SMOKE AND MIRRORS

LONMIN'S FAILURE TO ADDRESS HOUSING CONDITIONS AT MARIKANA, SOUTH AFRICA

AMNESTY INTERNATIONAL

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Amnesty International

EXECUTIVE SUMMARY

On 16 August 2012, the South African Police Service fatally shot 34 men at Marikana in South Africa's North West province. The men were employees of the mining company, Lonmin, and had been engaged in a strike and protest action over pay and conditions at the mine. The scale and visibility of the killings, as well as the growing unrest across the mining sector, sparked a national crisis.

Following the events at Marikana, President Jacob Zuma appointed a Commission of Inquiry. The Commission was chaired by a retired judge, Ian Farlam, and was known as the Farlam Commission. The Farlam Commission found that the "decisive cause" of events on 16 August was an unlawful and reckless decision taken by senior police officials the night before to disarm and disperse the strikers, forcibly if necessary, by the end of the next day.

While the deaths at Marikana were the main focus of the Farlam Commission, it also considered the context in which the events of August 2012 occurred, and specifically the horrendous housing situation and living conditions for mine workers at Marikana. Thousands of Lonmin employees were living in squalid conditions in informal settlements around the mine. Lonmin was well aware of the situation and had, under its 2006 Social and Labour Plan (SLP), committed to construct 5,500 houses for workers by 2011. By 2012 it had built just three.

SLPs are legally binding documents based on South Africa's Mineral and Petroleum Resources Development Act (MPRDA) and the Broad-Based Socio-Economic Empowerment Charter for the South African Mining and Minerals Industry (known as the Mining Charter). The Farlam Commission found that Lonmin had failed to adhere to the terms of its SLP with regard to housing, and that the company had "created an environment conducive to the creation of tension and labour unrest" by not addressing the housing situation at Marikana.

In making this finding the Farlam Commission put a spotlight on an issue that is pervasive across the South African mining industry: the living conditions for mine workers, many of whom are migrant workers coming from other provinces of South Africa or from neighbouring countries. While poor housing is an industry-wide issue, no company has received the wake-up call Lonmin received from the Farlam Commission. Lonmins admitted to the Commission that the housing conditions in an informal settlement where some of its workers live were "truly appalling."

Since 2012 Amnesty International has commented and campaigned on the serious policing failures that led to the deaths at Marikana, calling for full accountability and reparations for the victims and their families. That work continues. This report examines abuses of the right to adequate housing of mine workers at Lonmin's Marikana mine operation. Its primary focus is an examination of Lonmin's response to the findings of the Farlam Commission. In assessing the company's response, the report looks both at what the company has said to explain its failure to build the houses it promised under its SLP, and at what practical actions the company has taken since 2012 to improve the housing situation.

The report also examines how the Department of Mineral Resources (DMR), which is responsible for oversight of corporate compliance with SLPs and the Mining Charter, addressed Lonmin's failure to deliver on the housing component of the SLP, and whether the DMR is effectively ensuring the improvement of

workers' housing as required under the Mining Charter. This analysis is limited to the DMR operations in the North West province where Lonmin operates.

The report is based on an extensive review of Lonmin's SLPs and Sustainability Reports to shareholders and stakeholders. Based on these reports, Amnesty International carried out two interviews with Lonmin senior executives. Researchers also met with the DMR office covering the North West province. In addition, researchers visited the Marikana mine site and documented housing conditions in the informal settlement of Nkaneng, which is adjacent to the mine. Amnesty International's findings were presented in writing to Lonmin and the DMR. Lonmin responded and its response is attached as an annex to this report. The DMR did not respond.

MINING IN SOUTH AFRICA AND MIGRANT WORKERS

South Africa's mining industry has always relied on migrant labour. The history of migrant mine labour is inextricably linked to colonialism, apartheid and racial discrimination.

Part of the history of migrant labour is the way in which people were housed. Companies provided migrant workers, almost exclusively men, with accommodation in barracks style hostels, often housing a dozen or more men to a room. This form of accommodation, in which people lack space and privacy, is inconsistent with the right to adequate housing, recognised under international human rights law and South Africa's 1996 Constitution. South Africa's Mining Charter requires companies to reform the hostel system. For those mine workers who do not live in hostels the alternatives can be limited. Across South Africa thousands of migrant mine workers live in informal settlements which are often overcrowded, with inadequate housing, limited or no basic services, and high levels of insecurity.

HOUSING AT MARIKANA: SQUALID AND INADEQUATE

There is a severe shortage of housing in the Marikana region and the area has one of the highest rates of informal settlements in the South Africa. This situation is linked to platinum mining and the influx of migrant workers. Lonmin employs just over 20,000 permanent staff at Marikana. More than half of the mine workers are migrant workers. The company provides accommodation to some 3,000 employees in renovated hostels. The rest of its employees live in urban areas and informal settlements around the mine. Although Lonmin claims to have conducted surveys of its workers' living situation, the company has not disclosed how many live in the informal settlements. However, in a letter to Amnesty International dated 1 August 2016, Lonmin said that approximately 13,500 of its employees were "in need of formal accommodation".

Lonmin has a responsibility to ensure that employees have access to adequate housing. As a mine company it requires a large number of workers to live close to the mine site in an area where there is limited housing available. Under international standards on business and human rights all companies must respect all human rights. This responsibility is articulated in the UN Guiding Principles on Business and Human Rights (UNGPs), an internationally accepted set of standards endorsed by the UN Human Rights Council. To meet the responsibility to respect human rights, companies should have in place a human rights due diligence process to identify, prevent, mitigate and – where necessary – redress human rights abuses connected to their operations. The adequacy of housing available to workers, for an industry that is heavily dependent on migrant workers, or which requires a workforce in an area that has limited housing availability, is clearly connected to the operations of the company.

One of the main informal settlements in Marikana is Nkaneng, which is adjacent to Lonmin operations and within its mine lease area. In 2012 the population of Nkaneng was estimated at 15,000, and has – according to residents – grown since then. Conditions in the settlement are bleak. It comprises thousands of shacks constructed mainly from metal sheets and bits of wood. These structures are crowded together, surrounded by litter and, when it rains, by mud. They have doors but few have proper windows. In winter the shacks are cold, and during heavy rains, they can leak and suffer damage. Shacks generally comprise one or two rooms, and many people cook, sleep and bath in a single room. Access to water is limited and people living at Nkaneng report having to buy water daily. The sanitation consists of pit latrines, often shared by many households and frequently in poor condition. Sometimes when it rain they flood and are unusable. The smell from the latrines in the crowded settlement causes serious discomfort to the people living there.

During the Farlam Commission of Inquiry Lonmin was compelled to disclose that it was well aware of the living conditions of many of its workers, including specifically the conditions in Nkaneng.

LONMIN'S EXCUSES, EVASIONS AND LIES

Despite this, Lonmin has made clear that it has no intention of building the 5,500 houses promised under its 2006 SLP. The company has put forward a number of explanations for not building the houses. Amnesty International examined each and found the company's excuses fail to withstand scrutiny. In several cases Lonmin has provided false or misleading information to its shareholders and stakeholders about progress on the housing situation at Marikana. The justifications the company has provided for falling to meet its housing obligation have changed over time. For example, Lonmin now claims its plans to deliver the 5,500 houses were based on establishing some form of funding arrangement with a property developer, and it expected 5,500 mine workers to obtain mortgages to buy the houses. Lonmin's position is that it did not find any financial partner and workers did not want to buy the houses, and this is why they were not built.

The Farlam Commission rejected this explanation, not least because this is not what Lonmin's SLP actually says. The SLP provides a capital budget for the housing programme, states that housing will be offered for rental and sale, and makes no mention of the plans being dependent on a partnership with a property developer. Moreover, if this was Lonmin's plan, it suggests the company was careless when it entered into a legally binding arrangement under the SLP without exercising adequate due diligence.

Lonmin's employees – more than half of whom are migrants – do not want to buy houses at Marikana. As a mining company with more than 100 years' experience, Lonmin should have considered this factor. In any case, a 2008 survey conducted by the company found 85% of employees wanted rental accommodation. However, Lonmin's 2008 Sustainability Report to its shareholders said that the majority of employees wanted to buy houses.

Lonmin has also claimed that it did not have access to appropriate land to build the houses. However, Amnesty International found that the company did have land available for at least 2,000 houses, and probably had land for a further 6,000 units. Moreover, if Lonmin did not have sufficient land, this again suggests that its 2006 SLP was both carelessly entered into, and extremely poorly planned. A lack of land was not referred to in the SLP. That document claimed the company had land for at least 2,000 houses.

In addition, the company has pointed to the financial crash of 2008 and the fall in platinum prices to explain its failure to build the houses. However, by the time of the financial crash at least 700 houses should have been built, based on Lonmin's annual targets under the SLP. Lonmin cannot explain why only three houses were built. Moreover, this explanation is inconsistent with other excuses put forward by the company.

More recently Lonmin has claimed, as an explanation for its failure to build the houses, that its employees are too indebted to get mortgages to buy houses – despite also knowing that 85% of workers do not want to buy houses at Marikana and that the SLP specifically says the houses will be offered for rental or sale.

None of Lonmin's excuses stand up to scrutiny. Several are contradictory. The company lied about the outcome of a 2008 survey of employees, presenting shareholders and stakeholders with information that was contrary to what it knew to be true. The failure to deliver on the SLP constitutes a breach of South Africa's Mineral and Petroleum Resources Development Act (MPRDA). The MPRDA requires companies to provide financially and otherwise for their SLPs. Lonmin did not do this. The MPRDA requires that changes to the SLP can only be done with official approval from the DMR. Lonmin changed its SLP plans significantly, but never obtained official permission to do so.

LONMIN'S NEW HOUSING PLANS: REPEATING FAILED STRATEGIES

Amnesty International also examined what action Lonmin has taken in the aftermath of the events of 2012 and, in particular, since the Farlam Commission's findings, to address the "truly appalling" housing conditions which so many of its workers endure. Lonmin is currently operating under a new SLP covering 2014 to 2018. Some of the plans that Lonmin has put forward under this SLP to address housing involve activities that the company started in the 1990s and that have failed to address the problems of adequate housing. The SLP contains only two new initiates. One involves building apartments that employees can rent. However, although this plan was

developed in 2013 or earlier, as of mid-2016 the company has only laid the pavement for the project and has said that it needs to renegotiate its financial commitment to the plan because of the current economic climate for platinum companies. As the SLP runs from 2014 to 2018, it is troubling that half way through the process Lonmin has done so little and is already pulling back on its financial commitments.

Lonmin's SLP also proposes a housing development at Marikana which could generate 6,000 housing units. However, this proposal appears to be dependent on securing a financial arrangement with banks and property developers – the very same arrangement on which Lonmin claims its 2006 SLP was based. Lonmin never found the partnerships or property developers and never delivered the 2006 housing plans. As of May 2016 the company did not have a property development partnerships in place. Moreover, Lonmin's current plans still focus on employees buying homes, despite the fact that the company knows the majority do not want to buy homes at Marikana.

Lonmin past plans were not delivered and the company's excuses do not stack up. Its current plans repeat failed approaches. And most troublingly, so far Lonmin's post-2012 plans have not delivered one additional housing unit for mine workers at Marikana. This situation raises questions about why Lonmin has not been held to account for its breach of its 2006 SLP commitments and whether its operations are consistent with the requirements of the Mining Charter.

THE ROLE OF THE DEPARTMENT OF MINERAL RESOURCES

The serious failures documented in this report could not happen if the Government of South Africa enforced the legal provisions it has put in place to address historical discrimination and disadvantage in the mining industry. However, the government has allowed Lonmin to flout the law, seemingly without consequence. The failure to enforce SLPs weakens the process and undermines the objectives of the Mining Charter. One of the recommendations made by the Farlam Commission was that "Lonmin's failure to comply with the housing obligations under the SLPs should be drawn to the attention of the Department of Mineral Resources, which should take steps to enforce performance of these obligations by Lonmin." As far as Amnesty International could discover, no action has been taken on this recommendation.

Amnesty International's research found problems of capacity and policy within the DMR. The DMR's capacity to monitor and enforce SLPs is limited by a lack of human and financial resources. In the North West province just three staff are responsible for reviewing and enforcing some 250 SLPs. The DMR carries out site visits but can only do 20 – 30 per year, because of budgetary limitations.

In addition, the DMR does not have a coherent approach to housing of mine workers. Where mines are located in relatively remote areas with limited housing in the immediate vicinity, and employees are required to work shifts, they will need places to live close to the mine. Adequate rental accommodation must be available for those who do not want to make a permanent home near the mine site or do not wish to buy a house. The DMR has focused on the conversion of hostels and on home ownership, and pays little attention to the needs of migrant workers for adequate and affordable rental accommodation.

RECOMMENDATIONS

The report concludes with recommendations to the DMR, Lonmin and Lomin's shareholders. Lonmin must urgently address the lack of adequate housing for mine workers through the provision of rental accommodation in line with the needs of its workforce and, in consultation with affected people and the relevant authorities, develop proposals to upgrade informal settlements on Lonmin mine license areas. Lonmin's shareholders should engage with the company to ensure it develops a coherent and deliverable housing plan. Shareholders should also examine the company's reporting and require reforms that would address the false and misleading reporting that has characterised Lonmin's annual Sustainable Development Reports for the period 2005 to 2015.

The Minister of Minerals should ensure the recommendation of the Farlam Commission with regard to the DMR's enforcement of Lonmin's SLP is taken forward, and publicly report on this. The Minister should also ensure that the DMR's approach to enforcing SLPs and the Mining Charter is overhauled to ensure that the objectives of the Charter to redress historical disadvantage in relation to housing for mine workers are achieved.

