

**IN THE MARIKANA COMMISSION OF INQUIRY  
HELD AT CENTURION, PRETORIA**

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**QUALITATIVE AND QUANTITATIVE ASSESSMENT  
OF  
LONMIN'S SOCIAL AND LABOUR PLAN**

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**1. INTRODUCTION**

**1.1 Aim of document**

1.1.1 Any assessment of Lonmin's responsibility for the tragic events at Marikana, North West, in the week of 9 to 16 August 2012, is incomplete without an examination of how Lonmin PLC (Lonmin) discharged its legal obligations, including, in particular, its social development obligations listed in the 2006 Lonmin Social and Labour Plans (SLPs). Unsatisfactory living conditions have a significant impact on one's health, well-being and sense of dignity. When these conditions are left unaddressed over a long period, unmet expectations are likely to foster a sense of injustice. This is especially likely when the affected individuals form part of a class engaged in strenuous and high-risk work and have similar unsatisfactory working conditions.

1.1.2 SLPs contain the principal measures by mining rights holders to address the socio-economic conditions of mine workers and communities. Any significant failure on the part of Lonmin to meet its social commitments would therefore be a likely contributing factor "to the creation of an environment conducive to tension, labour unrest, disunity and other harmful conduct"<sup>1</sup> which precipitated the events of 9 to 16 August 2012. Similarly, Lonmin's compliance with its obligations under its SLPs must be examined

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<sup>1</sup> Para 1.1.3 of the Terms of Reference, GG 35680 No. 50 of 12 September 2012 at 4.

in the investigation of whether Lonmin “employed sufficient safeguards to prevent the outbreak of violence between any parties.”<sup>2</sup>

1.1.3 An assessment of Lonmin’s compliance with its SLP obligations in respect of its two Marikana operations, namely Western Platinum Limited (WPL) and Eastern Platinum Limited (EPL) is central in the Marikana Commission of Inquiry’s (the Commission) investigation into the underlying causes of the events at Marikana. The goal of this submission is to assist the Commission by identifying areas of concern, related to Lonmin’s SLP specifically, and to the South African SLP system generally, for further investigation and possible reform.

1.1.4 This submission should be read in conjunction with the expert report by MTS titled “*The Problems of the Social and Labour Plan System within the Mining Sector in South Africa*” filed on behalf of the SAHRC in the Commission. This submission draws upon the same principles and analysis regarding the SLP system detailed in that expert report, and summarised below. This submission seeks to illustrate that analysis and critique of the SLP system with some examples arising from a preliminary review of limited Lonmin SLP documentation made available prior to 31 July 2014. This submission is not intended to be an exhaustive analysis of Lonmin’s compliance with its obligations expressed in its SLPs; rather it is illustrative. We hope that the Commission’s further analysis of discovery obtained from Lonmin will develop the themes set out below.

1.1.5 We address in turn below:

1.1.5.1 Challenges in the South African SLP system (summarising what is set out in greater detail in the expert report by MTS);

1.1.5.2 Proposals to Improve the SLP System; and

1.1.5.3 An illustrative qualitative assessment of Lonmin’s compliance with its SLP obligations.

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<sup>2</sup> As above para. 1.1.4.

## 1.2 Challenges in the South African Social and Labour Plan (SLP) System

- 1.2.1 Any evaluation of Lonmin's compliance with its SLP obligations must be considered in light of the broader systemic context. Any failures of Lonmin's SLP programmes cannot be meaningfully understood without taking into account the challenges facing the SLP system as a whole. SLP's, as provided for in the *Mineral and Petroleum Resources Development Act* (MPRDA)<sup>3</sup> are the primary regulatory tool for redressing the systemic inequalities of race, class and gender that have characterised the South African mining sector since its origins in the colonial era. In short, 10 years into the life of a system designed with the objects of promoting employment, transforming the minerals sector and ensuring holders of mining rights contribute to the development of affected communities, there is still a considerable body of evidence suggesting that workers and communities tend to derive limited benefit from South Africa's mineral wealth, while bearing the preponderance of environmental and social costs.
- 1.2.2 As will be shown below, it is our view that some of the problems detected in relation to Lonmin's SLPs are, in part, attributable to these systemic challenges. Any proposals for preventing the future occurrence of similar events consequently also need to address flaws in the broader SLP system. For this reason, this submission provides a broad synopsis of the problems in the SLP system and provisional proposals for addressing some of these problems. The proposals are provided in the hope that they can assist the Commission in making its findings and ultimately contribute to a constructive discussion between all stakeholders on the necessary interventions to ensure a more equitable, and therefore more stable, minerals sector. This will be followed by an analysis of Lonmin's SLPs and an assessment on Lonmin's compliance with its SLP commitments.
- 1.2.3 The Centre for Applied Legal Studies (CALs) is engaged in an ongoing research project aimed at identifying and understanding the challenges of the SLP system. Although final conclusions cannot be drawn at this stage, the following observations on the main systemic challenges can be drawn and the points for possible intervention made.

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<sup>3</sup> Mineral and Petroleum Resources Development Act 28 of 2002 ('MPRDA').

1.2.4 The multiplicity of defects and challenges in the system will be discussed under the themes of i) responsiveness; ii) accountability; iii) planning; iv) alignment; and v) clarity in design. Each of these themes contain issues that are related to the design of the SLP system or the individual SLPs and to the implementation thereof. Often issues of implementation can be linked, in part, back to the design of the SLP.

#### 1.2.4.1 *Responsiveness*

- a. A fundamental failure of the SLP system, also closely related to the theme of accountability, is the lack of responsiveness to the needs of workers and, especially, communities. Consultation with communities and workers on the content of SLP's often falls below the threshold of meaningfulness<sup>4</sup> and the final document seldom reflects their wishes. As a consequence, the content of SLP programmes often bears little if any relationship to the wishes of the people who are directly impacted by the efficacy of the plan. Consultation often occurs with narrow and, at times selective, subsets of the community and the information provided often falls short of what is required to comment meaningfully.
  
- b. In addition, consultation with the municipality on which of the local economic development initiatives to adopt, is treated as a surrogate for consultation with the communities and the only references to the wishes of the community will often be citations of the Integrated Development Plan (IDP).<sup>5</sup> While consultation between mining companies and municipalities to ensure alignment with the latter's local economic development strategy as captured in the IDP is appropriate, and required by the MPRDA Regulations,<sup>6</sup> it should be noted that IDPs themselves are often prepared without meaningful community participation. Consultation with, sometimes fragmented communities is, of course, a nuanced and complex process. The lack of detail provided in the MPRDA Regulations and Department of Mineral Resources' (DMR) Guidelines on what constitutes meaningful participation in the SLP process is one factor contributing to the

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<sup>4</sup> In the matter of *Bengwenyama Minerals (Pty) Ltd and Others v Genorah Resources (Pty) Ltd and Others* (2011) (4) SA 113 (CC), the Court defined adequate consultation, in the context of the duty of applicants for prospecting rights to consult affected landowners under Section 16(4)(b) of the MPRDA. The main elements are adequate notice, the provision of adequate information for the affected party to understand the impacts, and good faith.

<sup>5</sup> An IDP is a plan that guides the decisions and activities of a municipality for a five year period. See Local Government: Municipal Systems Act, 32 of 2000.

<sup>6</sup> Regulation 46 (c) (iii) (ii) of the MPRDA Regulations (GN No. R.527 in GG No. 26275).

pattern of inadequate consultation. Further, there are no requirements for community participation in the process of amending SLPs.

#### 1.2.4.2 Accountability

- a. The most pervasive theme that emerges from an analysis of the SLP system is the frequent failure of mining companies to meet their SLP obligations and the failure of the State, through the DMR, to enforce these obligations and provide the necessary co-operation to ensure the success of programmes. An accountability deficit is present throughout the life-cycle of SLPs and a too-frequent hallmark of the relationships between all key role players.<sup>7</sup>
  
- b. Lack of accountability to communities remains persistent throughout the life cycle of the SLP. This is closely linked to a lack of transparency. Frequently communities are not provided with automatic access to SLPs and annual reports. Obtaining access to the documents through requests in terms of the *Promotion of Access to Information Act (PAIA)*<sup>8</sup> is often a protracted process and is not always successful. Experience shows a wide range of views amongst mining companies on the private or confidential status of SLP's and, especially, the annual reports. This is reflective of a "culture of secrecy" that is apparent in some parts of the sector. The end result is that many communities have no knowledge of the content of a document which is ostensibly designed to benefit them. There are therefore no real opportunities for these communities to hold companies to account for their obligations.
  
