



ASSESSMENT REPORT

Regarding Community and Civil Society concerns in relation to
the Lonmin Plc Project (# 24803)
in South Africa

September 2015

Office of the Compliance Advisor Ombudsman (CAO)
*for the International Finance Corporation and
Multilateral Investment Guarantee Agency*
www.cao-ombudsman.org

About the CAO

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), the private sector arms of the World Bank Group. The CAO reports directly to the President of the World Bank Group, and its mandate is to assist in addressing complaints from people affected by IFC/MIGA supported projects in a manner that is fair, objective and constructive and to enhance the social and environmental outcomes of those projects.

For more information, see www.cao-ombudsman.org

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LIST OF ACRONYMS

CALS	Centre for Applied Legal Studies
CAO	Compliance Advisor Ombudsman
DMR	Department of Mineral Resources
IFC	International Finance Corporation
LONMIN	Lonmin Plc
MIGA	Multilateral Investment Guarantee Agency
MPRDA	Minerals and Petroleum Resources Development Act
SLP	Social and Labour Plan (developed in terms of the MPRDA)
WITS	University of the Witwatersrand

1. Overview

In June 2015, an association of women of Marikana, known as Sikhala Sonke, assisted by the Center for Applied Legal Studies (CALS) of the University of Witwatersrand (WITS), lodged a complaint with CAO on behalf of the community residing in the informal settlement known as Enkaneng, near the Lonmin Marikana platinum mine in South Africa. The complaint raises concerns about the environmental and social impacts of Lonmin's operations, as well as concerns about IFC's due diligence and compliance with relevant policies and standards. Regarding the environmental and social impacts of the project, Sikhala Sonke have indicated a desire to enter into a dispute resolution process with Lonmin. Regarding IFC's due diligence and compliance, Sikhala Sonke request CAO conduct a compliance appraisal of IFC's performance with regard to the project. Lonmin has indicated a willingness to meet with Sikhala Sonke to discuss issues raised in the complaint which may be addressed through CAO Dispute Resolution. This Assessment Report provides an overview of the assessment process, including a description of the project, the complaint, the assessment methodology, and next steps.

2. Background

2.1 The Project

IFC has an active Category A project with Lonmin, a large platinum producer, which was initially for a multi-year expansion program of Lonmin's operations. The project consisted of the development, expansion, and mechanization of Lonmin's South African mines; and the development of a comprehensive, large-scale community and local economic development program (LEDP). IFC's investment in the project entailed a standby 10 year A loan of US\$100 million and an equity investment of US\$50 million. The LEDP ended in 2010 and the US\$100 million A loan is also no longer active. Although the loan was committed, it was never disbursed and was subsequently cancelled in 2010. The equity portion of the investment is still active and IFC currently has a ~0.6% shareholding in Lonmin's publicly listed shares.

2.2 The Complaint

In June 2015, CAO received a complaint from individual community members and a local community non-governmental organization, Sikhala Sonke (Complainants), in South Africa. The Center for Applied Legal Studies (CALS) assisted the Complainants in bringing the complaint. 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 complaint raises issues concerning the impacts of Lonmin's activities on the Enkaneng community, more particularly alleging an absence of proper housing, sanitation, reliable and safe electricity, and roads, and accessible, potable, and reliable water. Further, the complaint alleges that to the extent the mine offers benefits in the form of employment, those benefits are 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, less than 8 percent of employees are currently women.

A redacted version of the complaint can be found on CAO's website¹. 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 terms of the South African Minerals and Petroleum Resources Development Act(MPRDA) and the Marikana Commission's Report of the Marikana Commission of Inquiry.

3 Assessment Summary

The purpose of the CAO assessment is to clarify the issues and concerns raised by the Complainants, to gather information on how other stakeholders see the situation, particularly Lonmin, and to determine what it is that CAO is being requested to do. CAO does not gather information to make a judgment on the merits of the complaint during its assessment. For more information regarding CAO's Operational Guidelines, please see CAO's website².

The CAO assessment of the complaint consisted of:

- reviewing project documents;
- meeting with Complainants and Lonmin representatives in Rustenburg and Mooi-nooi, respectively;
- meeting with CALS representatives at the University of Witwatersrand; and
- conducting a site visit of Enkaneng.