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CHAPTER 1: BACKGROUND

THE EVENTS OF AUGUST 2012 AT MARIKANA

On 16 August 2012 the South Africa Police Service (SAPS) fatally shot 34 men at Marikana in South Africa's North West Province. More than 70 others sustained serious injuries. The men were employees of the mining company, Lonmin, and had been engaged in strike and protest action over pay and conditions at the mine. The events of 16 August occurred at the Lonmin mine site where hundreds of striking mine workers had gathered on a koppie (rock outcrop) as part of the protest. The striking mine workers were carrying traditional weapons.[1] Some had firearms, although the extent to which the strikers had, and used, firearms was later called into question during an inquiry.[2]

Ten other men died in the days leading up to 16 August 2012, which were marked by an escalation of violence linked to the strike action. These include two security guards and two police officers as well as mine workers killed in an attempt by some of the striking miners to enforce the strike. The National Union of Min (NUM) did not support the strike, and mineworkers at Lonmin's Marikana mine had joined a different union, the Association of Mineworkers and Construction Union (AMCU).[3]

Following the events at Marikana, President Jacob Zuma appointed a Commission of Inquiry. The Commission was chaired by Judge Ian Farlam and was known as the Farlam Commission. It commenced its work in October 2012 and reported its findings in March 2015.

THE FARLAM COMMISSION

The Farlam Commission's chief finding on the cause of the catastrophic turn of events at Marikana on 16 August 2012 was the reckless plan which had been endorsed by the leadership of the SAPS the previous evening, at a session of the police National Management Forum. In that meeting police officials, despite being informed of the risks of bloodshed, went ahead with a plan to disarm and disperse the strikers by the end of the following day. They proceeded notwithstanding information that the disarming and dispersal of the protestors could be done in a less high-risk manner at another time. The Farlam Commission described this decision as reckless and inexplicable and as the "decisive cause" of the deaths.[4]

While questions about unlawful killings were the chief focus of the Farlam Commission, it also considered the context in which the events of August 2012 occurred, specifically: "whether [Lonmin PLC] by act or omission, created an environment which was conducive to the creation of tension, labour unrest, disunity among its employees or other harmful conduct."[5]

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1 The main weapons were knobkerries (long wooden sticks with a solid wooden sphere on the end), catapults and pangas (machete).
2 Marikana commission of inquiry: report on matters of public, national and international concern arising out of the tragic incidents at the Lonmin mine in Marikana, in the north west province (Farlam Commission Report), 31 March 2015, Chapter 11, Section G, para 30 and Chapter 12, Section G, para 1,available at: www.sahrc.org.za/home/21/files/marikana-report-1.pdf
3 Farlam Commission Report, Chapter 3, Section 4, para 4.6; Chapter 4, para 10.
4 Farlam Commission Report, Chapter 13, para 11.
5 Farlam Commission Report, Chapter 24, para 1.

The focus of this part of the Commission's investigation looked at the housing situation and living conditions at Marikana and at Lonmin's obligations under its Social and Labour Plans (SLP). SLPs are legally binding documents that commit mining companies to carry out specific social development and labour-related initiatives (see below). The Farlam Commission's final report stated that the housing conditions for much of Lonmin's workforce were not only extremely poor, but that Lonmin had failed to adhere to the terms of its SLP and that the company had, in fact, "created an environment conducive to the creation of tension and labour unrest" by failing to address the housing situation at Marikana.[6] Lonmin responded to the findings of the Farlam Commission in its 2015 Sustainable Development Report, available at: https://www.lonmin.com/investors/reports-and-presentations.

BOX: SOCIO-ECONOMIC PROFILE OF MARIKANA

Marikana is a small mining town in the Rustenburg Local Municipality which falls within the greater Bojanala District Municipality, about 120 km north-west of Johannesburg. The town is surrounded by a number of multinational platinum mining companies including Lonmin, Aquarius Platinum and Anglo Platinum.[7]

Prior to the arrival of the platinum industry, the area was rich agricultural land and was largely dominated by white farmers. Following the establishment of the platinum industry, Marikana experienced environmental problems, including water pollution, air pollution and land degradation.[8] As a result, agriculture declined and local communities have been forced to depend largely on the mines for employment and in order to generate livelihoods.[9]

The area around the platinum mines has experienced high immigration of working-age men over the years, as people from other South African provinces, mainly the Eastern Cape, as well as from neighbouring countries, have arrived in search of jobs in the mining industry. The population of Rustenburg and Madibeng (the two municipalities spanned by Lonmin's Marikana operations[10]) grew by almost 40% from 2001 to 2011, to reach just over a million. In contrast, the population of South Africa as a whole rose by only 16% in the same time period. Women made up 52% of the population nationally, but just 47% in Rustenburg and Madibeng.[11]

Education levels in the area are poor: only 37% of Rustenburg's population and 38% of Madibeng's population has had some primary education. In both municipalities the completion rate for primary school is approximately 6%.[12] The poor quality of education and a low-skilled working-age population are major challenges across South Africa, making it difficult to reduce the triple challenges of unemployment, poverty and inequality.

The area has also grappled with the nationwide problem of poor access to basic services and lack of enjoyment of economic, social and cultural rights, resulting in protests by local communities about service delivery. Access to affordable, quality housing is a major challenge across the mine-affected areas.[13] The 2011-2012 Bojanala District development plan shows that the most significant challenges regarding housing backlogs (the shortfall in housing available compared to needs) are concentrated in the Rustenburg and Madibeng local municipalities. More than 40% of households in Rustenburg and approximately 33% in Madibeng are in informal dwellings.[14]

6 Farlam Commission Report, Chapter 26, para 6. The Social and Labour plans are mandated under the Mineral and Petroleum Resources Development Act, 2002. The Farlam Commission found Lonmin had breached the obligations of its SLP and had never obtained permission from the Department of Mineral Resources to alter the SLP.
7 The Bench Marks Foundation. Communities in the Platinum Minefields: Review of Platinum Mining in the Bojanala District Municipality in the North West Province: Participatory Action Research Approach, available at: /www.bench-marks.org.za/research/rustenburg_review_policy_gap_final_aug_2012.pdf
8 PK Bond. South Africa's Political Economy after Marikana 2012, available at: http://ccs.ukzn.ac.za/files/Bond%20Marikana%2018%20October%202012.pdf
9 Background Information, www.bojanala.gov.za/sample-page/background-history/
10 Lonmin Social and Labour Plans for Western Platinum Limited and Eastern Platinum Limited, August 2006, page 50 in each.
11 Neva Makgetla and Saul Levin, Working Paper, A Perfect Storm: Migrancy and mining in North West Province, January 2016, available at: www.tips.org.za/research-archive/item/download/1074_303d532263a4bf1f64133404fa8484c1.
12 Statistics South Africa. Census 2011: My Settlement, available at: http://www.statssa.gov.za/?page_id=993&id=rustenburg-municipality and http://www.statssa.gov.za/?page_id=993&id=madibeng-municipality.
13 Rustenberg Local Municipality profile, available at: http://www.citysolve.co.za/hda/files/pdf/rustenburg-local--municipality.pdf.
14 Bojanala Platinum District Municipality, 2011/12 Integrated Development Plan (Final Version), available at: www.bojanala.gov.za/janala.boja/wp-content/uploads/2013/05/2011_12-IDP-Final.pdf .

MINE WORKERS, MIGRATION AND HOUSING IN SOUTH AFRICA

South Africa's mining industry has always relied on migrant labour from other South African provinces, distant from the mines, and historically from neighbouring countries such as Swaziland, Malawi, Zambia, Lesotho, Zimbabwe and Mozambique. The system of migrant labour in South Africa was established in the last century to facilitate private mine owners and help guarantee labour at what mine owners considered affordable wages.[15] This history of migrant mine labour is inextricably linked to colonialism, apartheid and racial discrimination. The Leon Commission, which was established by the Government of South Africa to look at health and safety issues in the mining industry, and which reported in 1995, highlighted the role of the Chamber of Mines (COM) in establishing and maintaining a system of migrant labour. [16] The Leon Commission noted that the COM "played a specific role in putting in place the Pass Laws, which played a critical role in maintaining the migrant labour system for over 100 years."[17]

While some of the worst aspects of how the migrant labour system operated under apartheid have been removed, mining in South Africa is still highly dependent on migrant workers.

Part of the history of migrant labour is the way in which people were housed. Companies provided migrant workers, almost exclusively men, with accommodation in barracks style hostels, often housing a dozen or more men to a room. The Leon Commission, as well as many others, have been strongly critical of the hostel system. South Africa's 2010 revised Mining Charter, a legal instrument that sets out requirements mining companies must meet, made the eradication of the hostel system a goal, compelling mining companies to convert or upgrade hostels into family units by the end of 2014.[18] Almost half of all companies that had hostels failed to meet this deadline.[19]

A critical issue with the elimination of hostels is where migrant workers will live, and the responsibility of the State and companies to ensure that those working in the mining industry have access to an adequate standard of living, including housing. The government has attempted to address this through instruments such as the Mining Charter and by requiring mining companies to produce and adhere to Social and Labour Plans that, amongst other things, include improvement of accommodation for mine workers.

BOX: LOMIN'S MINE OPERATIONS IN SOUTH AFRICA

Lonmin Plc, formerly Lonhro (the London and Rhodesian Mining and Land Company Limited), was incorporated in the United Kingdom in 1909. It is listed on the London and Johannesburg stock exchanges. Its core business is the extraction, refining and marketing of platinum group metals. More than 90% of Lonmin's mining operations are in South Africa.

The company has a mining licence in South Africa valid until 2037 and renewable until 2067. The Group's flagship operation is in South Africa's North West Province. Marikana accounts for 95% of Lonmin's output.[20]

Lonmin's Marikana operations consist of Western Platinum Limited and Eastern Platinum Limited. The western part of Western Platinum Limited operations falls under the jurisdiction of the Rustenburg Local Municipality, whilst the eastern part of Western Platinum Limited, and the entire Eastern Platinum Limited operations falls within the Madibeng Municipality.[21]

In this report Western Platinum Limited and Eastern Platinum Limited are referred to collectively as Lonmin.

15 Commission of Inquiry into Safety and Health in the Mining Industry, Volume I (Leon Commission Report), 1995, pages 9-10, available at: www.cwbpi.com/AIDS/reports/LeonCommissionV1.pdf.
16 For example, the Witwatersrand Native Labour Association (WNLA) was set up in 1901 by the Chamber of Mines. It sent out agents to villages all over Southern Africa, as far north as Zambia, Tanzania, and Malawi, along the east coast of Mozambique, and to Lesotho, Swaziland and Botswana. In 1912, the Chamber of Mines also started the Native Recruiting Corporation which recruited black labourers from within South Africa.
17 Leon Commission Report, 1995, page 10.
18 Amendment of The Broad-Based Socio-Economic Empowerment Charter for the South African Mining and Minerals Industry (Mining Charter), 2010, para 2.7, available at: www.gov.za/sites/www.gov.za/files/33573_838.pdf
19 Assessment of the Broad-Based Socio-Economic Empowerment Charter for the South African Mining and Minerals Industry (Mining Charter), May 2015, page 19.
20 See Lonmin's website at: www.lonmin.com/about-us/about-us-overview and www.lonmin.com/our-business/where-we-operate/marikana
21 Lonmin, Consolidation and update of Environmental Management Programmes (EMPs) for Lonmin's Marikana Operations, North West Province, March 2011, available at: www.sahra.org.za/sahris/sites/default/files/additionaldocs/Lonmin%27s%20Marikana%20Operation.pdf

THE FOCUS OF THIS REPORT

Since 2012 Amnesty International has commented and campaigned on the serious policing failures that led to the deaths at Marikana, calling for full accountability and reparations for the victims and their families. That work continues. This report examines abuses of the right to adequate housing of mine workers at Lonmin's Marikana mine operation. Its primary focus is an examination of Lonmin's response to the findings of the Farlam Commission. In this regard it looks both at what Lonmin has done and what the company has said about the situation.

This report also examines how the Department of Mineral Resources (DMR) enforces SLPs, which are the mechanism through which mining companies are supposed to address a range of historical issues with regard to mine workers and the communities living around mine sites. This examination is limited to DMR operations in the North West province where Lonmin operates.

Because the conditions in which Lonmin mine workers live are also the conditions experienced by significant numbers of local people residing on the mine lease area, the report examines how Lonmin has responded to the living conditions of local communities. This examination is also carried out using the framework of the Mining Charter and the SLPs, which are supposed to bring to fruition the commitment of the Government of South Africa and South African mining industry to ensure the industry benefits local people.

METHODOLOGY

This report is based on desk and field research carried out by Amnesty International between May and July 2016. The main basis for the report is an extensive review of Lonmin's 2006 and 2013 Social and Labour Plans and corporate Sustainable Development Reports from 2005 to the present. These reviews led to a series of questions put to Lonmin over the course of two interviews with Lonmin senior executives at the company's Johannesburg office on 9 and 11 May 2016. In addition, researchers interviewed the Department of Mineral Resources regional office for the North West province, at Kelrksdorp, on 4 May 2016.

Amnesty International researchers also visited the Marikana mine and surrounding areas in May and July/August 2016. They spent time in the informal settlement of Nkaneng documenting living conditions there.

Amnesty International wrote to Lonmin on 20 July 2016 presenting the findings of the organization's research and seeking responses from Lonmin on a number of issues. Lonmin responded in writing on 2 August 2016 and this response is attached as an annex to this report.

Amnesty International also sent its findings in writing to the Department of Mineral Resources (DMR), and followed up this correspondence with phone calls. At the time of printing the DMR had not responded.

In assessing the housing commitments of Lonmin Amnesty International has benefitted from work done by the Centre for Applied Legal Studies (CALS) at Wits University and the Bench Marks Foundation.

CHAPTER 2: HOUSING FOR MINE WORKERS AT MARIKANA

This chapter examines the housing conditions for mine workers at Marikana.