- c. In addition to deficiencies in the processes by which mining companies account to the community there are also significant shortfalls in the processes through which mining companies account to the regulator, the DMR. The key mechanism of accountability to the regulator is annual reports on SLP compliance that mining companies are required to submit to the DMR. These reports can provide a clear indication of the level of compliance if they are clear and address all the targets in the original SLP in a consistent manner.

<sup>7</sup> MTS (2014) *The Problems of the Social and Labour Plan System within the Mining Sector in South Africa* at 90.

<sup>8</sup> The Promotion of Access to Information Act, 2 of 2000.

- c. In practice, however, there is immense inconsistency in the quality and the form of reporting by mining companies.<sup>9</sup> The information contained in the annual reports is not always sufficient to establish compliance with the original targets. At times, the classification of deliverables and the benchmarks for compliance differ from the original SLP with the result that compliance is difficult to evaluate. This is partly the result of the absence of detailed guidelines regarding the format and content of annual reports. In the absence of these guidelines, advice given to mining companies by government officials has not always been consistent. At the same time, mining companies may change the measurable targets to create more favourable results. In addition to the merging and diverging of programmes, this may occur through revising the targets in the results tables downwards, without indicating that this revision has occurred, thus presenting them as the original targets.
- d. SLP reports do not always indicate whether the company has been granted permission for any revisions to the SLP, by the Minister, as is required by the MPRDA Regulations.<sup>10</sup> Where changes to an SLP or cancellation to SLP projects are acknowledged, the reasons provided by the mining companies are sometimes very broad. This is a failure of accountability for the reason that in these instances the company is not offering a cogent and honest defence for its revision or reduction of obligations upon which its right to mine is premised.
- e. Closely linked to the above mentioned breakdown in mechanism of accountability is the lack of enforcement of SLPs. The cases in which the failure to deliver on SLP commitments leads to significant enforcement action, such as the suspension or withdrawal of a mining right are extremely rare.<sup>11</sup> This can create a sense amongst mining companies that SLP obligations are “soft commitments” and that less than full compliance might suffice.

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<sup>9</sup> MTS at 68.

<sup>10</sup> Regulation 44 of the MPRA Regulations.

<sup>11</sup> The DMR cancelled the mining right of Central Rand Gold Limited in 2011 for *inter alia* failing to meet its SLP commitments though the decision was set aside by the High Court in December 2011. On 11 August it was reported that the DMR had threatened to suspend or withdraw the mining right of Gold Fields Limited. However, the Department has since denied this, see <http://www.sabc.co.za/news/a/747727804511d9f8898e99a5ad025b24/Dept-of-Mineral-resources-refutes-mining-licences-threats>.

#### 1.2.4.3 *Planning*

- a. SLP initiatives also, at times, fail through a lack of sound planning during the design phase. Practice shows that “LED projects are often submitted within the SLP as ‘concepts’ rather than projects with clear objectives, deliverables and beneficiaries in mind.”<sup>12</sup> In such instances and when feasibility studies are conducted, subsequent to the approval of the SLP, the initiatives are founded upon untested assumptions which may be proven false by the feasibility study.<sup>13</sup> Lack of community buy-in could prove fatal to a project.

#### 1.2.4.4 *Alignment*

- a. A further theme that can be observed in evaluating the SLP system is that of alignment. The success of an SLP hinges on close alignment between the mining company and Government; between a host of State departments (including the DMR, other line departments, district and local municipalities); and must further align with local economic development priorities. Co-ordination between mining companies and Government is required for the success of SLP projects. For example if a mine builds a school, the municipality will need to establish a water connection. Frequently, partnerships between the company and the government institution necessary for the successful implementation of SLP projects are not finalised or implemented, with each party attributing blame to the other.
- b. SLPs need to align with the plans for local economic development, in particular, and consequently, both SLP’s and other plans by the mining company also need to align with IDPs. Mining companies, as required in the MPRDA Regulations and SLP Guidelines, draw their initiatives from IDPs.<sup>14</sup> However, it is not clear whether the design of IDPs meaningfully takes into account the demands on municipal resources due to the significant ecological and social impacts associated with mining. Where this does not occur, SLP programmes will, in turn, be less likely to be capable of substantially addressing the impacts of mining.

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<sup>12</sup> MTS at 58.

<sup>13</sup> MTS at 58.

<sup>14</sup> Section 46 (c) (iii) (ii) of the MPRDA Regulations; Clause 4 of the Revised Social and Labour Plan Guidelines (SLP Guidelines).

- b. Alignment and co-ordination is required at a regional level, in addition to the level of local municipality and/or project. The shape and size of mining areas follow the location of mineral reserves rather than municipal boundaries. As a result mining areas, such as those in the Platinum Belt, are often areas with distinct ecological, social and economic configurations and problems, may cut across municipal boundaries as well as mining companies. In large mining belts the impacts are cumulative in nature, such as the damage to roads due to heavy vehicles, while the damage by a single mine might not be of great significance. Together, these impacts are capable of seriously disrupting regional transport networks. Thus while viewed at a project level, road upgrades might not seem a necessary or appropriate local economic development initiative, viewed at a regional level such a contribution by mining companies will be justified, due to the significant cumulative impact of their activities. Addressing regional challenges and cumulative impacts requires co-ordination of planning on a scale not automatically required by the project-based SLP system. Frequently, this co-ordination does not occur, due to a variety of factors, which includes the climate of suspicion, competitiveness and secrecy between mining companies.<sup>15</sup> This results in an increase in duplication of initiatives without a co-ordinated cumulative response required for issues that cannot be attributed to a single mine.

#### 1.2.4.5 *Clarity in design*

- a. Defects in legislative design can be linked to the challenges of accountability and co-ordination. The MPRDA, its Regulations and the SLP Guidelines leave some important questions unanswered. The SLP system constitutes the partial transfer of Government's developmental responsibilities to the private sector which creates the scope for confusion of responsibilities. While the legislation indicates the kind of programmes that should be in an SLP, it is not clear what responsibilities mining companies are to take on in respect of the projects and those which Government should retain. The result is the frequent shifting of blame between Government and mining companies on the reasons for the failure of SLP projects. While the Mining Charter provides a range of targets in relation to the

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<sup>15</sup> MTS at 52.



advancement of Historically Disadvantaged South Africans (HDSAs), the regulatory framework largely leaves the determination of what constitutes a sufficient contribution towards other SLP goals open (in terms of expenditure, impact etc.).<sup>16</sup> It seems to be the practice of the DMR to require a fixed percentage of profits to be invested in SLPs, although this is not provided for in applicable legislation. Potentially relevant variables in the determination of what is sufficient include local conditions, the size/income/profitability of the mine, the size/income/profitability of the company and the impact of the mine. There are advantages and disadvantages to accentuating each factor hence, whatever framework is used needs to be based upon careful consideration.

### **1.3 Proposals to Improve the Social and Labour Plan System**

1.3.1 In response to the challenges identified, we propose a number of avenues, which should be explored.

- a. The SLP system's responsiveness to communities could be enhanced through providing for the establishment of multi-stakeholder forums dealing with SLPs from the design phase through to the closure of the mine.<sup>17</sup> The inclusion of community-based organisations should be mandatory. This forum could be incorporated into a broader forum encompassing future forums and Environmental Management Committees (EMCs).<sup>18</sup> One avenue for achieving this might be to expand on the existing future forum as provided for in the SLP Guidelines. Second, the extension of the time frame for development, consultation on and submission of SLPs, should be considered to prevent a rushed process. Third, substantive changes to an SLP should trigger consultation with the community on those aspects of the SLP to be amended. Any comments must be recorded in writing and submitted as part of the amendment application by the mining company to the DMR.

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<sup>16</sup> Amendment of the Broad-Based Socio-Economic Empowerment Charter for the South African Minerals and Mining Industry (September 2010) (Mining Charter).

<sup>17</sup> MTS at 70.

<sup>18</sup> Future Forums are bodies comprised of representatives of mine management and labour for the purpose of planning for downscaling and retrenchments. They are required under Regulation 46 (d) (i) of the MPRDA Regulations. EMCs are a multi-stakeholder body for the purpose of monitoring a company's compliance with its environmental authorisations and are increasingly included in the license conditions for mining operations.