Based on the original complaint and further stakeholder discussions undertaken prior to, and during, CAO's assessment trip, CAO has identified eight broad categories of issues about which the Complainants have concerns in relation to the Enkaneng settlement:

ISSUE	
Housing and land ownership	<ul style="list-style-type: none"> • Miners and affected community members not accommodated in the mine's residential units live in shacks built in the backyards of people who own residential sites. • Shacks are built very close to pit toilets and stagnant refuse water, causing unbearable smells. • Shacks are built of corrugated iron and, as such, are very cold in winter and hot in summer. • Lonmin has failed to comply with the Social and Labour Plan (SLP) for the period 2007-2012.
Basic infrastructure (roads, sanitation, water and electricity)	<ul style="list-style-type: none"> • Roads are non-existent. • Flooding occurs in the rainy season. • Public transport is only accessible on the outskirts of the settlement.

¹ http://www.cao-ombudsman.org/cases/case_detail.aspx?id=235 (accessed, September 22, 2015)

² http://www.cao-ombudsman.org/howwework/documents/CAOOperationalGuidelines2013_ENGLISH.pdf (accessed September 22, 2015)

ISSUE	
	<ul style="list-style-type: none"> • Insufficient pit toilets which are dangerous to use at night given they are outside the home and there are no street lights or fencing. • Dilapidated toilets offer no privacy. • Government-built precast pit toilets are shallow and inadequate for the demand. • Some residential sites have water taps but they are dry, and as such water has to be purchased. • Two water tanks supply the entire settlement and there is insufficient water. • Water from the tanks is contaminated. • There is nonexistent or, where supplied, unreliable electricity, and paraffin is used to cook, while candles are used for lighting.
Pollution	<ul style="list-style-type: none"> • Health is affected by smoke emitted from the mine's smelter and dust from mine vehicles. • Air and water are contaminated.
Lack of access to health care	<ul style="list-style-type: none"> • Government-managed health clinic is short-staffed and has insufficient supplies, as well as discriminates against Enkaneng residents. • The clinic is not open 24 hours. • Local community is unable to access the Lonmin-sponsored hospital.
Safety and security of mine employees and their families	<ul style="list-style-type: none"> • Mine workers have to walk through Enkaneng in the dark to catch mine buses and are often subject to criminal activity as a result. • Crime is rife in the area.
Education facilities	<ul style="list-style-type: none"> • There are no early childhood education facilities in Enkaneng. • There is no access to a public library.
Job opportunities and women's empowerment	<ul style="list-style-type: none"> • There is no grassroots economic activity and unemployment is high. • Women are particularly disadvantaged. • Employment practices discriminatory against migrant job seekers.
Remembrance and acknowledgment of events of August 2012 where Lonmin miners were fatally shot after staging strikes over pay	<ul style="list-style-type: none"> • The deaths, injuries and arrests of August 2012 traumatized the local community and there needs to be acknowledgement of this trauma. • Lack of commemoration of events and no monument constructed. • No trauma counselling offered.

The Complainants do not claim that Lonmin is solely responsible for all the issues raised in the complaint. However, the Complainants would like to engage in a dispute resolution process with Lonmin to determine which issues may be resolved.

Lonmin has provided a formal response³ to this complaint. In essence, Lonmin claims that housing, accommodation, and social upliftment is a complex “transformational necessity” in South Africa and the platinum belt, and one that requires a collaborative approach between government, municipalities, companies and communities. Lonmin is aware of its continued obligation to contribute toward alleviating housing and accommodation issues, particularly around Marikana, and states it is taking steps to live up to its obligations. Regarding Lonmin’s Social and Labour Plan, Lonmin claims that the plan is created in collaboration with a number of stakeholders, including the Department of Mineral Resources (DMR) and the local communities, and is audited by the DMR to determine compliance with the plan.

Lonmin provided additional information regarding a number of issues as part of CAO’s assessment process, particularly concerning:

- remodeled hostel dwellings
- electricity supply
- skills training opportunities for employees
- stakeholder engagement with local authority representatives
- measures to mitigate environmental impacts, if any.

Lonmin is willing to engage in a dispute resolution process facilitated by CAO.

4 Next Steps

The Complainants and Lonmin have agreed to engage in a voluntary dispute resolution process facilitated by CAO regarding the social and environmental concerns raised in the first part of the complaint. CAO will facilitate this process and, as a preliminary step, will engage with the parties on the setting of ground rules to guide the process. This will include agreement regarding, inter alia, representation, confidentiality and the use of media. The parties will also need to agree on the issues which the dispute resolution process will be designed to address.

³ http://business-humanrights.org/sites/default/files/documents/Lonmin%20response%20to%20Marikana%20community%27s%20IFC%20complaint_10Jul2015.pdf (accessed September 22, 2015)