Nkaneng resident returning home with water collected from a communal tank. © Amnesty International

THE HOUSING CONDITIONS AT MARIKANA IN 2012: "TRULY APPALLING"

The events of August 2012, described in the Background Chapter, occurred against a backdrop of severe deprivation amongst many Lonmin workers in relation to adequate housing. In 2012 Lonmin employed 24,000[22] mine workers, of whom approximately 60%were migrant workers coming from other South African provinces, particularly the Eastern Cape, as well as Lesotho and Mozambique. Approximately 4,000 men lived in Lonmin's single sex hostels.[23] The rest of Lonmin's employees lived in urban areas and informal

22 Lonmin Sustainable Development Report, 2012, page 32, available at: http://www.lonmin.com/reports/2012/online_annual_report_2012/pdfs/Lonmin_AR2012.pdf
23 Lonmin Sustainable Development Report, 2012, page 12.

settlements in and around Marikana, and received what is known as a 'Living Out Allowance' (LOA) from the company which was intended to cover rent and basic living costs, such as food and utilities (men living in the hostels were provided with meals).

Lonmin mine workers who receive the LOA have few options when it comes to renting accommodation because of an overall lack of availability of housing in the area around the mine operations. Government data on the housing situation in Rustenburg municipality, where Lonmin's operations are located, show a shortage of housing, compared to demand, of more than 58,000 units.[24] Most of those in need of housing live in informal settlements. There are some 38 informal settlements across Rustenburg[25] and 41% of all dwellings in the area are informal.[26] Lonmin's operations extend into the neighbouring municipality of Madibeng where 33% of homes are informal dwellings.[27]

Lonmin was aware of the housing shortage and knew many mine workers were living in the informal settlements, without adequate access to basic services.[28] This situation had persisted for many years.

The extent of informal settlements is connected to mining in the region. Over the years informal settlements have developed and expanded as people have migrated to the area in search of jobs in the mines or hoping to deliver services to mine workers. Eleven of Rustenburg's informal settlements are within what is known as the "Greater Lonmin Community" (GLC) which comprises those communities and households most affected by Lonmin's operations and who live on land that forms part of Lonmin's lease area. The GLC population is 100,000 and includes nine villages as well as the 11 informal settlements. Lonmin's mine is in the area of the Bapo ba Mogale traditional community.[29]

The accommodation in the informal settlements is far from adequate. One of the main settlements in Marikana is Nkaneng,[30] which is adjacent to Lonmin's operations. Rustenburg Local Municipality has registered 4,824 "shacks" in Nkaneng.[31] Local people believe the area is bigger.[32] In 2012 the population of Nkaneng was estimated at 15,000[33], and has – according to residents – grown since then. Although no-one has carried out a survey of the area, most sources agree that many of the residents are Lonmin mine workers.[34]

The settlement comprises thousands of shacks mainly constructed from metal sheets and bits of wood. These structures are crowded together surrounded by litter and, when it rains, by mud. They have doors but few have proper windows. In winter the shacks are cold, and during heavy rains, they can leak and suffer damage. Shacks generally comprise one or two rooms, and many people cook, sleep and bath in a single room. NGOs have documented eight or more people living in a two room shack.[35] As the settlement has grown, new shacks have been built in what was formerly the "garden" or yard of existing shacks, increasing the overcrowding in the settlement.

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24 Rustenburg Local Municipality Profile, available at: http://www.citysolve.co.za/hda/files/pdf/rustenburg-local--municipality.pdf
25 SABC, Rustenburg faces extensive housing backlog, available at: http://www.sabc.co.za/news/a/85e5c6004cbf5a3d8b798f8844d0101b/Rustenburg-faces-extensive-housing-backlog-20160513. This figure is higher that figures reported for 2005/6 when the housing backlog was estimated at 49,034.
26 Bojanala Platinum District Municipality, 2011/12 Integrated Development Plan (Final Version), available at: www.bojanala.gov.za/janala.boja/wp-content/uploads/2013/05/2011_12-IDP-Final.pdf
27 Bojanala Platinum District Municipality, 2011/12 Integrated Development Plan (Final Version), available at: www.bojanala.gov.za/janala.boja/wp-content/uploads/2013/05/2011_12-IDP-Final.pdf.
28 Farlam Commission Report, Chapter 24, paras 20 – 21.
29 International Finance Corporation, Environmental and Social overview at: http://ifcext.ifc.org/ifcext/spiwebsite1.nsf/78e3b305216fcdba85257a8b0075079d/3401e47b5ebfde96852576ba000e291a?opendocument
30 Nkaneng is a Setswana word meaning "difficult place"
31 Rustenburg Local Municipality, Prevalence of Informal Settlements in Rustenburg, September 2015, available at: http://www.rustenburg.gov.za/?q=node/365.
32 Bench Marks Foundation, Communities in the Platinum Minefields: Review of Platinum Mining in the Bojanala District Municipality in the North West Province: Participatory Action Research Approach, page 35. Available at: http://www.bench-marks.org.za/research/rustenburg_review_policy_gap_final_aug_2012.pdf
33 Mail and Guardian, Marikana: Freedom's Bitter Paradox, available at: http://mg.co.za/article/2014-08-14-marikana-freedoms-bitter-paradox.
34 Lonmin has in the past estimated that at least 2,000 workers live at Nkaneng. No survey data are available but mine workers interviewed by Amnesty International and civil society actors who have worked report that significant numbers of Lonmin workers live there. Lonmin workers also live in other informal settlements on the Lonmin lease area. Again, no survey of the populations of each settlement is publicly available.
35 Amnesty International interviews with mine workers living at Nkaneng, 16 July 2016. See also: Complaint by affected community members in relation to the social and environmental impacts of Lonmin plc's operation in Marikana, available at: http://www.cao-ombudsman.org/cases/document-links/documents/ComplaintbyAffectedCommunityMembersinRelationtoSocialandEnvironmentalImpactsofLonmin20150615.pdf

The informal settlements across Rustenburg have varying - but generally low – levels of service provision, particularly in relation to sanitation. The municipalities have plans to formalise the settlements but progress is slow. The municipalities also report financial challenges with expanding provision of water and sanitation services to informal settlements.[36]

Older parts of Nkaneng have water taps which people share, but residents report that these do not always function properly. For most of Nkaneng water is supplied through Jojo (water storage) tanks. The water provide through taps and Jojo tanks is not sufficient for people's needs and residents of Nkaneng report having to purchase water on a daily basis.[37]

The sanitation situation is appalling. An assessment done by Lonmin found that 84% of households in the GLC do not have safe, environmentally friendly, decent sanitation facilities.[38] At Nkaneng sanitation is mainly comprised of pit latrines, some built by the municipality. The latrines are shared – in some cases by several households. Residents told Amnesty International they face delays waiting for the municipality to dig latrines and that, once dug, they can be full and smelling in a matter of days. The smell from overused latrines is a serious complaint amongst residents. During heavy rain the latrines can flood and become unusable.[39]

The majority of the households in Nkaneng that have electricity access it through illegal connections.[40] The area also lacks basic infrastructure such as roads and a sewerage system. Lonmin collects refuse from the settlement weekly.

In interrogating the issue of the housing available for mine workers at Marikana the Farlam Commission stated:

Nkaneng informal settlement near Lonmin's Roland mine shaft. (© Greg Marinovich)

36 Bojanala Platinum District Municipality, 2011/12 Integrated Development Plan (Final Version), available at: www.bojanala.gov.za/janala.boja/wp-content/uploads/2013/05/2011_12-IDP-Final.pdf
37 Amnesty International interviews with mine workers living at Nkaneng, 16 July 2016. See also:
Complaint by affected community members in relation to the social and environmental impacts of Lonmin plc's operation in Marikana, available at: http://www.cao-ombudsman.org/cases/document-links/documents/ComplaintbyAffectedCommunityMembersinRelationtoSocialandEnvironmentalImpactsofLonmin20150615.pdf.
38 Lonmin, Social and Labour Plan October 2013 to September 2018, page 117.
39 Amnesty International interviews with residents of Nkaneng, August 2014, and July and August 2016
40 Department of Human Settlements. Briefing by the National Department of Human Settlements and North West provincial Department of Local Government and Human Settlements, Bojanala District and Rustenburg Local Municipality on the progress made in the implementation on Special Integrated Projects (SIPs). Available at: https://pmg.org.za/committee-meeting/17542/

> *"It is also common cause that large numbers of Lonmin workers live in squalid informal settlements surrounding the Lonmin mine shafts. The living conditions in these settlements are very poor and the people living there lack basic social services."*[41]

During the Farlam Commission, a senior Lonmin representative, Mr Mahamed Seedat, conceded in his evidence that the living conditions in Nkaneng and other informal settlements around the mine were *"truly appalling"*.[42]

As noted earlier, the Farlam Commission found that the housing situation at Marikana contributed to the breakdown in relations and trust between Lonmin and its workforce in 2012.[43]

THE HOUSING SITUATION AT MARIKANA IN 2016: "A TERRIBLE PLACE"

Despite the events of 2012 and the findings of the Farlam Commission, the situation for most mine workers at Marikana has changed very little. As of May 2016 Lonmin employed some 22,000 people at Marikana, with more than 50% coming from outside the North West province.[44] Following a process to upgrade and convert its hostels as required under the Mining Charter, approximately 3,000 mineworkers are now accommodated in the former hostels, down from 8,000 in 2006. Thousands of mine workers remain living in informal settlements, such as Nkaneng. According to Lonmin, 13,500 of its employees are currently in need of formal accomodation. In July 2016 Amnesty International visited Nkaneng and met some of the women and men and women living there and visited their accommodation. We asked them about their day-to-day lives and their hopes for the future. Everyone interviewed asked to remain anonymous. [45]

PK, MINE WORKER AT LONMIN, LIVING IN NKANENG INFORMAL SETTLEMENT

PK is a mineworker who previously lived in a Lonmin hostel but now lives in Nkaneng. He is 50 years old and from Eastern Cape. PK arrived in Marikana in 1989. When he arrived at Marikana he lived in a hostel with 16 people sharing one room. In the 1990s he took the living out allowance and moved out of the hostel. PK says he did this "to increase my salary" but also because he found the living conditions in the hostel very difficult.

"The main reason I left [the hostel] was because of the bad living conditions inside the hostel. You have no choice, you have no freedom. What you eat is decided for you. You eat whatever is put on your plate, no matter what it is or how it is… The bathing conditions were bad, you have to bath 20 at a time."

PK went to live in Nkaneng, which he says at that time was not as big as it is now. He told Amnesty International that he has heard many promises from Lonmin and the government about providing better accommodation for mine workers, but nothing has materialised. Several years ago he heard that the company planned to build houses for workers. "By that stage, many of us were living in Nkaneng", he says. Years went by but no houses were built.

"The hostel was renovated," PK says. "Our names were put on this list for housing and for the family units. Conversion of family units was finished and up until today I have not been allocated to the family units. We continue to live in shacks."

PK also recalls that the government came to the area at one time and made promises about

41 Farlam Commission Report, Chapter 24, Para 20.
42 Farlam Commission Report, Chapter 24, Para 20.
43 Farlam Commission Report, Chapter 26, page 6. The Social and Labour plans are mandated under the Mineral and Petroleum Resources Development Act, 2002. The Farlam Commission found Lonmin has breached the obligations of its SLP and have never obtained permission from the Department of Mineral Resources to alter the SLP.
44 In an interview with Amnesty International in May 2016 Lonmin referred to approximately 22,000 mine workers at Marikana. The 2015 Sustainable Development report states that Lonmin employs almost 27,000 permanent staff, although an unspecified proportion of these staff work outside Marikana.
45 All interviews were carried out by Amnesty International on 16 July 2016 at Marikana. Interviews were conducted in Xhosa. All of those interviewed asked to remain anonymous.

housing but nothing tangible has materialised. A few hundred government houses were built in Marikana in 2015 (see Chapters 6 and 7) but have not been allocated to the mine workers. "Even today we are still being made promises of housing….", he says, but he does not have much faith that the houses will materialise.

PK is looking for better housing he can rent, which is affordable.

"I am not happy at all. I stay where I stay because I am here for work. If it was up to me and I earned a decent salary, I would not live in Nkaneng."

Although he has lived in Nkaneng for more than a decade, PK says he finds the life there difficult.

"I can never say that the living conditions here in Nkaneng are good because the lives we live here are abnormal. We have many instances where we run out of water, we have many instances where we have no electricity and this can go on for days where we are without water or electricity. That is not normal at all. Even the back houses [toilets] we use are terrible, there are always flies about that get into your shack and that is terrible."

He plans to return to the Eastern Cape eventually. "I cannot stay here forever; this is not my home," he says. My plan is always to go home, I don't want to buy a house here due to my age. I don't want to stay here because at home I have my family."

He is disappointed by Lonmin's lack of action on housing.

"Lonmin really needs to deliver on what it says it will do about housing… It's always a case of empty promises and things it says it will do… it would be better if they built houses as they said they would and we receive the same level of service as those who stay in family units, like running water and electricity. At least they always have water and no power shortages as we do in Nkaneng."

PL lives in the informal settlement of Nkangeng with her partner and their three children. She allowed us to photograph her home but did not want to be photographed herself. Her partner has worked for Lonmin since 1985. She has been in Marikana since 2007, and is currently unemployed. She describes Nkangeng as "a terrible place". Her home is a tin shack with just one room for the whole family. "People live terrible lives in this place," she says of Nkangeng". She had hoped to get housing through a Lonmin scheme but nothing has materialised and she does not know what the company plans to do.

Top: *The interior of PL's shack in Nkaneng.* ***Bottom Right:*** *Shacks in Nkaneng informal settlement, with PL's house on the left, with the latrine structure to the right.* ***Bottom Left:*** *View of PL's yard, shared with five other families. (All images © Amnesty International)*

ZN is a mine worker living in Nkaneng. He is from Eastern Cape and started working at Marikana in 2005. He is a Rock Drill Operator. For the first two years after he arrived at Marikana ZN lived in a company hostel but when it was closed down he moved to the informal settlement. His shack is made of zinc with wooden frame. Inside there is a makeshift kitchen, containers of water on the ground, a fridge mounted on bricks, an electric stove.