- b. In addition to multi-stakeholder forums, there are a number of interventions that could serve to enhance and augment existing mechanisms of accountability. First, accountability to the community could be enhanced by requiring mining companies to take steps to make their SLPs, reports on SLPs and other mining-related documents that have an impact on communities and the public (including environmental management programmes) publicly available, through inter alia, publication on their website and lodgement at local venue/s accessible to the community (e.g. city libraries or town halls) and in a language that can be understood by the community. Second, the DMR should demand a greater degree of compliance with the full commitments contained in SLPs. SLPs that contain significant loopholes allowing companies to scale back on the substance of commitments, or which do not contain measurable targets on mandatory components, should not be approved for the purpose of granting a mining right. Third, there needs to be an official format for reporting on SLP performance which should further require reporting on every target and deliverable as captured in the original SLP. This reporting format should include columns for revised targets. Fourth, existing measures by the DMR to enhance its compliance monitoring capacity should be intensified and lead to more thorough inspections. Lastly, accountability requires sanctions for non-compliance. The failure to substantially meet an SLP target should, where it involves a breach of the mining company's obligations, attract severe penalties including the suspension and/or revocation of mining rights.
- c. While legislation with more clarity in these areas should not be viewed as a panacea, it is true that the system could be clearer and more user-friendly if a number of gaps in both the Regulations and the SLP Guidelines are filled. First, as already mentioned above, the duty to make SLPs publicly available should be expressly provided for. Second, the Guidelines should provide an indication of how the responsibilities of organs of State and mining companies should be apportioned in SLPs and in implementation agreements. Third, the Regulations should provide a transparent basis for determining the scope of the mining company's required commitments. Further, the percentage of SLP expenditure to be allocated to initiatives that benefit the broader community, in addition to employees, should be indicated in the Guidelines.

- d. The establishment of formal regional mechanisms for integrating development planning and mining is vital.<sup>19</sup> For areas identified as key mining nodes, the substance of development planning should take place at the level of the regional geographic area. Often this area will be contained within a district municipality. Where the node spans more than one district municipality, officials from all the relevant municipalities should be involved substantively. The planning forum should provide for representation by National, Provincial and Local Government; mining companies; organised labour; community based organisations; and civil society. The establishment by the Presidency of the Inter-Ministerial Committee on the Revitalisation of Distressed Mining Communities constitutes a positive step towards a more consolidated approach to addressing the systemic socio-economic problems associated with mining. However the focus of this Inter-Ministerial Committee is on six particular communities, which are experiencing the legacy impacts associated with mining and mine closure. Permanent bodies that are proactive as well as remedial in focus, and which are constituted for all present or planned mining nodes, are required. The involvement of National Government, which might include the Ministers represented on the Inter-Ministerial Committee,<sup>20</sup> is critical given the limited capacity of many municipalities. The regional body can oversee the creation of a regional development plan and regional-SLP, which encompasses all mining rights holders' responsibilities for economic development in the combined mine affected area in the particular region. Individual SLPs could then be developed with reference to this regional framework.

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<sup>19</sup>See discussion in MTS under heading 8.3 'Regional SLP Forums and SLP Funds.'

<sup>20</sup> Namely Ministers of Mineral Resources, Water and Sanitation, Trade and Industry, Social Development, Labour, Human Settlements, Health, Economic Development and Finance.

## 2. ANALYSIS OF LONMIN'S SOCIAL AND LABOUR PLAN

### 2.1 Background

2.1.1 Western Platinum Ltd ('WPL') and Eastern Platinum Ltd ('EPL') are the two divisions of Lonmin operating in Marikana. WPL is comprised of four business units, namely; Karee, Westerns, Middelkraal and Easterns.

2.1.2 Lonmin's workforce has grown from 15,917 employees in 2006<sup>21</sup> to 27,796 employees in 2011<sup>22</sup>. 24,152 of Lonmin's employees as of 2011 were classified as black African.<sup>23</sup> The population in Rustenburg has grown from 395,540 in 2006<sup>24</sup> to 549,575 in 2011,<sup>25</sup> with nearly 487,000 of the population classified as black African.<sup>26</sup> Lonmin's operations impact on a large workforce and a rapidly expanding population.

2.1.3 The main source of Lonmin's social obligations is the MPRDA, which makes a mining right dependant on the approval of the SLP, in that an application for a mining right must be accompanied by a SLP, the contents of which are specified in Regulations 40 to 46 of the MPRDA Regulations.<sup>27</sup>

2.1.4 The objectives of a SLP are to "promote employment and advance the social and economic welfare of all South Africans; contribute to the transformation of the mining industry; and ensure that holders of mining rights contribute towards the socio-economic development of the areas in which they are operating."<sup>28</sup>

<sup>21</sup> Western Platinum Limited (2011) Lonmin Social Labour Plan Annual Report at 12.

<sup>22</sup> Ibid at 17.

<sup>23</sup> Ibid.

<sup>24</sup> *Gaffney's Local Government in South Africa 2004-2006* Gaffney's Sandton.

<sup>25</sup> [http://www.statssa.gov.za/timeseriesdata/pxweb2006/Dialog/varval.asp?ma=mn\\_age\\_group&ti=Census+2011+by+municipalities%2C+age+group%2C+gender+and+population+group++&path=../Database/South%20Africa/Population%20Census/Census%202011/Municipality%20level%20-%20Persons/&lang=1](http://www.statssa.gov.za/timeseriesdata/pxweb2006/Dialog/varval.asp?ma=mn_age_group&ti=Census+2011+by+municipalities%2C+age+group%2C+gender+and+population+group++&path=../Database/South%20Africa/Population%20Census/Census%202011/Municipality%20level%20-%20Persons/&lang=1).

<sup>26</sup> [http://www.statssa.gov.za/timeseriesdata/pxweb2006/Dialog/varval.asp?ma=mn\\_age\\_group&ti=Census+2011+by+municipalities%2C+age+group%2C+gender+and+population+group++&path=../Database/South%20Africa/Population%20Census/Census%202011/Municipality%20level%20-%20Persons/&lang=1](http://www.statssa.gov.za/timeseriesdata/pxweb2006/Dialog/varval.asp?ma=mn_age_group&ti=Census+2011+by+municipalities%2C+age+group%2C+gender+and+population+group++&path=../Database/South%20Africa/Population%20Census/Census%202011/Municipality%20level%20-%20Persons/&lang=1).

<sup>27</sup> GN R.527 in GG 26275 of 23 April 2004.

<sup>28</sup> Regulation 41 of the MPRDA Regulations.

- 2.1.5 The MPRDA further provides that “when interpreting a provision [of this Act], any reasonable interpretation of the objects [of this Act] must be preferred over any other interpretation which is inconsistent with such object.”<sup>29</sup> Accordingly, to promote the objective of community socio-economic development, the SLP formulated by holders of mining rights must be designed to make a meaningful contribution towards developing the areas in which they are operating and addressing the needs of the surrounding community.
- 2.1.6 Lonmin submitted SLPs along with its mining right applications in 2006 to the Regional Manager of the DMR in the North West Province. Once these mining rights were granted, Lonmin became legally bound to the applicable provisions of the MPRDA, including compliance with its own SLPs commitments.
- 2.1.7 The adequacy of Lonmin’s SLP design and its SLP compliance require interrogation. Therefore, what follows in this submission is a history of the discovery requested and required to undertake a full analysis on the adequacy of Lonmin’s SLPs; a qualitative assessment of Lonmin’s SLPs for both WPL and EPL; and a quantitative assessment of Lonmin’s compliance with its targets.
- 2.1.8 The qualitative assessment is arranged according to the main statutorily mandated components of SLPs. The detailed quantitative analysis, which informed this analysis is attached as **Annexure ‘A’**. Due to the significant degree of integration between the SLPs of WPL and EPL, both shall be analysed together.

## **2.2 Qualitative analysis of Lonmin’s Social and Labour Plans**

### *2.2.1.1 Preamble to SLPs*

- a. The preamble of Lonmin’s SLPs contain all the required particulars of Lonmin, as the applicant, and a map of Lonmin’s mining projects. The preamble thus provides vital information on the location of the nature and location of the project. These are important for assessing whether the SLP programmes are of an appropriate scale and in fact target the correct geographical area.

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<sup>29</sup> Section 4(1) of the MPRDA.

- b. The preamble and the general structure of SLPs indicate that Lonmin has been careful to comply with the formal requirements for SLPs, as contained in the MPRDA Regulations and the departmental SLP Guidelines. Notably absent, however, is any information or detail on the content of past mining activities, local economic development programmes, past interventions and plans. As the SLP does not state the age of the mine or the length of Lonmin's presence in the area, the SLP creates the impression of a 'year zero' scenario for Lonmin's operations at Marikana.

