will aim to capture lessons learned for future operations.

Compliance Investigation Process and Preliminary Timeline

CAO aims to have a draft compliance Investigation Report ready by July 2018.

The draft investigation report will be circulated to IFC senior management and all relevant IFC departments for factual review and comment. IFC comments should be submitted in writing to CAO within 20 working days of receipt by IFC.

Upon receiving comments from IFC on the consultation draft, CAO will finalize the report. The final report will be submitted to IFC senior management for official response. A notification will be posted on CAO's website. IFC has 20 working days to submit a written response to CAO. CAO will forward the Investigation Report and the IFC response to the President of the World Bank Group. The President has no editorial input as to the content of the compliance Investigation Report, but may take the opportunity to discuss the investigation findings with CAO.

Once satisfied with the response by IFC senior management, the President will provide clearance for the investigation report and the response. The President retains discretion over clearance. After clearance, CAO will disclose the investigation report and the IFC response to the Board. CAO will also alert relevant stakeholders of the disclosure of both documents on CAO's website, and share the documents with the complainants.

External Panelists

As per its established practice, CAO will engage an external panelist to work with it on this task. Given the scope of this compliance investigation, CAO considers necessary to engage an expert with experience in the assessment and management of E&S impacts of large-scale mining activities.