He describes his living conditions:

"This is a place where we struggle with electricity and water problems. Even though where we are now [his shack dwelling] has electricity, many other houses in the area don't have electricity and running water. There is not even running water here. We live in structures made of zinc. We have no houses. There is nothing we can say is good about this place. The back houses [toilets] are not even of a decent standard. They don't have running water."

ZN also spoke about the insecurity of living in Nkangeng, where his flimsy home can be pulled apart easily and intruders can enter the house to steal. He says that: "We are forced by circumstance because we have no other way."

Top: *ZN's previous shack. He abandoned it due to its compromised structure. His nephew now lives in the shack.* ***Middle:*** *ZN's newly- built shack in Nkaneng informal settlement.* ***Bottom:*** *The interior of ZN's shack. He uses the jerry cans and buckets to collect water from communal taps. © All images: Amnesty International*

In January 2016 a storm hit Marikana. People in the area report that the storm destroyed a large number of the shacks. XM is one of some 40 mine workers whose homes were demolished by the storm. He was inside when it collapsed. When Amnesty International met him in July 2016 he was living with his family in a converted Lonmin hostel. XM says Lonmin gave him and several other mine workers rooms in the converted hostel as temporary accommodation after their shacks in Nkangeng collapsed.

The interior of XM's temporary accommodation in the converted hostel. © Amnesty International

"There were about 40 of us who were mine workers that lost our shacks during the storm. Lonmin gave us these houses as temporary accommodation. Lonmin said we should stay two men per unit, we rejected their suggestion because some were coming with their families from Nkaneng. They also tried to say we must go back to Nkaneng."

XM says they have refused to leave. Although XM does not think the hostel accommodation is suitable for families with children he says:

"Conditions are better here, you can't really say it's a comparison because in Nkaneng you live in a shack. When you live in shack, in winter when it's cold the shack is also cold. The shack is just one room and you do everything there, to bath and do everything you do it there in front of your children you have no dignity. In this unit kids have their own space. You have more dignity here than you do in a shack."

***

The living conditions at Nkangeng, an informal settlement on Lonmin's doorstep, are "truly appalling", a situation of which the company is well aware. Lonmin mine workers are living there. The rest of this report assesses what Lonmin has done about this problem. The next two chapters set out, briefly, what the company ought to do: Chapter 3 looks at Lonmin's human rights responsibilities and the legal framework in South Africa with regard to mine companies and housing for mine workers, while Chapter 4 looks at the commitments made in Lonmin's SLPs with regard to the housing situation at Marikana. Subsequent chapters examine why the company has failed to act in accordance with these various responsibilities and commitments.

CHAPTER 3: NATIONAL LAW AND INTERNATIONAL STANDARDS RELEVANT TO HOUSING AND MINE WORKERS

THE HUMAN RIGHT TO ADEQUATE HOUSING

The right to adequate housing is protected under various international and regional human rights treaties to which South Africa is party, including the International Covenant on Economic, Social and Cultural Rights and the African Charter on Human and Peoples' Rights.[46] The UN Committee on Economic, Social and Cultural Rights (the Committee) has stated that the right to housing should not be interpreted narrowly but seen as the right to live somewhere in security and with dignity.[47] The Committee has identified seven elements to determine the adequacy of housing: 1) legal security of tenure; 2) availability of services, materials, facilities and infrastructure; 3) location; 4) habitability; 5) affordability; 6) accessibility; and 7) cultural adequacy.[48]

Two of these elements are particularly relevant to the situation described in this report: the "availability of services, materials, facilities and infrastructure" and "habitability". The Committee has elaborated on both. According to the Committee "adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services."[49] In addition, "adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be guaranteed as well."[50]

46 The African Commission on Human and Peoples' Rights has affirmed that the right to housing is protected by the African Charter under articles 14 (the right to property), 16 (the right to highest attainable standard of mental and physical health) and 18(1) (protection accorded to the family). See: Resolution on the Right to Adequate Housing and Protection from Forced Evictions, available at: http://www.achpr.org/sessions/52nd/resolutions/231/.
47 UN Committee on Economic, Social and Cultural Rights, General Comment 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), contained in UN Doc. E/1992/23, adopted sixth session (1991), para 7.
48 UN Committee on Economic, Social and Cultural Rights, General Comment 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), contained in UN Doc. E/1992/23, adopted sixth session (1991), para 8.
49 UN Committee on Economic, Social and Cultural Rights, General Comment 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), contained in UN Doc. E/1992/23, adopted sixth session (1991), para 8 (b)
50 UN Committee on Economic, Social and Cultural Rights, General Comment 4: The Right to Adequate Housing (Art. 11 (1) of the

Nkaneng settlement with Lonmin mine in the background. © Paul Botes / Amnesty International

BUSINESS AND HUMAN RIGHTS

Under international standards on business and human rights all companies must respect all human rights. This responsibility is articulated in the UN Guiding Principles on Business and Human Rights (UNGPs), an internationally accepted set of standards endorsed by the UN Human Rights Council.[51] To meet the responsibility to respect human rights, companies should have in place a human rights due diligence process to identify, prevent, mitigate and – where necessary – redress human rights abuses connected to their operations. The adequacy of housing available to migrant workers, for an industry that is heavily dependent on migrant workers, is clearly connected to the operation of the company.

The International Labour Organization has set out standards that housing for workers should meet,[52] as have the International Finance Corporation and the European Bank on Reconstruction and Development.[53] Full details of these international standards are available in the annex.

THE RIGHT TO HOUSING IN SOUTH AFRICA

South Africa's Constitution recognises the right to adequate housing under Article 26. The Constitution requires the State to "take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.[54] The Constitutional Court of South Africa has upheld economic, social and cultural rights included in the Constitution. It has developed an understanding of the state's duty to act "reasonably" to progressively ensure access to adequate housing, in particular through

Covenant), contained in UN Doc. E/1992/23, adopted sixth session (1991), para 8 (d)

51 See: UNOCHR, Guiding Principles on Business and Human Rights, UN Doc HR/PUB/11/04, 2011, available at:www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

52 ILO Workers' Housing Recommendation, 1961 (No. 115), Section 'Suggestions Concerning Methods of Application', Section II, para 7, available at: www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R115

53 International Finance Corporation (IFC) and European Bank for Reconstruction and Development (EBRD), Workers' accommodation: processes and standards – A guidance note by IFC and EBRD, September 2009, available at: available at: http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/learning+and+adapting/knowledge+products/publications/publications_gpn_workersaccommodation.

54 South African Constitution, Article 26 (1).

prioritizing the most vulnerable people.[55] The Government of South Africa has repeatedly recognised the inadequacy of housing available to migrant mine workers and has put in place legal and policy measures to require mine companies to improve access to adequate housing for mine workers (see below).

THE RESPONSIBILITIES OF MINE COMPANIES IN SOUTH AFRICA

Because mining companies in South Africa have always relied on migrant labour, the provision of accommodation has been part of the terms and conditions of employment of most mine workers. In practice, until a decade ago, mine companies houses mine workers in hostels. In 1998 the National Union of Mineworkers (NUM) negotiated with the mining industry to provide a Living Out Allowance (LOA) which was a means to enable men living in hostels to seek accommodation off mine property.

THE LIVING OUT ALLOWANCE

The LOA was introduced to give migrant workers the option not to live in hostels. While the allowance had positive aspects and enabled mine workers to leave the hostel system, it did not take account of whether there was adequate alternative housing in the vicinity of the mine where they could find accommodation. In many cases, the lack of alternatives has led to mineworkers living in informal settlements and in some cases to the growth of such settlements.

While many mine workers get a LOA, thousands remain living in hostels. In 2002 the Government of South Africa introduced legislation that aimed at redressing historical inequalities in the mining industry, including the living conditions of mine workers. This included the Mineral and Petroleum Resources Development Act, 2002 (MPRDA) and the Broad-Based Socio-Economic Empowerment Charter for the South African Mining and Minerals Industry (known as the Mining Charter). Both the law and the Charter contain provisions relevant to housing.

The MPRDA requires the Minister of Mineral Resources to "after consultation with the Minister for Housing, develop a housing and living conditions standard for the minerals industry".[56] The Department of Minerals and Energy (now the Department of Mineral Resources) published the "Housing and Living Conditions Standard for the Minerals Industry" in 2009.[57] They require mine companies to ensure a decent standard of housing for mine workers and to be responsive to housing demand – including by providing employees a range of tenure types such as rental accommodation, home ownership and social housing.

The MPRDA also requires, as a pre-requisite for the government to grant companies mining rights, that the company develop a Social and Labour Plan (SLP).[58] SLPs are expected to set out company plans in relation to a range of specific issues, including: Human Resources Development; Mine Community Development; and a Housing and Living Conditions Plan.

The MPRDA makes a number of provisions with regard to SLPs, the most important of which is that an applicant must provide financially and otherwise for the prescribed SLP in order to get Ministerial approval of a mine licence[59] and that companies must submit an annual report, detailing compliance with the SLP.[60] SLPs must be approved by the Department of Mineral Resources (DMR). Once approved the SLP is a legally binding document and can only be changed with the express permission of the DMR.[61]

55 Government of the Republic of South Africa and Others v. Irene Grootboom and Others, Case CCT 11/00, para. 41, www.saflii.org/za/cases/ZACC/2000/19.pdf
56 Mineral and Petroleum Resources Development Act, 2002, Section 100, para (1) (a).
57 Housing and Living Conditions Standard for the Minerals Industry, 2009 available at: www.gov.za/sites/www.gov.za/files/32166_445.pdf
58 Mineral and Petroleum Resources Development Act, 2002, Section 23, para (1) (e); Section 24, para (3) (c); Section 25, paras (2) (f) and (h), Section 84, paras (1) (g) and (i); Section 85, para (3) (c), available at: www.dmr.gov.za/publications/summary/109-mineral-and-petroleum-resources-development-act-2002/225-mineraland-petroleum-resources-development-actmprda.html (last accessed 4 August 2014)
59 Mineral and Petroleum Resources Development Act, 2002, Section 23, para (1) (e).
60 Mineral and Petroleum Resources Development Act, 2002, Section 28, para (2) (c).
61 Revised Social and Labour Plan Guidelines, 2010, para 1.6, available at: www.dmr.gov.za/guidelines-revised-social-and-labour-plans/summary/119-how-to/221-guidelines-revised-social-and-labour-plans-.html

The Mining Charter also includes a specific section on housing issues. It states that:

> *"mining companies must implement measures to improve the standards of housing and living conditions for mineworkers as follows:*
>
> - *Convert or upgrade hostels into family units by end of 2014;*
> - *Attain the occupancy rate of one person per room by the end of 2014; and*
> - *Facilitate home ownership options for all mine employees in consultation with organised labour by the end of 2014."*[62]

The broad obligations of the Mining Charter have to be translated into specific measures for each company. The main vehicle through which the government has required companies to articulate their plans to improve housing are the SLPs mandated under the MPRDA.

Failure to comply with the MPRDA, the Mining Charter or the Housing and Living Conditions Standard could render a mining company in breach of the MPRDA.[63] Penalties provided for in the law include fines and suspension of mining rights.

62 Mining Charter, para 2.7.
63 *Mining Charter, Para 3; Housing and Living Conditions Standard, Para 6; MPRDA, Section 47.*

CHAPTER 4: LONMIN'S SOCIAL AND LABOUR PLANS

LONMIN'S SOCIAL AND LABOUR PLAN HOUSING COMMITMENTS AT MARIKANA

In order to convert its old order mining rights in respect of the Marikana mine into a mining right under the Mineral and Petroleum Resources Development Act (MPRDA), Lonmin submitted a Social and Labour Plan (SLP) to the Department of Mineral Resources (DMR) in 2006. In terms of housing the SLP included a development plan to 2011 and a budget. With respect to housing, Lonmin committed to the following:

- Phasing out all existing single sex hostel accommodation by 2011 and the conversion of 114 existing hostels into bachelor or family units by 2011 at a cost of 145.9 million Rand.
- Building an additional 5,500 houses for employees by 2011 at a cost of 665 million Rand.
- Servicing 4,800 stands by 2011 at a cost of 96 million Rand. Servicing stands refers to ensuring that plots of land on which houses will be built are connected to infrastructure for electricity, water and sewage.[64]

At that time Lonmin employed 20,083 people at Marikana. Of this number 68% were migrants from other parts of South Africa or neighbouring countries.[65]

Lonmin's 2006 plans on housing were made against the backdrop of a serious shortage of housing, compared to demand, in both Rustenburg and Madibeng local municipalities – the two areas in which Lonmin's mines operate. The shortfall in housing was estimated by local government to be 49,034 and 22,826 units respectively at that time (it has increased since).[66]

Lonmin's 2006 SLP document made clear that the planned 5,500 houses would cater for the workers who had previously been housed in hostels but would be rendered homeless by the hostel conversion programme that was also part of the SLP. As of 2006, some 8,000 men were accommodated in hostels.[67] Full completion of the hostel conversion process would eventually result in 5,000 men losing their accommodation.

With respect to the planned 5,500 houses, the SLP states that employees would be offered a range of tenure options, including purchase or rental.

Lonmin's SLP provided yearly targets and annual capital budgets for the hostel conversion process, the

64 Lonmin Social and Labour Plans for Western Platinum Limited, pages 71 – 73.
65 Lonmin Social and Labour Plans for Western Platinum Limited and Eastern Platinum Limited, 2006, page 7 of each document respectively.
66 Bench Marks Foundation. Communities in the Platinum Minefields: Review of Platinum Mining in the Bojanala District Municipality in the North West Province: Participatory Action Research Approach, page 35, available at: www.bench-marks.org.za/research/rustenburg_review_policy_gap_final_aug_2012.pdf.
67 Lonmin Social and Labour Plans for Western Platinum Limited, page 73.

house building and the servicing of stands. The SLP states that the company intended to facilitate its housing plans "through partnerships with banking institutions and, in this regard, has commenced discussions with Rand Merchant Bank who are likely to provide the necessary funding."[68]

Once the DMR approved the SLP Lonmin became legally obliged to comply with its terms.