*2.2.1.2 Adult basic education and training and other education and training programmes*

- a. Due to the migrant labour system, and, increasingly, due to the increased mechanisation of mining, a large proportion of community members impacted by mining activity have not, and shall never, find work on the mine. It is therefore vital that SLP programmes are designed so as to ensure that the whole community of non-employees are able to enjoy a significant share of the benefits.<sup>30</sup>
- b. Given the large proportion of adults in Rustenburg and Madibeng Local Municipalities who have not obtained the educational qualification to the level of a matric certificate, much of the population can potentially benefit from the adult basic education and training (ABET) initiatives as provided for in the SLP Guidelines.<sup>31</sup> While there are a number of education/training initiatives that embrace the broader 'Greater Lonmin Community' (GLC),<sup>32</sup> the number of targeted beneficiaries is considerably lower than those for employees of the mine. For example, based on the annual reports<sup>33</sup> the number of community members targeted for ABET is approximately 1/14 of that for full-time employees

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<sup>30</sup> MTS at 27.

<sup>31</sup> Department of Mineral Resources, Revised Social and Labour Plan Guidelines (2010).

<sup>32</sup> The Greater Lonmin Community is used principally to refer to the target area of the WPL and EPL SLPs, which is the 15km radius around its Marikana operations. It is not defined in the SLPs but in the annual reports from 2010 onwards.

<sup>33</sup> The ABET targets for WPL and EPL are not contained in the body of the original SLPs but are included in the annual reports.

and approximately 1/5 of that for part-time employees thereby representing approximately 4.6% of the total beneficiaries of ABET programmes.

- c. Some of the education/training initiatives as contained in the SLPs suffer from a degree of vagueness. For example, while there is a skills development programme for employees, which is backed by a financial provision, the body of the SLP does not state how many employees would benefit from this programme. Further, the language used to frame targets creates some uncertainty, in so far as the SLPs speak of numbers of offers/opportunities rather than actual enrolments. Neither are the targets for learnerships defined in the body of the SLP. The corresponding plans are often very broadly worded using stock phrases such as 'this programme seeks to equip frontline supervisors with technical and leadership skills to enable them to meet new challenges in the workplace'. In both cases the SLPs refer to annexures containing the applicable policy. While the use of annexures is appropriate in relation to documentation of agreements and more detailed policies on the implementation of SLP commitments, all the actual targets should be contained in the SLP to ensure they are accessible to the people they are designed to benefit.
- d. The majority of education and training initiatives, however, including sponsorships, bursaries and internships, contain annual targets and benchmarks in relation to numbers of beneficiaries or enrolments and, as such, allow for the measurement of compliance.

### 2.2.1.3 *Employment Equity*

- a. The targets for the advancement of HDSAs are in line with those contained in the MPRDA Regulations and the Mining Charter.<sup>34</sup> It should be noted that while compliant with the Regulations, the targets for 'women at the mine' (the broader category that includes women employed both in core mining and in other capacities) are very low, at 11% of the total workforce by 2012.<sup>35</sup>

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<sup>34</sup> The minimum employment equity targets are to be found in Regulation 46 (b) (v) of the MPRDA Regulations and 2.4 of the Mining Charter.

<sup>35</sup> WPL SLP at 43; EPL SLP at 43.

#### 2.2.1.4 Local economic development

- a. The local economic development (LED) component of SLPs, as required by Regulation 46 to the MPRDA, refers to projects designed to achieve the socio-economic advancement of mining communities, including infrastructure and poverty eradication projects as well as income generating projects. These programmes comprise the bulk of the benefit to be experienced by the community as a whole making their success vital. Success requires that they have workable designs that are the product of proper consultation, thorough feasibility studies and sound planning.
- b. The LED section in both of Lonmin's SLPs are prefaced by the following vision statement, which draws on the Lonmin Charter<sup>36</sup>:

*We respect the communities and nations that host our operations and conduct our business in a sustainable, socially and environmentally responsible way.*

*WPL/EPL embraces the role of being a powerful force in the upliftment and transformation of South Africa...WPL clearly states its intention to embrace socio-economic development both within the Greater Lonmin Community and within its primary labour sending areas.*

- b. Lonmin's LED initiatives should thus be assessed against this professed commitment to being a socially responsible corporate citizen committed to local economic development.
- d. *Definition of target areas* - The main geographical area to benefit from the SLPs, the GLC is not defined in the body of the SLP itself – the definition only appears in the annual reports from 2010 onwards. It refers to communities within the radius of 15km of its operations. There is, however, no explanation on how the 15km figure was arrived at. This gives rise to the question of whether the scope

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<sup>36</sup>The Lonmin Charter is a document containing a statement of the mission and values of the company. See [https://www.lonmin.com/Lonmin\\_Annual\\_Report\\_2011/Root/shareholder\\_information/lonmin\\_charter.html](https://www.lonmin.com/Lonmin_Annual_Report_2011/Root/shareholder_information/lonmin_charter.html)



of the GLC is commensurate with the impact of the projects, which together employed 15,917 people at the inception of the SLPs. Additionally, has the GLC increased in size with the substantial growth in the Lonmin operations due to the increased impact and the number of employees.

- e. *Socio-economic baseline and impacts of mining*<sup>37</sup> - The assessment of the socio-economic baseline and the impacts of mining is of critical importance for the ability of the SLP to promote LED, and address the social impacts of mining. It should be noted that under both the MPRDA and the National Environmental Management Act, 107 of 1998 ('NEMA'), social impact assessment is required as a part of the broader environmental impact assessment ('EIA') processes and these should provide background information for the study area and inform this section of the SLP. In the subsection of the socio-economic impacts of mining in Bojanala Platinum District Municipality, within which WPL and EPL fall, the SLP states that, 'a proper socio-economic impact study will be conducted once the current impacts have been mitigated and progress tracked.'<sup>38</sup> This is of concern as one cannot mitigate one's impacts before identifying the likely impacts via empirical assessment.<sup>39</sup> Further, the failure to conduct a social impact assessment under NEMA would make the award of any environmental authorisation reviewable.
- f. The picture that emerges in the socio-economic baseline for the host communities, and especially the sending communities of Alfred Nzo and Encgobo Municipalities in the Eastern Cape, is of abject poverty and poor service delivery. The level of unemployment in the host community was estimated at 40% which was almost double the estimated national average of 24%.<sup>40</sup> Despite the severity of the crisis both SLPs set no numerical targets for local employment. The SLPs do state that it is Lonmin's policy to employ local people 'whenever possible.'<sup>41</sup> The SLPs also state that community skills databases for unemployed graduates

<sup>37</sup> Section 46 (1)(c)(i), (ii) and (iii) [sic] of the MPRDA Regulations. Note that the text of the socio-economic baseline sections of both SLPs are identical as they apply to the same areas.

<sup>38</sup> WPL SLP at 59; EPL SLP at 59.

<sup>39</sup> All statistics must take into account the high population growth rate in the area – there was an 8.2% increase between 1996 to 2001. This would need to have been taken into consideration when developing LED programmes.

<sup>40</sup> Statistics South Africa 'Census 2001 in Brief' at 51.

<sup>40</sup> <http://www.statssa.gov.za/census01/html/CInbrief/CIB2001.pdf>. In the labour sending areas it is even worse at 75%.

<sup>41</sup> WPL SLP at 59; EPL SLP at 59.

in the area has been established coupled with specialty training courses planned.<sup>42</sup> As will be seen below, the numbers of non-employees targeted for skills training programmes are low. Further the passage provides no clarity on the level of educational attainment necessary to fall into the class of 'graduate' for the purposes of the database and training programme.

- g. Both the GLC and sending areas are experiencing a severe health crisis, due in particular to a combination of the high prevalence of HIV/Aids and limited availability of healthcare services. The Department of Health estimated that 26% of pregnant women in the North West Province are HIV positive. In its SLPs, Lonmin estimates that 40% of the sexually active population in the North West Province is HIV positive.<sup>43</sup>
- h. Access to basic services and to potable water in both host and sending communities is also significantly below the national average. In the sending communities the situation is particularly severe – as of 2001, 93% of the population had no access to safe drinking water and 99% had no access to safe sanitation.<sup>44</sup>
- i. In the sub-section on the impact of mining on the host community it is stated that “there is a belief that the increase in crime, HIV/AIDS and land invasion are as a result of the influx of outsiders and contract workers from labour sending areas...”<sup>45</sup> A key concern regarding the accommodation of non-local contractors and its effect on the prevalence of sex work and HIV/Aids was raised in the IDP of ‘the Municipality’.<sup>46</sup> The SLPs state that Lonmin’s housing and living conditions project mitigate these impacts.<sup>47</sup> Thus Lonmin’s compliance with its housing commitments are of pivotal importance.

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<sup>42</sup> WPL SLP at 60; EPL SLP at 60.

<sup>43</sup> WPL SLP at 54; EPL SLP at 54.

<sup>44</sup> WPL SLP at 59; EPL SLP at 59.

<sup>45</sup> WPL SLP at 60; EPL SLP at 60.

<sup>46</sup> The name of the municipality is not stated but this presumably refers to the Bojanala Platinum District Municipality. Ibid at 60.

<sup>47</sup> WPL SLP at 60; EPL SLP at 60.

- j. The Lonmin SLPs also briefly set out the challenges identified as facing the mining sector in the Bojanala District Municipality.<sup>48</sup> These challenges include the inability of the public sector to provide necessary bulk infrastructure (e.g. roads, electricity, water); the need to source much of the inputs and products from outside the district; the sensitivity of the mining sector to international commodity prices and economic conditions; the impact of HIV; achieving corporate and public sector alignment with regards to CSI; and pressure on water resources.<sup>49</sup>
- k. *Stakeholder engagement process* - The importance of the involvement of all stakeholders in the design and implementation of SLPs cannot be overstated.<sup>50</sup> In particular, the involvement of employees, workers and the community is necessary for ensuring the programmes cater to their needs.
- l. Both SLPs state that Lonmin has overseen the creation of a community representative organisation called the GLC.<sup>51</sup> This terminology is confusing because the GLC is also used in a purely geographical sense, as those communities within a 15km radius of the mine. The SLPs do not identify the representative bodies and traditional structures within the listed communities of which it is comprised. It is impossible from the information provided to evaluate the extent to which the GLC is legitimate, both in leadership and in structure.
- m. Reference is made to workshops being held with the local community on the impacts of the mine, social investment and poverty eradication.<sup>52</sup> Twenty-one projects have been identified for consideration. Each of the eight project committees established are comprised of both Lonmin employees and community members. It is stated that “regular meetings are scheduled for progress and identification of new projects.”<sup>53</sup> The SLPs claim that an entity consisting of 100 community members, known as GLC Lentswe, meets regularly and has drawn up a charter (‘Lentswe Charter’), which is an appendix to the main SLP. Committing to such community engagement and any subsequent failure to honour this commitment would contribute significantly to distrust. The only evidence cited in

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<sup>48</sup> WPL SLP at 56-57.

<sup>49</sup> *Ibid.*

<sup>50</sup> MTS at 15.

<sup>51</sup> WPL SLP at 46; EPL SLP at 46.

<sup>52</sup> WPL SLP at 47; EPL SLP at 47.

<sup>53</sup> *Ibid.*

the SLPs of actual meetings having taken place were with local and provincial government officials. The Lentswe Charter itself gives no indication of which communities signed up to the Charter, the procedures to be followed by the GLC (e.g. when meetings should be scheduled), membership and leadership structures. It is primarily a wish list of favourable socio-economic outcomes with no clarity on the lines of responsibility. It is thus, by itself, incapable of establishing channels of accountability and meeting Lonmin's obligations.

n. *Identified projects*

i. WPL Project 1 - Water and Sanitation

The WPL Project 1 on Water and Sanitation targets the residents of the Rustenburg and Madibeng Municipalities.<sup>54</sup> Timeframes, annual outputs and budgets have only been set out for one of the three deliverables under the Project - the building of 1,000 pit latrines.<sup>55</sup> The remaining deliverables, namely the roll out of sewer systems with toilet structures and water reticulation with residential connections seem to have been included without the necessary funding and / or benchmarking. Where benchmarks are not included in the original SLP, the standard against which compliance is measured becomes unclear and thus accountability is undermined. The absence of success indicators is an example of a problem common to LED initiatives in SLPs, which needs to be addressed.<sup>56</sup>

ii. WPL Project 2 – Brick Making Factory

WPL Project 2, a brick making factory, was linked to the building of houses in the GLC. Lonmin's main intervention was to provide R10 million, in support to a local brick making factory from which bricks would be purchased for the planned 5,500 houses to be built.<sup>57</sup> The Project was later found to be unfeasible. The plan for developing a brickyard appears to have collapsed on two issues. First, the main material to be used in the brickmaking was to be sourced from existing tailings facilities. This material, however, was found to

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<sup>54</sup> WPL SLP at 62.

<sup>55</sup> Ibid.

<sup>56</sup> MTS at 59.

<sup>57</sup> WPL SLP at 63.

be live (radioactive) and therefore unsuitable for this use.<sup>58</sup> Second, the development of the brickyard was predicated on Lonmin building 5,500 houses, which would ensure the required demand for the bricks produced by the brickyard. These houses were never built and in turn the brickyard was made redundant.<sup>59</sup> Both these points raise questions not only to the thoroughness of Lonmin's planning, but also to Lonmin's compliance with its obligations under its SLPs.

iii. WPL Project 3: Schools

WPL's Educational Support and Upliftment Programme involves capacity building, upgrading of infrastructure and the provision of technical education resources at 29 GLC schools. The SLP states that the benchmarks are included in Appendix 6 to the SLP which is termed 'the Schools Plan'.<sup>60</sup> Appendix 6 to the SLP is, in fact, a general table of CSI projects and does not constitute a sufficient plan for schooling.

With regards to schools, the following four components are provided for in Appendix 6: First, the 'Winter School', the benchmark described 'to improve Grade 12 pass rates by at least 10% by 1 October.'<sup>61</sup> Second, the 'Twinning of Schools' the benchmark described 'to facilitate the twinning of 1 United Kingdom school with 1 GLC school.' Third, a 'Schools Survey' the benchmark described as an 'In-depth analysis of needs at all GLC schools.' Fourth, 'Read to Succeed' the benchmark described as the 'Construction of 150m squared extension of Marikana Library.' The relationship between these initiatives and that contained in the SLP is not precisely defined, though the schools survey seems the most closely connected to the former. None of the above information constitutes proper benchmarks for the purpose of assessing annual compliance. It needs to be clarified whether this document is the same Appendix 6 referred to in the SLP.

In the log frame for project 3 in the SLP, the participation of the North West Department of Education is referred to as an 'assumption' rather than a

<sup>58</sup> WPL SLP Annual Report 2008 at 50.

<sup>59</sup> The failure to build all but 3 of the 5500 houses is ascribed by Lonmin to the 2008 economic recession and the company's weakened financial position as a result. WPL SLP Annual Report 2010 at 37.

<sup>60</sup> Appendix 6 is not a discrete schools plan but a table summarising the company's CSI initiatives and which include education-related programmes.

<sup>61</sup> The year is not stated.

secured commitment.<sup>62</sup> This indicates uncertainty as to whether there would be the necessary support for the Project from the Department. The success of projects such as these is dependent on securing the support from all stakeholders, with the power to ensure the go-ahead for the project, at the time of developing a SLP rather than subsequent to the approval of the SLP. Without prior consent from crucial stakeholders, such as the Provincial Department of Education, there is a large risk that such undertakings will not materialise, leading to a situation of unmet expectations and non-compliance with SLP obligations.

iv. Housing Project (WPL and EPL)

Adequate housing is central to the lived reality of all mining communities and is one of the most significant of Lonmin's commitments under its SLPs.<sup>63</sup> Both the EPL and WPL SLPs contain the same housing programme. The target of 5,500 houses in five years, is appropriate, and sufficiently ambitious given the significant housing crisis in the area.<sup>64</sup>

However, there appears to be a number of flaws in the scheme, which have the potential to dilute its effectiveness: First, all commitments in terms of the employee housing scheme are subject to securing funding from a financial institution. Second, there is no specificity on the criteria of who is eligible to benefit from the houses (i.e. whether the houses are for employees only or for the GLC). Third, there is no certainty on how people will access housing (whether given to employees, through pay-by-rent or through secured loans), and whether these options reflect what mine workers and/or community members actually want. Fourth, it is not clear whether the net benefit to employees or the broader community members is comparable in value to what the SLP refers to as Lonmin's financial provision for the Project. For example, were employees to obtain the houses from the mine through secured loans, made available by a third party bank, the mine would ultimately recoup some of the value. When a mining company states in its SLP that a certain sum of money is a component of its social expenditure, it is

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<sup>62</sup> WPL SLP at 64.

<sup>63</sup> It is of particular significance both in terms of impact and expenditure. R685 million was earmarked for the housing programme (excluding hostel conversion) which can be contrasted with the R78.5 million initially allocated to the non-housing LED programmes in the WPL SLP. WPL SLP at 92.