PROGRESS ON LONMIN'S SLP BY 2012

In 2012, at the time of the strike, a time at which Lonmin should have fulfilled all of the housing-related obligations under its SLP, it had only done the following:

- Built three (3) "show" houses
- Converted 60 of 114 hostels[69]

TOP: *Two of the three show houses built by Lonmin (the multi-story structure in the background is not one of the houses).*
BOTTOM LEFT: *The third of the three show houses.* ***BOTTOM RIGHT:*** *close up of one of the three show houses.© Amnesty International*

68 Lonmin Social and Labour Plans for Western Platinum Limited, page 71.
69 Lonmin Sustainable Development Reports, 2008, 2010, 2011, pages 13, 7, 14 respectively. All reports are available at: www.lonmin.com/investors/reports-and-presentations.

These three "show" houses were built, according to Lonmin, for the purpose of allowing employees to see which type of layout they liked best and would want to buy.[70] No further houses were built, in part because Lonmin's employees did not want to buy houses – an issue taken up in Chapter 5.

Much of Lonmin's workforce continue to live in appalling conditions today. Lonmin has provided a variety of explanations for its staggering failure to comply with the terms of the SLP. These are interrogated in detail in the next chapter. Some of these explanations were made as part of Lonmin's evidence to the Farlam Commission, others have been made since then, in other forums, including directly to Amnesty International in interviews conducted with Lonmin in May 2016. The Farlam Commission did not accept Lonmin's explanations and found that:

> *"The Commission is satisfied that Lonmin's failure to comply with its housing obligations "created an environment conducive to the creation of tension, labour unrest, disunity among its employees or other harmful conduct".*[71]

A senior Lonmin official, Mr Seedat, speaking at the Farlam Commission conceded that there was a critical shortage of decent housing for the employees of Lonmin and that the board and executive of Lonmin understood that the tragic events at Marikana were linked to that shortage.[72] Mr Seedat conceded that Lonmin had known about the critical housing shortage at Marikana and the squalid conditions in Nkaneng and other informal settlements for years and that Lonmin knew significant numbers of its staff were living in the informal settlements.[73]

In evidence before the Farlam Commission:

> MR CHASKALSON SC: *"Now presumably Lonmin has known since long before the shootings that a substantial proportion of its workforce is living in those conditions."*
>
> MR SEEDAT OF LONMIN: *"Yes, we've done many surveys and we fully understand the demographics of how our employees live."*

Statements made by the company in 2012, outside of the Farlam Commission, also suggested the company acknowledged its failures. In the weeks following the massacre, Lonmin identified housing problems as an issue amongst its workers, and announced it would act to improve the situation.[74] In a joint statement Lonmin's then Chairman, Roger Phillimore and Acting Chief Executive Officer (CEO), Simon Scott stated:

> *"It is certainly true that mining companies have faced criticism for their efforts to support the transformation agenda in the country and, on Lonmin's behalf, we accept that we must do more, particularly around the nationally difficult issue of housing."*[75]

In interviews and written correspondence with Lonmin executives in 2016, Amnesty International challenged the company to explain how it justified the ongoing failure on housing and what it intended to do about the situation. While acknowledging that there was a serious housing problem facing its workforce at Marikana, as well as local communities, Lonmin executives stated that the company would not build any houses and had no intention of building the 5,500 originally promised in the 2006 SLP. The company referred to a number of housing plans, none of which have yet resulted in any new accommodation for Lonmin workers. These proposals are interrogated in Chapter 6.

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70 Amnesty International interview with Lonmin senior executives, Lonmin offices, Johannesburg, 11 May 2016.
71 Farlam Commission Report, chapter 24, page 542, para 37.
72 Farlam Commission Report, chapter 24, page 527, para 21.
73 See transcript of day 292 of the Farlam Commission at: http://www.marikanacomm.org.za/transcripts/day292-140916Marikana.pdf.
74 Lonmin, Sustainable Development Report, available at: http://sd-report.lonmin.com/2012/people-planet-profit/people/housing-our-employees.
75 Lonmin, Annual Report and Accounts 2012, page 3, available at: www.lonmin.com/reports/2012/online_annual_report_2012/pdfs/Lonmin_AR2012.pdf.

Exterior of converted hostels (single bedroom units). © Amnesty International

Overall, between 2006 and 2012, Lonmin moved from providing inadequate accommodation to 8,000[76] employees in hostels to providing more adequate accommodation to approximately 2,500 employees in converted hostels. The hostel conversion programme, while welcome, has actually increased the number of men looking for accommodation in the locality while Lonmin has failed to provide the additional housing it promised.

How, and why, has Lonmin evaded its responsibility to provide its workforce with adequate accommodation and how has the company been able to renege on the terms of its SLP, which is a legally binding document? These issues are explored in the following Chapters.

76 Lonmin, Sustainable Development Report 2012, page 11.

CHAPTER 5: LONMIN'S EXCUSES: EVASIONS & LIES

Lonmin failed to meet the terms of the Social and Labour Plans (SLP) in relation to housing. It met the hostel conversion targets only in 2014.[77] Legally Lonmin is bound by the SLP unless it gets official permission to alter the terms of the SLP from Department of Mineral Resources (DMR). Lonmin never sought or received such official permission.[78]

How does Lonmin justify its failure to fulfil such a key element of the SLP, and its apparent willingness to leave its workforce in the same "truly appalling" accommodation a decade after the original SLP commitments? Lonmin has explained its failure in different ways in different forums and documents. This Chapter considers each of Lonmin's explanations.

LONMIN'S EXCUSES IN SUMMARY

- The SLP commitment was not to build and provide houses, only to facilitate a financial arrangement to have them built. If Lonmin could not arrange finance their obligation was void.
- Most Lonmin employees did not want to buy houses at Marikana
- Lonmin's employees are too indebted to buy houses
- The financial crash of 2007/8 and the fall in platinum prices meant they did not have the money to build the houses
- There is a shortage of infrastructure for water, sanitation and electricity in the area
- There is a shortage of suitable land in the area
- The government is responsible for housing, not Lonmin

LONMIN EXCUSE #1: THEY NEVER INTENDED TO BUILD THE HOUSES; THEY WOULD FACILITATE A FINANCIAL ARRANGEMENT TO ENABLE OTHERS TO BUILD

Firstly Lonmin maintains that it never intended to build the houses but rather it would facilitate some kind of financial arrangement that would enable the houses to be built. Lonmin made versions of this claim before

77 Lonmin, Sustainable Development Report, 2014, pages 12 and 68
78 Lonmin confirmed this to Amnesty International in an interview in May 2016.

the Farlam Commission in 2014 and to Amnesty International in interviews in May 2016.[79] According to Lonmin, if the company did not secure some form of financial arrangement, they had no obligation to build the 5,500 houses referred to in their 2006 SLP.[80] This highly material fact is not stated in the SLP itself or in any of Lonmin's Sustainability Reports, which report progress on the SLP to shareholders, as well as to its stakeholders, including employees.

Although the SLP document says Lonmin "intends to facilitate the building of these houses through partnerships with banking institutions", at no point in the document is the building of the houses made conditional upon such a financial partnership being reached. Moreover, the 2006 SLP includes the following statement:

> *"During the course of this financial year Lonmin Platinum has built 70 new houses …Lonmin Platinum has also installed services on 780 stands … with a view to building 700 houses on these stands in the course of the 2006/7 financial year. Plans to build these 700 houses in the next financial year are on track".*[81]

All of Lonmin's annual Sustainability Reports up to 2011 (the date at which the housing commitments were due to be fully fulfilled) repeat the commitment to build or provide the houses. For example, Lonmin's 2007 Sustainability Report states: "One of our commitments under the Mining Charter is to construct 5,500 houses by the end of 2011."[82] This report makes no reference to financial arrangements, let alone to a total dependence on securing a financial arrangement. The 2008 Sustainability Report refers to "[t]he construction of 5,500 houses."[83] Again, there is no reference to any finance agreement being necessary.

Finance is mentioned in the company's 2009 Sustainability Report, which states that: "Due to the reduction in availability of financial resources we will not achieve our target to construct 5,500 houses and…are engaging with relevant stakeholders on revised targets."[84] This statement suggests some problems with the company's ability to build the houses, but it does refer to any failure to secure finances from a bank. By 2009 some 3,200 houses were due to have been built. There is no explanation for why this has not happened. In its 2007 and 2008 annual reports there is no mention that a deal with a bank had fallen through, and that as a result none of the houses had been built. The 2010 Sustainability Report repeats the commitment to build the 5,500 houses but makes no reference to the financial problems raised in the 2009 report or any revised targets.

In 2011, the year when, based on the SLP, the 5,500 houses should have been constructed, Lonmin's Sustainability Report states that: "To enhance employee wellbeing we have undertaken to provide affordable housing to our employees."[85] The report goes on to state: "To date we have built 1,728 houses."[86] This information is accurate but misleading because it refers to houses built before 2006, and has nothing to do with the SLP commitment to build 5,500 homes. The statement in the Sustainability Report is un-dated but it is noteworthy that they say they "have built" the houses.

Houses built before 1994. Some have been refurbished by recent owners. © Amnesty International

79 Amnesty International interviews with Senior Lonmin Executives, Lonmin offices, Johannesburg, 9 and 11 May 2016. See also: Farlam Commission Report, Chapter 24, paras 23 – 25.
80 Amnesty International interviews with Senior Lonmin Executives, Lonmin offices, Johannesburg, 9 and 11 May 2016.
81 Lonmin Social and Labour Plans for Western Platinum Limited and Eastern Platinum Limited, August 2006, page 70 in both.
82 Lonmin Sustainable Development Report 2007, page 13 (emphasis added)
83 Lonmin Sustainable Development Report 2008, page 29 and 64 (emphasis added)
84 Lonmin Sustainable Development Report 2009, page 1 (emphasis added)
85 Lonmin Sustainable Development Report 2011, page 26 (emphasis added)
86 Lonmin Sustainable Development Report 2011, page 27 (emphasis added)

Lonmin's claim that it did not make a commitment to build houses for its workforce, but only to facilitate some form of financial arrangement, is false. It repeatedly stated it would build, construct or provide such housing. At no point in the SLP or any of the Sustainability Reports did Lonmin make any statement that building the 5,500 houses was completely dependent on getting a bank to provide the finance.

Moreover, the claims Lonmin is now making about the nature of the financial arrangement it says was the basis of its SLP are confusing and inconsistent. Specifically, it appears in some statements that Lonmin was looking for finance to enable it to build the houses[87]; in others the company suggests it was looking for a bank willing to provide loans (mortgages) to mineworkers so they could build their own houses[88]; in yet others, that Lonmin was looking for a property developer who would take responsibility for building, selling and renting houses.[89] Only the first of these explanations stands up to scrutiny.

The SLP refers to "entering into partnership with banking institutions" in order "to facilitate" the building of houses. As noted above, there is no mention of the whole housing project being entirely dependent on this agreement. As evidence leaders at the Farlam Commission observed, it would be unlikely that DMR would accept such a weak obligation in any case, one that could be rendered moot if the company did not get finance.

The SLP implies that a partnership with Rand Merchant Bank is already underway. Lonmin's 2006 Sustainability Report, goes further and says "we have agreed a partnership with Rand Merchant Bank which will allow us to deliver 6,000 new employee homes over a five year period."[90] In fact no deal was ever agreed with Rand Merchant Bank or any other bank or financial institution,[91] but this information was not disclosed in any Lonmin Sustainability Reports. It emerged during the Farlam Commission's enquiry.

If Lonmin's SLP commitment on housing was dependent on getting finance from a bank, then it would be reasonable to assume that if one deal fell through the company would be actively seeking other deals and keeping the DMR and shareholders updated on progress. Amnesty International asked Lonmin to explain what action it took, how many banks it approached and why, over a period of five years (2007-2011), it was unable to secure any finance to build the 5,500 houses. Lonmin's sole response was that no bank would provide finance on terms that were acceptable to the company.[92] Lonmin did not explain what terms it was looking for.

Lonmin's second version of the finance issue was that the SLP did not include an obligation to build houses but only involved them brokering an interaction between their employees and private financial institutions so employees would be able to obtain mortgage bonds.[93] In a meeting with Amnesty International in May 2016 Lonmin officials said the company believed that Rand Merchant Bank was going to provide finance to its employees, but Lonmin would construct the houses. This version of events has several significant problems.

Firstly, it contradicts other statements made by Lonmin about its role in building the houses. Over the course of two interviews with Amnesty International on 9 and 11 May 2016 executives said Lonmin had not intended to build the houses and that Lonmin meant to build the houses if employees got mortgages.

Secondly, if this was the basis of Lonmin's SLP commitment (that it would build houses if workers got mortgages), then Lonmin would have had to establish that at least 5,500 of its employees wanted to enter into such financial agreements, and wanted to buy homes in Marikana. As far as Amnesty International could discover, Lonmin had no such information. In fact, as discussed below, Lonmin knew, or ought reasonably to have known, the opposite was true. Few of Lonmin's predominantly migrant workforce want to buy houses at Marikana. Amnesty International asked Lonmin to clarify where the figure of 5,500 came from and how the company surveyed its workforce to establish this was the need for mortgages. Lonmin did not respond.

Thirdly, Lonmin's SLP specifically states, with respect to the 5,500 houses, that employees would be offered a variety of tenure options, including rental. This is not consistent with workers having to secure the mortgage to buy a home.