<sup>64</sup> For example, at Rustenburg during the period 2004-2006, an estimated 41.4% of inhabitants lived in informal accommodation. Gaffney's Local Government 2004-2006.

making a representation to all stakeholders (including Government Regulators), that the benefits from this expenditure will remain with the intended beneficiaries and will not be recouped by the company. The stated sum of social expenditure in the SLP should therefore be the projected expenditure on the Project minus the monies recouped from the intended beneficiaries.

Given the vagueness and conditionality associated with the Project, which constituted the bulk of Lonmin's social expenditure, questions in this regard should have been asked by the DMR in considering the mining right application. The aforementioned issue of conditionality could have ultimately affected the approval of these particular SLP commitments, notwithstanding all the conditions and exit clauses available to Lonmin, the fundamental commitments should have still been complied with. Not fulfilling the housing obligations would breach the social contract rooted in Lonmin's regulatory obligations.

The other component of the housing programme was the upgrading of the mine hostels into single and family units. This was an important initiative to allow mineworkers to live with their families, thereby attempting to address some of the social problems associated with the migrant labour system. There is, however, some cause for concern in relation to the provision of alternative accommodation in the following two circumstances: First, during the renovation of the hostels and, second, for those employees who would not be accommodated in the new hostels. While the renovation of the mine hostels is underway, those living in the hostels would be afforded access to accommodation, but indications are that employees would have to pay to stay in the temporary alternative accommodation.<sup>65</sup> While it is suggested that Lonmin is designed, in part, to accommodate employees who will lose their allocated accommodation due to the restructuring of the hostels the relationship between the housing Project and the hostel upgrade programmes is not articulated in sufficient detail to be properly understood. Most fundamentally there is no clarity on the process to be followed for determining who is eligible for accommodation in either a house or a hostel.

The housing commitments made by Lonmin in its 2006 SLPs had a significant financial value attached, although over the five-year-SLP-cycle the financial

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<sup>65</sup> WPL SLP (see note 16 above) at 73.

input was significantly diluted. The 2011 Annual SLP Report for WPL shows that the targets for housing-related expenditure for the year 2011 approximately halved from the financial provision in the 2006 SLPs.<sup>66</sup> At the time of this investigation, we were not in possession of any evidence that the DMR has formally granted any amendments to Lonmin's SLPs.

v. WPL Project No.5 – Provision of Access to Basic Services (Alfred Nzo District Municipality)

The WPL Project 5 was designed to improve access to water and sanitation in the Alfred Nzo District Municipality in the Eastern Cape (one of the labour sending areas). The deliverables of this Project are the supply of ventilated improved pit latrines (VIPs) to 250 houses and the provision of protected water infrastructure to five villages. These targets seem to be unambitious as 30% of the WPL and EPL workforce come from the area, suggesting the need for a larger scale roll-out especially in the context of the needs of this particular area.

vi. Nutrition

At the time the SLPs for WPL and EPL were developed, Lonmin contracted caterers to compile menus in consultation with a dietician and based on the recommendation by the Chamber of Mines Report on Nutrition for Mine Workers.<sup>67</sup>

Mine workers would thereafter be responsible for arranging their own food, once 'access to single and family housing unit integrated with the local community' had been provided.<sup>68</sup> Lonmin was thus planning to transfer responsibility for adequate nutrition from the company to its employees. This does not appear to constitute a nutrition scheme as it is in no way designed to assist mine workers in accessing quality food.

vii. Other LED

<sup>66</sup> WPL SLP Annual Report 2011 at 37. Read with WPL SLP at 92

<sup>67</sup> WPL SLP (see note 16 above) at 77; EPL SLP at 76.

<sup>68</sup> Ibid.



Both SLPs state under the housing subsection that “Local Government has approved plans for an informal trading area, a shopping complex, and a bus and taxi rank which are all to be established in partnership with the Madibeng Local Municipality.”<sup>69</sup> The role of Lonmin in this partnership as well as the source of the financial provision necessary for the infrastructure is not clarified.

#### 2.2.1.5 *Procurement*

- a. The procurement section, which is identical in both SLPs, is detailed and thorough with respect to Broad Based Black Economic Empowerment (BBBEE) targets. The targets are clear and in line with the Mining Charter and a set of concrete measures are outlined to achieve the targets. These include a database of HDSA companies and the creation of a specialist position of Supplier Development Manager (and an appointed candidate) to identify opportunities for HDSAs, to assist in tender preparation, and to facilitate entrepreneurial skills transfer etc.<sup>70</sup> This is important as it creates a line of accountability. This is also accompanied by steps to ensure there are incentives for complying with targets. For example, the performance of management and incentives (re salary increases etc.) are evaluated on the extent of the company’s compliance with the SLP procurement targets.
  
- b. In contrast, local content commitments are not clearly defined, despite a statement of intent to identify businesses in the Greater Marikana area,<sup>71</sup> and for the supplier development manager to ‘carry out structured interventions to address local black empowerment by facilitating the participation of local empowerment companies in the Lonmin procurement chain’.<sup>72</sup>

#### 2.2.1.6 *Financial Provision*

- a. Ostensibly the financial provision for WPL was R 1,793,275,000. This consists of R367,770,000 for human resources development; R897,900,000 for LED; and

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<sup>69</sup> Ibid at 74.

<sup>70</sup> WPL SLP at 80 and 82; EPL SLP at 79 and 81.

<sup>71</sup> WPL SLP at 80; EPL SLP at 79.

<sup>72</sup> WPL SLP Appendix 7: Procurement Progression Plan at 8.

R527,695,000 for downscaling and retrenchment. However if the housing spend is excluded, which is to be lent from financial institutions and is to be partially recouped as a result of employees renting and/or purchasing the houses; the total expenditure is approximately half of this (R982,375,000) and the LED Project's spend is R87,000,000.

- b. Similarly, the financial provision for EPL was R1,332,170,000. This consists of R367,770,000 for human resources development; R899,400,000 for LED; and R65,000,000 for downscaling and retrenchment. However, if the housing spend, which is to be lent from financial institutions and is to be partially recouped as a result of employees renting and/or purchasing the houses, is excluded; the total expenditure is less than half at R521,270,000 and the LED Project's spend is R88,500,000.
- c. When examining the financial provision for EPL and WPL, it became apparent that the financial provision for both housing/hostels and human resources development were identical and were being added on to the total financial provision for each SLP. This falsely inflates the SLP expenditure per project. Ideally financial provisions per mining license should distinguish between independent project based expenditure and overall company expenditure, and not conflate financial spends.
- d. *Proportion of budget devoted to initiatives of which mine employees are not the sole beneficiaries* - While the LED initiatives are targeted at both host and labour sending communities (at R897,900,00 being the largest component of the budget, of which housing constitutes the majority), the majority of the education and training beneficiaries are employees of Lonmin with downscaling and retrenchment provisions, naturally relating only to employees.
- e. A number of caveats need to be made in relation to the impact of LED initiatives on the community. First, while Lonmin has committed to building 5,500 houses (the bulk of the LED spend) there is no indication that these houses are intended to benefit non-employees. Further, the SLP discusses 'tenure options', renting and purchasing which indicates Lonmin intends to recoup much of this expenditure.

Finally, the housing spend is subject to securing the necessary finance from financial institutions, which is not guaranteed.

- f. As outlined above, when one excludes the housing expenditure from the LED budget for both WPL and EPL, the scale of the expenditure and impact is significantly smaller.
- g. Another critical component of the SLPs, especially given the low levels of formal education and high levels of unemployment in the GLC and sending communities, is ABET. However, the body of the SLP lacks any definitive targets.
- h. Although the SLPs indicate that Lonmin has other projects designed to benefit the GLC inhabitants, over-and-above those projects in the SLPs; it is stated that “[i]n addition, WPL is implementing Corporate Social Investment (CSI) projects in the areas of health, educational support and tourism development as outlined in Appendix 6”. Appendix 6 does provide evidence of additional projects to benefit inhabitants and includes the establishment of two paralegal offices to provide counselling to victims of crime and partnering with the Municipality to develop a tourism master plan as well as offering 20 individuals learnerships in the food and hospitality sector. For the most part, however, the level of detail is insufficient to establish the nature, scope and impact of these programmes and the relationship to its counterparts in the SLPs.
- i. These findings raise questions as to whether the scale and financial provision for LED initiatives is commensurate with the scale and impact of these projects.