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87 Lonmin Social and Labour Plans for Western Platinum Limited and Eastern Platinum Limited, August 2006, page 71. A plain reading of the SLP documents would be that Lonmin was looking to secure a loan to enable the company to build the houses.
88 Amnesty International interview, Lonmin offices, Johannesburg, 11 May 2016.
89 Amnesty International interview, Lonmin offices, Johannesburg, 11 May 2016. Farlam Commission report, Chapter 24, para 23.
90 Lonmin Sustainable Development Report 2006, page 21
91 This emerged during the Farlam Commission. See: mail & Guardian, Lonmin's broken promises: the housing deal that wasn't, 2 October 2014, available at: http://mg.co.za/article/2014-10-02-lonmins-broken-promises-the-housing-deal-that-wasnt
92 Amnesty International interview with Lonmin, Lonmin offices Johannesburg, 11 May 2016.
93 Amnesty International interview with Lonmin, Lonmin offices Johannesburg, 11 May 2016.

A fourth issue is that, if this was the case, Lonmin would still need the capital funds to embark on the construction project and the SLP's reference to an arrangement with the bank seems to relate to funding the construction of the homes and not to the finance being about the subsequent ownership by workers of those homes.

An additional problem is that this version of events is never referred to in any Lonmin Sustainability Reports between 2007 and 2011, the years when the housing programme was supposed to be delivered. Lonmin provides its shareholders with an update on housing in each report. The details of this plan do not appear anywhere in public documents. Lonmin itself, in an interview with Amnesty International, was unable to explain exactly what it meant, or how this proposition would work. When pressed on the fact that a plan based on employees getting mortgages was inconsistent with a commitment to offer rental accommodation Lonmin told Amnesty International that it expected a property developer to take on the project and provide houses for purchase or rental. Lonmin maintained that its SLP legal commitment on housing was therefore not a commitment to housing at all but a hope that some investor would come along and see the Lonmin workforce as an investment opportunity.[94] Company executives appeared unaware that this explanation was inconsistent with other statements made in the same interview.

More tellingly, Lonmin was unable to provide any details about how many investors had considered the investment deal it proposed and had rejected it (it has to be assumed that any investors approached rejected the idea as no such deal was ever made). Nor was the company able to clarify how an agreement with Rand Merchant Bank, which was not in the property development business, would have enabled the property development, which the company now suggests was the plan all along, to happen. In fact there is no evidence that Lonmin ever had any such plans in place or had located any entity that would act as a property development investor in the way described to Amnesty International. In 2009 the company indicated for the first time that it had experienced difficulty with the financing, but made no mention of the property developer idea, let alone any information that the failure to secure a property developer has rendered their ability to deliver on the housing plans unworkable. "In a 2010 report the company stated that it had revised its housing strategy and that to deliver on this new strategy it would focus on "developing strategic partnerships between the Company, property developers and financiers…."[95] "It is hard to see how a new strategy announced in 2010 could be the basis for an SLP developed in 2006.

As noted earlier, and by the evidence leaders at the Farlam Commission, the idea that Lonmin's obligation under the SLP was merely one of facilitating financing is untenable. The Chairperson put the following to Lonmin during the enquiry:

> *"You go to the [DMR] and you say, "… 'well all we have to do as far as the housing is concerned is try to see …there are houses, get banks involved, get developers involved, facilitate it, and if they don't provide the houses or the banks walk away from it, well tough. It's very unfortunate. We did our best: we went through the motions of facilitating; It didn't work out; There aren't the houses. The people are having to live in shacks in appalling conditions in an informal settlement, but that's very sad, but nevertheless, this was all we had to do in order to get the new order mining rights.' Does that sound like a proposition that makes sense?"*[96]

The Farlam Commission's final report noted that Lonmin executive Mr Seedat "spent several pages responding to this question but could not come up with any credible answer."[97]

If Lonmin's 2006 SLP housing commitments were dependent on the realisation of some form of financial deal or deals, it was incumbent upon it to have a clear, workable plan to ensure the finance. Clearly it did not have such a plan. Its statement that no banks would provide finance on terms acceptable to it underlines the point that Lonmin should not have made the original 2006 commitment without having first arranged the financial mechanism it required to commit to the project.

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94 Amnesty International interview, Lonmin offices, Johannesburg, 11 May 2016.
95 Lonmin, Annual Report and Accounts, 2010, page 44, available at: https://www.lonmin.com/investors/reports-and-presentations.
96 Farlam Commission Report, Chapter 24, para 23.
97 Farlam Commission Report, Chapter 24, para 24.

It was also incumbent on Lonmin to transparently state the nature of the plan and to transparently report on it. Lonmin did not do this. Lonmin's claims are at best unclear and, at worst, deliberately misleading.

One final question that arises from Lonmin's claims about the financing of its SLP housing plans: whether what Lonmin says is compatible with the terms of the MPRDA which require that the applicant for a mining rights must "provide financially and otherwise for the prescribed SLP"?[98] Lonmin set out a capital budget for the building of the housing programme, but did not provide financially or otherwise for this budget. Moreover, based on some of its explanations, Lonmin did not intend to pay for the housing or spend the amounts of money set out in the SLP; the company expected, variously, property developers or its own employees to pay for the housing.

EXCUSE #2: EMPLOYEES DO NOT WANT TO BUY HOUSES

As noted earlier, more than half of workers at Lonmin's Marikana mine are migrant workers. Most have a permanent home elsewhere, in some cases in another country. One of the most striking features of Lonmin's explanations about why the houses were not built is that employees did not want to buy houses. In its 2014 Sustainability Report Lonmin presents the issue as follows:

> *"In the past the Company committed to the construction of houses for employees to buy and own, but this had to be curtailed as the overwhelming majority of employees prefer to rent. This has been the almost unanimous response from the initial pilot project, confirmed by subsequent surveys and market research."* [99]

This statement is false. The 2006 SLP committed the company to a variety of tenure options.

Although this explanation for Lonmin's failure features prominently in its public reporting since 2012, it was only briefly mentioned in its reporting before 2011. In a 2010 annual report Lonmin stated that:

> *"Regrettably there have been several challenges that have required us to review the target of 5,500 houses. These challenges include … the actual housing needs of our employees, the majority of who require rental accommodation."* [100]

Since 2012 Lonmin has regularly cited this issue. In 2012 it stated:

> *"A further exacerbating factor is that employees who are migrant have indicated an aversion to settling in formal accommodation close to the mine, preferring to return to their home base at the end of their careers."* [101]

Similar challenges are repeated in Lonmin's 2013 and 2014 Sustainability Reports.

There are several problems with this excuse, not least that it is inconsistent with other explanations Lonmin has provided for its failure to build the 5,500 houses. Firstly, as noted above, Lonmin's SLP said the houses would be offered to employees on a variety of tenure basis, including rental. Therefore, the fact that workers did not want to buy houses should not have been a material issue. Secondly, Amnesty International asked Lonmin when it, as a mining company that has operated in Southern Africa for more than a century, came to the understanding that most of its migrant workforce did not want to buy houses at Marikana.

According to Lonmin, speaking to Amnesty International in May 2016, the company carried out a housing needs assessment survey in 2008 and this survey "showed 85% of employees wanted rental. Most people come from outside the area."[102]

98 Mineral and Petroleum Resources Development Act, 2002, Section 23, para (1) (e).
99 Lonmin Sustainable Development Report 2014, page 44 (emphasis added)
100 Lonmin Annual Report & Accounts 2010, page 44
101 Lonmin Sustainable Development Report 2012, page 99
102 Amnesty International interview, Lonmin offices, Johannesburg, 9 and 11 May 2016.

This statement is problematic on several fronts. Firstly, it suggests Lonmin had no basic understanding of the housing needs of its workforce in Marikana when it developed the 2006 SLP. The fact that migrant workers might not want to buy houses in the mine location should be a likely, if not obvious, consideration for a mine company looking at the housing of its workforce, particularly one with 100 years of experience in the southern Africa mining industry.

When Amnesty International put this to Lonmin, the company had no response. Amnesty International asked Lonmin why it did not do the housing needs assessment survey before making legal commitments in the SLP. The company had no response.

THE MARIKANA HOUSING DEVELOPMENT CORPORATION

In 1998 Lonmin established the Marikana Housing Development Corporation (MHDC), a special purpose company (known as a section 21 company), to build houses at Marikana to sell or rent to employees and to members of the community By 1999, according to Lonmin, the MHDC had built 1,149 homes.[103] Some of these houses have been sold to employees or local people, but most are rented, including on rent-to-buy schemes. The quantity of houses available fell far short of needs – in 2008 Lonmin had a housing waiting list with more than 5,000 miners on the list.[104]

Lonmin, to its credit, provides financial advice and assistance, as well as rent-to-buy options, to encourage home ownership. Despite this, as of 2016 less than a quarter had been sold, and not all those sold were bought by employees of Lonmin.

The current status of the MHDC is unclear.

Amnesty International asked why the MHDC, which has built houses in the past, and rented and sold them, was not still doing so and why this company could not provide more housing for rent at Marikana. Lonmin did not provide a direct answer. One Lonmin executive interviewed by Amnesty International in May 2016 said she believed the MHDC was defunct. However, Lonmin's recent Sustainability Reports refer to it as an operating entity.[105] Amnesty International also asked Lonmin why, if the 2008 housing needs assessment survey provided the information that 85% of people wanted rental, and this fact is now being cited as one of the reasons the company did not deliver on its SLP commitments, the company continued, up until 2011, to report on building houses without mentioning this fact[106] For example, the 2008 Sustainability Report, published after the housing needs assessment survey was done, renews Lonmin's commitment to "the construction of 5,500 houses by 2011"[107], with no suggestion that the construction is now in question because it was based on a (false) assumption that people would buy the houses. The 2008 report also refers to the assessment, stating: "Taking into account the assessment…..houses are to be affordable to our employees and home ownership is pivotal to the success of our housing programme."[108] The company had no answer.

Moreover, even though senior Lonmin executives told Amnesty International in May 2016 that the 2008 survey revealed that employees did <u>not</u> want to buy houses at Marikana, they also said that it was the 2008 survey that led them to build three show houses for the purposes of getting employees to decide which one they wanted <u>to buy</u>. Amnesty International asked Lonmin to explain why, if the 2008 survey found that 85% of workers did not want to buy homes, Lonmin built three show houses for the purposes stated. Lonmin responded that "if 50 employees got bonds from a bank, if 50 employees would qualify, they would go ahead and build more [houses]."[109]

Amnesty International was unable to secure from Lonmin any clear explanation for why the response to a housing needs assessment survey that found that 85% of people wanted rental accommodation was to build show houses for people to buy.

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103 Lonmin's Human Settlements, Factsheet, available at: http://www.lonmin-farlam.com/images/pdfs/factsheet_housing-accommodation_28-06-15.pdf
104 Mail & Guardian, Farlam: Lonmin Did Not Pursue Housing Agreement, 29 September 2014. See: http://mg.co.za/article/2014-09-29-farlam-lonmin-did-not-pursue-housing-agreement
105 See for example, Lonmin Sustainable Development Report 2015.
106 Lonmin Sustainable Development Reports 2007-2011
107 Lonmin Sustainable Development Report, 2008, page 29
108 Lonmin Sustainable Development Report, 2008, page 64
109 Amnesty International interview, Lonmin offices, Johannesburg, 9 May 2016.

In fact the 2008 survey was not reported by Lonmin as giving the information that their senior executives provided to Amnesty International in 2016. In the 2008 Lonmin Sustainability Report, the "key outcomes" of the employee survey are reported as including: "it is the intention of the majority of employees to buy a house as opposed to renting a house".[110] The senior Lonmin executives interviewed by Amnesty International appeared to have no knowledge of the content of their 2008 Sustainability Report. Amnesty International subsequently sent Lonmin the text of its own report for comment. The company did not respond.

Amnesty International noted that the comment in the 2008 Sustainability Report, that the majority of employees wanted to buy houses, was preceded by the statement that the strongest driver for employees to acquire a house was the need to live with their immediate family. Amnesty International put it to Lonmin that the statements appeared carefully constructed and asked whether employees had in fact indicated their desire to buy homes in the places where they originally came from, not Marikana, and if so, why Lonmin failed to report this highly material fact. The company did not respond.

Whatever the explanation for Lonmin's two different accounts of the results of the 2008 employee survey on housing needs, it is clear that most Lonmin employees do not want to buy a permanent home at Marikana. This is consistent with the way in which migrant workers describe their situation, and with the general trends in the mining industry. What is unclear is why Lonmin ever believed they did. It is also not clear why the company did not do a survey before making a legal commitment in the 2006 SLP or why its plans were not changed in 2008 if it found them to be based on false assumptions, which is what the company now claims. Finally, Lonmin did not respond to Amnesty International on why it presented false and misleading information to the public, including directly to its shareholders and employees, in the 2008 Sustainability Report.

While Lonmin did not accurately report the 2008 survey, as noted above, in 2012 it began stating that employees, did not want to buy homes.[111] This information is presented as if it is new information, not the result of the 2008 survey. Although the fact that migrant mine workers largely do not want to buy homes in Marikana, and Lonmin (if one accepts its explanation) has known this since 2008, the company now points to this fact as an excuse for their failure to deliver on legal obligations, effectively seeking to shift blame onto the workers themselves.

Instead of acknowledging that it was in error in so far as its housing plans relied on employees buying houses, Lonmin has continued to report to its shareholders on the issue, subtly converting it from failure of planning by Lonmin to a problem of the their employees' life choices. It is now the workers themselves who are part of the challenge Lonmin faces in providing decent accommodation for the workforce.

LONMIN EXCUSE #3: EMPLOYEE INDEBTEDNESS

In 2013 Lonmin introduced another factor, stating:

> *"High levels of employee indebtedness, combined with reckless lending, which also limits employees' creditworthiness and their access to home finance, now and in the future."* [112]

Lonmin continues to raise this excuse to this day, referring to it in an interview with Amnesty International in May 2016. Lonmin pointed to indebtedness and the problem it creates for employee home ownership with no apparent recognition of the fact that in the same interview Lonmin executives told Amnesty International that the vast majority of its employees do not want to buy homes. There is no evidence that Lonmin's employees are trying to secure mortgages to buy houses at Marikana and cannot do so. Lonmin's mine worker employees, who have twice gone on strike over their salaries in the past five years, and – in many cases – support a family in another part of South Africa, are now being blamed for lacking creditworthiness to buy homes they have never said they wanted to buy in the first place.

110 Lonmin Sustainable Development Report, 2008, page 64 (emphasis added)
111 Lonmin Sustainable Development report, 2012, page 65
112 Lonmin Sustainable Development report, 2013, page 99

LONMIN EXCUSE #4: THE FINANCIAL CRASH

Yet another Lonmin excuse for its failure to build the houses is the 2007/8 financial crash. This is something Lonmin has referred to several times in recent years. For example its 2015 Sustainability Report states:

> *"Lonmin did not meet its initial SLP housing targets due to a number of factors, including a sudden and dramatic decline in the platinum price at the time of the global economic downturn, which severely impacted revenues."*[113]

This statement leads to another question which Lonmin cannot answer: if the reason for not building the houses is the fall in platinum prices, why, at least, were 700 houses that it said would be built in 2006/7 year not built? Lonmin's response appears to be that it had not secured the financial arrangements referred to under excuse #1.[114]

Lonmin's claims about the impact of a fall in the price of platinum appear to accept that Lonmin would incur the capital cost of building the houses. While Lonmin building and paying for the houses is what any reasonable reader of the company's SLP and various Sustainability Reports would expect, Lonmin has repeatedly stated that it did not intend to build the houses unless some other entity financed the scheme. But even leaving aside this new set of contradictions, this claim raises another serious issue: if the financial crash had impacted a key element of their SLP so badly, why did they not report on this in the 2008 and subsequent Sustainability Reports? And why did they not seek DMR permission to change the plans? As noted above, in the 2009 Sustainability Report Lonmin refers to financial issues and the renegotiation of the housing targets but this is never followed up, and the 5,500 target is repeated in 2010.

Lonmin cannot have it both ways: it cannot say it never intended to build the houses, only to seek finance or a property developer to do so, as it told Amnesty International, then claim that the price of platinum was the reason it could not build the houses. If the first is true the second is not relevant. If the second is true then there should have been at least 700 houses already built. Moreover, as the Farlam Commission also noted, Lonmin cannot unilaterally decide to renege on its SLP commitments. It requires the official consent of the DMR to change the plans, and Lonmin neither made nor received such authorization.[115]

MIGRANT WORKER HOUSING: A CASE STUDY IN INEQUALITY

One Lonmin migrant worker did not experience challenges with the company's provisions for his accommodation. Ian Farmer was CEO between 2009 and 2011. Mr Farmer moved from the UK to South Africa for work. As part of his overall package of benefits he received a specific allowance for housing, visits home and private health care, in addition to salary and bonuses:

YEAR	AMOUNT FOR HOUSING, HOME VISITS AND HEALTH	
	UK£	RAND
2010	149,334	1,871,55
2011	121,743	1,525,440 (2.3 milliion)
TOTAL	271,086	3,396,595

By contrast with the provisions made for the CEO's housing and home visits, workers at Lonmin received a Living Out Allowance (in 2011) of approximately 1,850 Rand per month (22,200 Rand or UK£1,772 per year).

The cost of visiting home is substantial relative to the salary of a mine worker. For example the cost of taxi or bus fare from Marikana to the Eastern Cape, from where some 30% of Lonmin's

113 Lonmin Sustainable Development Report, 2015, page 21
114 Amnesty International interview with Lonmin, 11 May 2016.
115 Lonmin acknowledges this, but says it kept the Minister of Mineral Resources and DMR updated. Lonmin refused to share the correspondence with Amnesty International.

workforce comes, is around 500 Rand one way.

The CEO salary in 2011 was UK£565,000 (excluding allowances and a bonus of UK£283,065). Prior to August 2012 the basic pay for a rock drill operator (excluding allowances) was R5,405 (UK£431). (Lonmin, Sustainable Development Report 2012)

*currency conversion done using historical exchange rates (UK£1 = ZAR12.53 @ 30/09/2011)

LONMIN EXCUSE #5: A LACK OF BULK SERVICES

More recently Lonmin has added a new element to its explanation for not building the 5,500 houses. Lonmin does not have access to enough serviced land. In an interview with Amnesty International in May 2016 a Lonmin executive stated that: "the Marikana region is very challenged in terms of bulk services in terms of the two municipalities"."[116] Bulk services are the electricity, water and sewage infrastructure needed for any housing development; in order to build houses each plot of land – or stand – has to be serviced. This explanation also fails to stand up to scrutiny.

Firstly, Lonmin had some serviced land and the company repeatedly referred to it, including in the 2006 SLP. This is what they said in 2006: "Lonmin has installed services on 780 stands at Marikana 2[117] with a view to building 700 houses on these stands".[118] It built three. Clearly there were at least 777 more serviced stands available. Lonmin also says in the SLP that it will put services on 4,800 stands and gives a capital budget of 96 million Rand to do so (presumably the 4,800 stands are the balance needed to enable 5,500 houses to be constructed). In its 2006 Sustainability Report Lonmin says that 2,000 residential, serviced stands were "proclaimed" in Marikana Extension 2, with 300 residential units already commenced. Before the company can install services on the land, it has to be designated (proclaimed) through an official process. So as of 2006, Lonmin had the authority to put services on 2,000 stands and had serviced 780 of these 2,000.

In its 2010 Sustainable Development Report, Lonmin states that:

> *'Regrettably there have been several challenges that have required us to adjust the 5,500 houses targets. These challenges include… Insufficient water and electricity supply… resulting in delay to meeting our committed targets."* [119]

Lonmin refers to delays but not to an inability to deliver the "committed targets".

In 2015 Lonmin stated that it had contributed "50 hectares of serviced land, known as Marikana Extension 2" to the government.[120] This land was described as having the potential to provide more than 2,000 units, implying Lonmin had put services on this land. Amnesty International asked Lonmin to clarify how many serviced stands the company had at Marikana 2 and why it referred to a lack of bulk services as a problem if it had 50 hectares of serviced land available. The company did not respond.

When Amnesty International asked Lonmin in a meeting in 2016 how it had planned to ensure the servicing of land, given its SLP commitments, the company representatives implied, without clarity, that they expected a property developer to do this. As noted above, in the decade since making its SLP commitments, Lonmin has not found such a property developer. Moreover, in 2006 Lonmin, without any property developer, had serviced 780 stands, so it is unclear why it put forward an SLP which – it now claims – envisaged two totally different approaches: Lonmin servicing the first 780 stands and some, unknown, entity doing the rest. Lonmin could not provide clarity on this point.

In 2006 the company knew that land for housing required services, and its 2006 SLP made a commitment

116 Amnesty International interview, Lonmin offices, 9 May 2016.
117 Plots of land on Lonmin's mine lease are referred to as Marikana Extensions 1, 2, 3, etc. These plots of land are areas where Lonmin has built or planned to build houses.
118 Western Platinum Limited, SLP, page 70.
119 Lonmin Sustainable Development Report, 2010, page 38.
120 Lonmin Sustainable Development Report, 2015, page 47 (emphasis added)

to put those services on the land. It is not clear how Lonmin can put forward the lack of serviced land as an excuse for not building the houses, when servicing of land was part of the original plan. Essentially the company is saying that it did not execute its plan because the plan was not executed.

While Lonmin's statements about the lack of serviced land are problematic for the reasons stated above, the company's assertion that the provision of bulk infrastructure requires the involvement of government is reasonable. Such infrastructure is generally the purview of the local government and should form part of local and regional development plans. It was incumbent on Lonmin to ensure that its 2006 SLP and subsequent plans for housing were integrated with wider local government development plans, and that the cooperation of local authorities was agreed upfront. However, SLPs in the North West area are frequently not well integrated with local government plans, according to sources within the DMR.

LONMIN EXCUSE #6: LACK OF LAND AS PROBLEM

To its claims about a lack of bulk services, Lonmin has added a lack of suitable land. In 2011 Lonmin stated than one of the challenges it faced in delivering on housing was: "a shortage of appropriate land in the vicinity of our operations".[121] This justification for its failure also fails to withstand scrutiny.

One problem with this explanation for the failure to build the 5,500 houses is that it is not true. Lonmin had land for 2,000 houses at Marikana Extension 2, and referred to this in its 2006 SLP. And in 2016 Lonmin told Amnesty International it had land for 6,000 housing units at Marikana 5.[122] Lonmin built three houses. It clearly had land to build more – but did not do so.

A second problem with this statement is that if Lonmin did not have access to land for the 5,500 houses, its 2006 SLP was based on extremely poor planning and, once again, it failed to make this critical point clear in the SLP. In 2008 the company stated:

> *"Urban design plans for Marikana in terms of the housing programme are complete and pending approval by the Rustenburg local Municipality as part of their Integrated Development Plans"*[123]

It is difficult to reconcile this statement with Lonmin's claims that it did not have access to land for building the houses. An urban design plan would have to include such information. Lonmin does not report any problems with lack of access to land – or bulk services - in 2008. The urban design plan is not mentioned again in Lonmin Sustainability reports.

LONMIN EXCUSE #7: THE GOVERNMENT SHOULD BUILD HOUSES, NOT LONMIN

Since 2012 Lonmin has added yet another dimension to its explanation for why it has not address the shortage of adequate housing for its workforce and why it failed to deliver on its SLP: housing is the government's responsibility. In a factsheet the company states:

> *"Addressing the critical shortage of affordable housing in Lonmin's regions of operation, particularly around Marikana, is a complex challenge for the company, who is committed to working closely with both regional and national government to meet these challenges. One*

121 Lonmin Sustainable Development Report, 2011, page 27
122 Lonmin referred to Marikana Extension 5 and the potential to put housing units there in an interview with Amnesty International in May 2016. In a letter to Amnesty International dated 1 August 2016 and annexed to this report, Lonmin states that that it "has identified" Marikana Extension 5 as a potential site for development.
123 Lonmin Sustainable Development Report, 2008, page 66.

of the critical questions is: Where does the role and responsibility of the company begin and end and where does the role and responsibility of government begin and end?"[124]

But this is not the question. The obligations of the SLP are on the company. The responsibility to provide or ensure adequate housing for migrant workers is a company responsibility. The Farlam Commission address this issue stating:

> *"the responsibility and performance of the local government in the area of housing is irrelevant because Lonmin's obligations were self-standing".*[125]

Lonmin was aware of the appalling state of accommodation at Marikana for years, if not decades. It has a human rights responsibility to address this issue in respect of its migrant workforce. It also had a specific legal obligation under the Mineral and Petroleum Resources Development Act, 2002 (MPRDA) to deliver on its SLP housing commitments unless it is given official authorization not to do so.

The company cannot, when it comes to its workforce, point to the government's failures. The United Nations Guiding Principles (UNGPs) make clear:

> *"The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States' abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights."*[126]

The question is why Lonmin is attempting to reframe the issue and obscure its own responsibilities.

As the UNGPs note, the responsibility of the company does not diminish the obligations of the State. The government of South Africa has an obligation to ensure people have access to adequate housing. The overall state of housing around Marikana, in which many local communities have to live in the same squalid conditions as Lonmin's workforce, is an issue the government should address through appropriate policy and budgetary measures. It is beyond the scope of this report to assess the full range of government activity in relation to housing in Rustenburg and Madibeng, although the high number of informal settlements and lack of access to basic services raises questions with regard to whether the government is doing enough.

However, one policy measure the government has put in place since 2002 is a requirement for mine companies to improve the standard of accommodation available for workers. In the case of Lonmin, the authorities have failed to enforce the SLP, which is a key tool for companies to deliver on the objectives of the MPRDA and the Mining Charter. One question about where the government's responsibility begins and ends, is the question of why the government has not held Lonmin to account for failing to fulfil legal requirements and for providing false and misleading information.

NON-COMPLIANCE WITH THE MPRDA

Lonmin's failure to deliver the 5,500 houses included in its SLP amounts to a breach of the MPRDA. According to Lonmin in 2010 the DMR sent the company a letter saying that "you have not complied with housing".[127] Lonmin sent a detailed response, of approximately 100 pages to the DMR, in which the company stated that it did not intend to build the houses. In addition, according to Lonmin, in 2011 Lonmin's CEO made a presentation to the Minister of Mineral Resources that detailed the change in the company's housing strategy, and explained that employees wanted to rent rather than buy, based on a 2008 needs assessment.

124 Lonmin's Human Settlements, Factsheet, available at: http://www.lonmin-farlam.com/images/pdfs/factsheet_housing-accommodation_28-06-15.pdf
125 Farlam Commission Report, Chapter 24, para 15
126 UNGPs, para 11.
127 Amnesty International interview with senior Lonmin executives, Lonmin Offices, Johannesburg, 9 May 2016.

According to Lonmin the DMR never came back to them on the letter and they took this as assent. Speaking to Amnesty International in 2016 Lonmin executives acknowledged that in order to formalise their change of plans they should have applied officially to do so and reflected the amended strategy in the SLP but they did not. "It was less formal," one executive said.

In common with many of the material changes to Lonmin's approach to its SLP housing commitments, the 2010 letter from the DMR, Lonmin's response, and the briefing of the Minister on the change of plans were not referenced in the Sustainability Reports in which Lonmin annually updated shareholders and stakeholders on progress on housing. Lonmin reports several times on delays to its housing plans, not on their abandonment.

LONMIN'S FAILED HOUSING PLANS: THE 2005 SUSTAINABLE DEVELOPMENT REPORT

Lonmin's failure to deliver on its 2006 SLP is not the first time the company has made plans on housing that it does not follow up on. In its 2005 Sustainable Development Report Lonmin states that:

> *"The development of stands and houses in Marikana Extension 2 is another example of Lonmin's commitment to ensuring employees' access to family accommodation. We have commenced with the construction of 900 additional houses in Marikana.*[128]

The same report also says that in addition to the 1,419 houses built by the MHDC, the MHDC plans to do the following:

"A further 2,160 houses and a shopping complex are being planned for Marikana over the next three years. The first phase of this project, estimated to be completed in 2005 and valued at US$10.62 million will include the construction of 1,000 houses as well as roads, water and sanitation infrastructure."[129]

As far as Amnesty International could discover, these ambitious plans were not realised and mentioned again.