### 3. ASSESSMENT OF LONMIN'S COMPLIANCE WITH ITS SLP COMMITMENTS FOR WESTERN PLATINUM LIMITED AND EASTERN PLATINUM LIMITED

#### 3.1 Methodology

3.1.1 The methodology used in the qualitative analysis is based, *inter alia* on a set of criteria for critical assessment of SLP compliance, which CALS has been developing. This assessment tool has been developed in the course of various SLP analyses. The methodology used to assess quantitative compliance is to compare the annual performance benchmarks set in the 2006 SLPs for both WPL and EPL, against the actual performance, as recorded in the Annual Reports for the years 2007 to 2011. Every benchmarked output, as contained in the 2006 SLPs, was analysed against the following: (i) Original SLP target; (ii) Actual; (iii) Percentage of target met; (iv) Revised target (where applicable); (v) Percentage of revised target met (where applicable); and (vi) Percentage of target revised.

3.1.2 The qualitative analysis is attached as **Annexure 'A'**. In the remainder of this submission, a narrative to the qualitative analysis is provided below, followed by an overall assessment and conclusion.

#### 3.2 Quality of reporting

##### 3.2.1 Terminology

3.2.1.1 The SLPs contain various instances where terminology that is critical to understanding the nature and reach of programmes and targets is unclear and/or used inconsistently. An example is the manner in which the local target area of the SLP is defined. Two different phrases, namely the GLC and the Bojanala Platinum District Municipality (Bojanala District), are both used in the SLPs and in the Annual Reports to describe the area surrounding the mine. The term GLC is only defined with any precision from the 2010 Annual Report onwards as "communities within 15km radius of operations". However, the LED Projects are described in their log-frames as being applicable to the Bojanala District.

3.2.1.2 There is also ambiguity regarding the designated group of women meant to benefit under the SLPs. The phrase 'HDSA women' seems, based on the targets to be used interchangeably with the term 'women'. While it appears that the phrase 'HDSA women' simply refers to women as a historically disadvantaged category, the terminology causes some confusion in that it can also be read as meaning the intersectional category of black women.

### 3.2.2 Consistency of reporting

3.2.2.1 In order to ensure mining companies are held accountable to every SLP commitment, it is important that the definition and demarcation of measurable outputs remain consistent with the original SLP. Further, each Annual Report should, as far as possible, measure each of the benchmarks contained in the SLP. Any changes accepted by the DMR should be expressly highlighted and fully explained. Without this consistency it is very difficult to measure compliance as there are no benchmarks against which performance can be measured.

3.2.1.2 A number of inconsistencies in Lonmin's reporting were detected. Categories of deliverables are, on occasion, conflated only to be separated again in subsequent Reports without explanation. For example, enrolment in the entry level ABET programme referred to as BTL is a discrete deliverable in the original SLPs.<sup>73</sup> From the 2008 Annual Reports<sup>74</sup> the category of BTL disappears. It was found that the target for the next category (pre-ABET) in these Reports is the same as the original BTL and pre-ABET combined. This can either be interpreted as a revision of target (pre-ABET expanded to accommodate the lack of need for BTL) or the conflation of the two. In the 2010 Reports, BTL re-emerges only to disappear in the 2011 Reports.

### 3.2.3 Accuracy of reporting

3.2.3.1 The obligation placed on any juristic person when reporting on compliance with legal obligations is always, whether implicitly or expressly provided in legislation, a requirement to report accurately, as compliance with obligations can only be

<sup>73</sup> BTL is not defined in the SLPs but might refer to Breakthrough to Literacy, a methodology for teaching functional literacy. [http://www.unicef.org/evaldatabase/files/2002\\_Uganda\\_Literacy\\_rec\\_358398.pdf](http://www.unicef.org/evaldatabase/files/2002_Uganda_Literacy_rec_358398.pdf)

<sup>74</sup> The 2007 report does not contain a breakdown of the ABET levels.

enforced if both regulators and interested and affected parties have a full and correct understanding of the status of that juristic persons compliance.

3.2.3.2 It is therefore noteworthy that the 2010 and 2011 Annual Reports for both SLPs are prefaced by a statement by KPMG, Lonmin's appointed auditors, that it can only provide limited assurance ('LA') and reasonable assurance ('RA') on several reported items. LA is provided on targets in relation to ABET; student sponsorships; HDSA management; and hostel conversions.

3.2.3.3 Perhaps the clearest illustration is the quality of the first combined Annual Report for both WPL and EPL in 2007.<sup>75</sup> It is submitted that this Report does not constitute meaningful fulfilment of Lonmin's obligations to report annually on its SLP performance. First, two separate mining projects, each with its own SLP targets are conflated into a single three page report. Second, quantitative compliance data is only provided for Lonmin as a whole and not for the individual mines. Whole components of the SLP (including 'human resources development' and 'mine community') were only afforded a brief paragraph, each with no concrete compliance. For example, all that is reported on 'mine community' (LED) programmes is, "[a]lthough expenditure and progress to date on projects is of concern, the Eastern Cape Multi-purpose Community Centre will be completed in January 2008".

### **3.3 ABET and other skills training**

3.3.1 The compliance record for both EPL and WPL with ABET targets is, on average, within acceptable limits. However the extremely low levels of performance on pre-ABET implementation are not explained. Pre-ABET provides basic reading and writing skills that form a foundation for subsequent learning. Given that roughly 30% of the District is illiterate, the programme is of fundamental importance. Questions therefore need to be asked about whether the appropriate weight was afforded to this critical category.

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<sup>75</sup> 'Social and Labour Plan – end of Financial Year 2007.' Submitted to WPL and EPL Boards, with Department of Minerals and Energy, Provincial Department of Minerals and Energy, Office of the Premier North West Province, Madibeng Municipality, Bapo Ba-Mogale Traditional Authority, National Union of Mineworkers, Solidarity and UWASA copied in.

3.3.2 Initially, Lonmin exceeded its targets for workplace training. However, from 2010 the ABET programme was paused with “financial constraints brought on by the global financial crisis” being cited.<sup>76</sup> Based on the 2008 and 2009 Reports,<sup>77</sup> Lonmin’s level of delivery on its mentorship targets was low, at an average of 26%. Lonmin delivered on its commitments to provide GLC learners with bursaries for study in mathematics and science, exceeding its annual targets for 2008 and 2009.<sup>78</sup>

### **3.4 Employment equity and participation of HDSAs in management**

3.4.1 Overall targets for HDSA representation in the workforce and in management were largely complied with, while targets for participation of women at the mine were consistently missed. This raises questions as to the efficacy of Lonmin’s measures to achieve gender transformation in the context of a male-dominated industry.

### **3.5 Housing programme and hostel conversion**

3.5.1 The assessment of Lonmin’s implementation of its housing programmes, namely the building of houses and upgrading of hostels into single and family units, is of critical importance. First, housing and living conditions have profound implications on human dignity and the quality of life. For this reason the Constitution protects the right to access to adequate housing.<sup>79</sup> It is common cause that at the time the SLPs were drafted, the Bojanala District faced, and continues to face, a significant housing backlog with 41.4% of all households living in informal accommodation.<sup>80</sup>

3.5.2 It is also commonly accepted that the establishment of new mining projects puts pressure on existing resources as people arrive en masse in search of employment. The result, especially when coupled with low levels of access to water and other basic services, is that a critical mass of the population, including mineworkers, continue to live in unsafe and uncomfortable living conditions. These living conditions are conducive to frustration, tension and the eventual outbreak of unrest. Second, the scale of the housing programme, which included the building of 5,500 houses and the upgrading of Lonmin’s hostels into single and family units was, if fully complied with and implemented successfully, of a sufficient scale to make a meaningful

<sup>76</sup> WPL SLP Annual Report 2010 at 10-11.

<sup>77</sup> The mentorship programmes for EPL and WPL ran from 2006-2009.

<sup>78</sup> Programme ran until 2009.

<sup>79</sup> Section 26 of the Constitution of the Republic of South Africa, 1996.

<sup>80</sup> Gaffney’s Local Government 2004-2006.

contribution towards addressing the housing crisis. Third, the housing component constituted the most significant programme of the SLPs<sup>81</sup> both in terms of direct impact and expenditure. Consequently Lonmin's compliance with its housing commitments alone has a significant bearing on its overall compliance.

- 3.5.3 The SLP Reports of 2008 to 2011 indicate that out of the 5,500 five year target, only three show houses were built, translating into a 0.5% fulfilment of the SLP commitment. Following the 2008 financial crisis, the housing targets were dramatically revised downwards to three houses in 2009. In 2010, Lonmin decided to 'review' its housing programme citing "the global economic meltdown and the consequent financial position of the company" and develop a new strategy to implement from 2011 onwards.<sup>82</sup> As of 2011, no strategy had been implemented or developed. Lonmin would "continue to explore and seek a sustainable market solution" and would, in the interim, carry out a pilot project of "erecting additional accommodation at our operations with densification as a central theme".<sup>83</sup>
- 3.5.4 Lonmin went a little further towards meeting its targets for the conversion of its hostels where 114 hostels were converted in the period 2006/2007 – 2010/2011. Lonmin reported that 60 hostel blocks had been converted by 2011 though it was only able to provide limited assurance on the numbers for 2009/2010 and 2010/2011. This represented 53% of its original target and less than 50% of its revised target of 128 hostel blocks. Lonmin has committed to reaching this target by 2014.<sup>84</sup>
- 3.5.5 Lonmin's overall housing performance is, on the face of it, a near total non-compliance with its SLP obligations. It must be borne in mind that the housing and hostel conversion programmes were inextricably linked. The SLPs state that by themselves the new hostels would not be able to accommodate all those presently residing in hostels.<sup>85</sup> These employees would be accommodated in houses and flats to be built. At the time of this analysis, no evidence had been provided to prove that there had been approval for the abandonment of the original housing targets as an amendment to the SLP. If approval had been provided - the question remains

<sup>81</sup> Lonmin had a single housing programme covering both its Marikana operations.

<sup>82</sup> EPL SLP Annual Report 2010 37-38.

<sup>83</sup> EPL SLP Annual Report 2011 37-38.

<sup>84</sup> WPL SLP Annual Report 2010 at 40.

<sup>85</sup> WPL SLP (Note 16 above) at 73-75.



whether such a significant dilution of SLP commitments is compatible with the purpose of the regulatory and legislative system. Lonmin was awarded a mining right on, inter alia, the basis of the commitments contained in its 2006 SLP, of which the measures to address housing and living conditions were a significant component.

### **3.6 Other Local Economic Development Programmes (LED)<sup>86</sup>**

3.6.1 The WPL and EPL SLPs each contain several<sup>87</sup> other LED programmes targeted at the GLC and labour sending communities in Alfred Nzo District Municipality, Eastern Cape. Compliance on several of these programmes was more difficult to assess. Not every programme was addressed thoroughly in each Annual Report so as to allow continuous tracking of performance against the benchmarks. The programmes where findings could not be made, due to poor reporting include: Provision of Water and Sanitation for the GLC (WPL); Educational Support (WPL); Water and Sanitation for the labour sending area (WPL); Community Skills Project for GLC (EPL); and Sports and Recreation for the GLC (EPL).

3.6.2 A number of LED initiatives failed due to a variety of factors. These initiatives were the Commercial Farm for the GLC; the brickyard for the GLC; and the provision of waterborne sanitation for the Alfred Nzo Municipality, the latter accounting for two of three components of EPL's Provision of Water and Sanitation Programme. The Commercial Farm Project is of particular importance given its aim of providing job opportunities to 400 inhabitants of the GLC. The trend of inconsistent reporting remained a theme throughout the existence of this Project. It appeared that 68 people were employed on the farm, though it is not clear whether these jobs existed prior to the SLP commitment. Unfortunately, by 2010 the programme had failed with Lonmin attributing insufficient skills and capacity in the GLC, and due to the inability to find an investor.

3.6.3 Another significant failure was the upgrade of a brick-making factory in the GLC for the purpose of supplying bricks for the WPL Housing Project and in support of local

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<sup>86</sup> Housing was included in the local economic development spend in the SLPs but is treated in the reports as a separate component.

<sup>87</sup> Six additional programmes for WPL and five for EPL (six if you count the duplicate water and sanitation programme which was likely an error).

business. In 2008 it was reported that the Project had been abandoned as unfeasible. Lonmin cited two reasons for the unfeasibility. First the material for the bricks, which was to be sourced from existing tailings facilities, was found to be live (radioactive). Second, the development of the brickyard was predicated on the building of 5,500 houses by Lonmin which would ensure the required demand for the factory's brick product. According to Lonmin, the economic downturn of 2008 meant that the houses were never built and in turn the brickyard was made redundant. Both reasons provided by Lonmin for this failure raises questions as to the thoroughness of Lonmin's planning.

- 3.6.4 The third failure was EPL's Water and Sanitation Project for Alfred Nzo Municipality which was ascribed to the absence of water infrastructure within the Municipality. A high level feasibility study would have detected such an obstacle and allowed the necessary steps to be taken to re-evaluate the Project or propose an alternative.

### **3.7 Overall assessment**

- 3.7.1 The effectiveness with which Lonmin discharged its SLP obligations under the MPRDA, the Regulations and Guidelines had significant implications for the quality of life of its workforce and affected communities. Given severe systemic problems associated with poverty and inequality; including access to housing, access to education, unemployment and levels of basic service provision; SLP programmes, if implemented, could have made a discernible improvement to living standards within the GLC and the labour sending communities.
- 3.7.2 The careful consideration of a wide range of impacts in the design of the SLP is critical to its success. Workable initiatives require an accurate assessment of community needs which, in turn, requires rigorous and meaningful consultation. Equally, the viability of SLP initiatives requires clear understandings to be reached with the Government authorities whose co-operation and approval is necessary. The impression gained from the EPL and WPL SLPs is one of sub-standard engagement with community and Government with many issues of critical importance deferred until the subsequent approval of the SLP. For example, the failure to anticipate obstacles posed by limited infrastructure in Alfred Nzo Municipality raises questions

about the extent of consultation between Lonmin and the Municipality during the development of the SLP.

- 3.7.3 In addition to substantive compliance with SLP obligations, companies are required to comply with their reporting obligations. Inconsistencies in reporting – including the conflation of targets and frequent changes in both the information reported and the format employed – renders it difficult and sometimes impossible to gain an accurate picture of the level of compliance with SLP obligations. This is coupled with the frequent downward revision of targets; changes which are not always identified and/or explained.
- 3.7.4 Another trend detected in the analysis was the double counting of single interventions taken at a Lonmin Company level in both of the SLPs, which contributed to the considerable inflation of the total SLP budget. There is a need to contain a clear and comprehensive account of project targets, aims and deliverables in order to assess compliance.
- 3.7.5 Considerable overspend and underspend are present in the Annual Reports, suggesting poor financial forecasting. An example of this can be seen in the level of 'mine community spend' for 2007, where Lonmin spent 4% of the annual target, equating to a total of R2 million spent out a target of R60 million.
- 3.7.6 Based upon the data from the WPL and EPL SLP Annual Reports, there is evidence of a significant divergence between the vision articulated in the SLPs submitted to the DMR and the actual scale and impact of Lonmin's interventions. Lonmin seems to have delivered substantially on its human resources, ABET, and workplace skills commitments. Employment equity targets for HDSAs as a whole have also been met, although the employment of women in managerial positions still lag behind targets. Lonmin has also met targets for learner bursaries, although precise benchmarks have not been provided in the 2006 SLP. Additionally, Lonmin invested considerably in support to local schools, though interventions appear to have occurred at only 19 schools, as opposed to the 29 stated in the SLP.

3.7.7 While certain educational commitments were exceeded, many of the larger scale SLP programmes and initiatives have not come to fruition. It seems that insufficient weight has been afforded to high-impact components of the SLP, such as housing and infrastructure. While Lonmin committed to ensure the building of 5,500 houses to improve living conditions and address the legacy of the migrant labour system, by 2011 Lonmin had built a mere three show houses. In addition, two of the initiatives designed to promote local entrepreneurship, namely WPL's brick making factory upgrade and EPL's commercial farm (which was designed to create work opportunities for 400 people) were unsuccessful and abandoned. Consequently a very significant proportion of the positive high impact deliverables contained in the SLP, and hence conditions upon which the renewal of the old order mining rights were granted by the DMR, are largely unmet.

#### **4. CONCLUSION**

- 4.1 The present SLP system is significantly flawed when considered against the criteria of responsiveness, ability, alignment, planning and clarity of design. For this reason a systematic review of the regulatory framework of the SLP system should be a matter of priority.
- 4.2 Lonmin's SLPs for both WPL and EPL suffer from many of the same symptoms of the afore-mentioned systemic issues. A number of programmes suffered from poor planning with resulting problems of implementation. These programmes include brick-making factory, the agricultural farm project and most importantly, the construction of 5,500 houses as committed in the 2006 SLPs. The failure of these projects points to non-compliance that requires further investigation.
- 4.3 The lack of delivery under these projects and the resultant lack of impact on the lived reality of the mine-affected communities, including workers and their families, could constitute a significant factor precipitating the events in Marikana of 09 to 16 August 2012.