The repeated failure of Lonmin's plans on housing and the way the company has presented information to its shareholders and stakeholders in Sustainability reports raises a number of questions about the level of scrutiny given to these reports and the level of seriousness with which these commitments are taken by Lonmin, its Board and the South African authorities.

CONCLUSION: PLAN – WHAT PLAN?

When Lonmin developed its SLP in 2006 to address the "truly appalling" state of worker accommodation, it is a reasonable expectation that the plan, a legally binding agreement, was based on some solid foundations. It was not. On face value the original plan was clear. Lonmin would build 5,500 homes that would be offered to employees on a range of tenure options. This would be done by 2011.

However, with the total failure of the plan, Lonmin's efforts to explain what it intended and what happened expose a shocking mixture of bad planning, outright lies, and what appears to be a lack of any genuine interest in addressing the issue. In interviews with Amnesty International, senior Lonmin personnel attempted to blend a range of excuses together: first the bank and then the crash and then the employees not wanting the houses, but each attempt leads, as above, to more questions that cannot be answered. The only reasonable conclusions are that Lonmin's original plan was unworkable, and when this became apparent, no-one was particularly interested in making it work.

In the case of Lonmin's operations at Marikana, the company was well aware that there was a shortage of adequate housing in the Marikana area. At the time of producing its 2006 SLP, Lonmin knew that many thousands of its employees lived in the informal settlements with all that entails in terms of an inadequate standard of living. The company's hostel accommodation housed some 8,000 workers out of a total workforce, at that time, of 24,000.

The next section examines Lonmin's post-2012 actions and plans with regard to housing.

128 Lonmin Sustainable Development Report, 2005, page 22.
129 Lonmin Sustainable Development Report, 2005, page 23.

CHAPTER 6: LONMIN'S NEW HOUSING PLANS – REPEATING THE SAME FAILED STRATEGIES

Following the events at Marikana in 2012 Lonmin acknowledged that housing was a serious issue. The Farlam Commission report, published in March 2015, underlined how serious an issue the housing situation was for the company.

Chapter 2 of this report described the current housing situation at Marikana, which remains appalling. Chapters 4 and 5 exposed Lonmin's failure to deliver on its Social and Labour Plan (SLP) housing commitments. Amnesty International examined whether any other action had been taken by Lonmin since 2012 to improve the housing conditions or increase the availability and accessibility of adequate accommodation for mine workers, beyond the failed SLP plans.

In an interview with Lonmin in 2016, the company pointed to three achievements since 2012. It has:

- Completed the conversion of the company's hostels.
- Donated land it had originally, in 2006, said would be used to build houses for its workforce, to the government so the government could build houses and apartments.
- Developed a plan to build what it calls "infill" apartments.

Each of these actions is assessed below.

COMPLETION OF THE HOSTEL CONVERSION PROCESS

In its 2006 SLP Lonmin set a target of converting 114 hostels to single or family apartments by 2011. In 2011 Lonmin reported that 64% of hostels had been converted, but said it was on target to complete the process by the scheduled completion date of end of 2014.[130] Lonmin's target increased from 114 hostels to 128 hostels, as the company had to meet the Mining Charter requirement to convert all of its hostels by 2014.

The conversion of the Lonmin hostels, and all they represent, is a positive move. However, in terms of its 2006 SLP, it was only part of the overall plan to address the housing conditions at Marikana. Hostel conversion does not address the housing shortage, as fewer people are accommodated in the converted hostels. By failing to implement the SLP housing plans in full, Lonmin has increased quality for some workers but has added little to the availability of adequate accommodation.

In 2006 some 8,000 people were accommodated in Lonmin's hostels; with the completion of the conversion process, 3,000 employees are now accommodated in converted apartments.

130 Lonmin, Sustainable Development Report 2011, pages 6 and 14

SM[131] is a mine worker at Marikana. He is from Eastern Cape and came to Marikana in 1986 for work. He and his family now live in one of the family units in the converted hostels. When SM arrived at Marikana he lived in single sex hostels with between 16 and 18 men in one room. He was given a family unit in 2008. SM pays R320 per month for the two bedroom unit. He was allocated his family unit based on Lonmin's housing waiting list.

"I always say I am lucky to stay here since others are living in the shacks in Nkaneng with no running water and not good electricity. Others who are there are not as lucky as I am," he told Amnesty International.

He is very conscious of their plight. There are, he says, simply not enough houses and Lonmin must build more.

SM is, as he said, one of the lucky ones. ZN, whose situation was described in Chapter 2, was not so lucky. He lived in one of Lonmin's single sex hostels but this closed down in 2007 and he had to move to Nkaneng. He says the living conditions in the hostel were better than the conditions he now lives in.

"we want houses but don't get them. The mine keeps saying preparations are being made for people who were staying in the hostel first then they will get to us but they never do. There is a list that is used for allocating houses but we know nothing of it."

Top left: *Illegal electricity connections in Nkaneng settlement. © Paul Botes / Amnesty International.* ***Top Right:*** *People living in Nkaneng are forced to make use of communal water towers and communal taps. Due to poor roads and infrastructure, collecting this water can be difficult. Some residents prefer to wash clothes etc at the water source.* ***Bottom Left:*** *Interior of two bedroom unit in converted hostel.*
© Amnesty International.

131 Amnesty International interviewed SN on 16 July 2016 at Marikana. He asked for his name not to be used.

Amnesty International asked Lonmin where those who had been housed in the hostels but did not get one of the converted apartments live now. The company did not respond.

DONATION OF LAND TO GOVERNMENT

In late 2012, in the aftermath of the tragic events in Marikana, South Africa's President Jacob Zuma established an Inter-Ministerial Committee (IMC) for the Revitalisation of Distressed Mining Communities. This Committee was to give effect to the Special Presidential Package for the revitalisation of mining districts and labour sending areas.[132] The initiative included plans to build government housing at Marikana.

On 10 July 2014 Lonmin donated 50 hectares of serviced land to the government to build houses and apartments. The land the company donated was the land on which it had committed to building houses for its workers in the 2006 SLP.

The government housing project at Marikana comprises social housing including what are known as Breaking New Ground houses and community residential units (CRUs, which are apartments). Both of these types of housing are intended for people who earn below a certain income threshold. To date the government has built 292 houses and 252 CRUs at Marikana. The intention is to build a total of 2,600 housing units, although the deadline for this work to be completed is unclear.

Apartment blocks and houses built by the government on land donated by Lonmin © Amnesty International

Amnesty International asked Lonmin how this government initiative would address the needs of Lonmin's migrant workforce. Lonmin confirmed that none of the Breaking New Ground housing would be allocated to Lonmin employees. The company claims that 70% of CRU apartments will go to Lonmin employees. However, when asked how access for Lonmin employees is being guaranteed, given Lonmin employees earn above the income threshold to qualify for CRUs, Lonmin admitted that the company has no formal agreement with the government on this point.[133]

The average wage package for a Lonmin mine worker is 8,700–12,000 Rand (UK£490 - £677) per month. The CRU Programme "targets low-income individuals and households earning between R800 and R3 500 a month, who are unable to enter the formal private rental and social housing market."[134]

According to the company Lonmin is involved in a multi-stakeholder steering committee under the direction of the National Department of Human Settlements. This committee has verbally agreed the 70/30 split that will enable Lonmin employees to access some of the CRUs. However, before this can happen, the Steering Committee must agree a change to the official qualification criteria – specifically the income threshold. As

132 See article on website of The Presidency, 30 June 2015 at: http://www.thepresidency.gov.za/pebble.asp?relid=20033&t=79
133 Amnesty International interview with senior Lonmin executives, Lonmin offices, Johannesburg, 11 May 2016.
134 South African Government website: http://www.gov.za/about-government/government-programmes/community-residential-unit-cru-programme

of May 2016, almost two years after donating the land, Lonmin was still awaiting confirmation that this will be the case.

The local community living around Marikana is, in general, poor. Most live in the same appalling conditions as Lonmin workers (an issue addressed in Chapter 8). The government has an obligation, in international and domestic law, to ensure people have access to adequate housing. The government is also responsible for ensuring migrant workers' (including both foreign and internal migrants) rights to housing are respected.

Lonmin and the government should have publicly communicated the terms of the agreement under which the land was transferred by Lonmin to the government. The use of a social housing programme, which is intended for low income households, for people who do not fit the criteria will raise questions. The government and Lonmin need to clarify Lonmin's contribution and the government's contribution. They should make clear that government funds earmarked for social housing are not being diverted and the arrangement will benefit Lonmin workers and lower-income members of the community. The allocation of government social housing is supposed to be based on a housing waiting list and certain criteria. In a context where many local people are already on the housing list, a process that appears to allow Lonmin workers to have preferential access may cause tensions. This is already occurring.

The North West Provincial Legislature Portfolio Committee on Local Government and Human Settlements, which visited the site in July 2015, expressed concern about the situation because mine workers believed the housing was rightfully theirs, while the local community believed the housing was for local people and were concerned about manipulation of the housing list. The Committee also expressed concern about "the role of Lonmin in communicating a joint common message of government about the project, which is meant to benefit the community of Marikana, informal settlements surrounding Marikana as well as workers of Lonmin who happen to be community members."[135]

In January 2016 some 100 people occupied the Breaking New Ground houses at Marikana. This led to legal action by the local government to evict those who occupied the houses. The case had not been resolved at the time of writing.

When Amnesty International visited the area in May and July 2016, local people described ongoing tensions over the allocation of housing. According to community activists, the housing waiting list is not being used. Some of the Lonmin mine workers and local people whom Amnesty International interviewed in Nkaneng spoke about the new housing and the lack of clarity about who would benefit. Mine workers believed the housing is intended for them, while local people believe it is for local people.

Amnesty International asked the government about the waiting list and transparent allocation of the housing but received no response. Amnesty International asked both the government and Lonmin about the risks of giving government-funded housing to workers and whether this risk had been considered – neither responded.

As of May 2016 no Lonmin employees had been allocated any CRUs. Lonmin had yet to secure an agreement that the income threshold was being changed. Even if Lonmin employees are allocated CRUs, the total currently available is 252, 70% of which amounts to 176, which represents just over 1% of the Lonmin workforce who need formal accommodation.

INFILL APARTMENTS

In 2011 Lonmin announced it was looking at a new option for worker accommodation, which it described as "densification". This is now referred to as the building of what it calls infill apartments. According to Lonmin these are apartments the company will build between the converted hostel blocks. This enables the company to take advantage of the bulk services infrastructure that already exists for the hostels.

Despite referring to the idea in 2011, by 2014 it was still being reported in Lonmin's Sustainability Report as an idea to explore. In meetings with Amnesty International in May 2016, Lonmin described the project

135 See: Report of the North West Provincial Legislature on oversight at Marikana Housing Projects, 7 July 2015, available at:http://www.gov.za/speeches/north-west-provincial-legislature-oversight-marikana-housing-projects-7-jul-2015-0000

as follows: "The scope of the infill project includes green spaces, clinics, security, recreation".[136] As of May 2016, Lonmin had only laid the pavement for this project.

According to executives, it is a five year plan.[137] Amnesty International asked for further details, including any financial constraints Lonmin envisaged. At the time of writing no further information was forthcoming. However, as will be discussed below, in 2015 Lonmin has indicated that it may – again - face financial challenges in relation to housing.

LONMIN'S ACHIEVEMENTS SINCE 2012	
Total number of Lonmin staff accommodated in converted hostels	3,000
Total number of Lonmin staff accommodated in new government housing:	0
Total number of Lonmin staff accommodated in infill apartments:	0

LONMIN'S NEW SOCIAL AND LABOUR PLAN: 2013 - 2018

In October 2013 Lonmin submitted a new SLP to the DMR. With regard to housing this SLP states:

"Lonmin's planning for the management of the housing and living conditions of its employees encompasses human dignity and privacy, which supports the spirit of transformation as advocated in the Mining Charter."[138]

Lonmin goes on to say that the company's strategy for the five year period has three pillars:

- Hostel conversions
- Provision of affordable housing; and
- Future housing close to the operations.

On reviewing the details it is apparent that the hostel conversion which forms one of the three pillars of the 2013 -2018 housing strategy is the same hostel conversion described above, complete in 2014 as mandated by the Mining Charter. It is not clear how a process that was begun in 2006 and due to be completed in 2014 can form part of the company approach to housing to 2018.

Under the heading of 'Hostel conversion' Lonmin's 2013 SLP also includes the construction of infill apartments. Lonmin states that it has approved 100 million Rand per annum for the next five years towards this project. It then goes on to say:

> *"The opportunity exists for construction of 4,000 units over the next five years. Extensive efforts are required to access possible funding from institutions such as the Social Housing Regulatory Authority to unlock and secure social housing grants and subsidies that are available."*[139]

Once again Lonmin is referring to the need to secure finance.

In its 2015 Sustainability Report, just two years later, Lonmin states:

> *"Subsequent to August 2012, Lonmin increased its Housing Department's internal capacity, skills and resourcing and committed R100 million per annum towards housing and accommodation programmes. In the current economic circumstances, this commitment of R100 million per annum has been internally reviewed and an application will shortly be made for Ministerial approval for an amendment of this undertaking in order to minimise job losses."*[140]

136 Amnesty International interview with senior Lonmin executives, Lonmin offices, Johannesburg, 11 May 2016.
137 Amnesty International interview, Lonmin offices, Johannesburg, 11 May 2016.
138 Lonmin Social and Labour Plan, October 2013 to September 2018, page 127
139 Lonmin Sustainable Development Report 2015, page 47
140 Lonmin Sustainable Development Report 2015, page 21

Lonmin is once again citing "economic circumstances" as a challenge. It is not clear what impact this will have on the infill apartments. As noted above, little progress has been made as of May 2016.

Under Pillar II, 'provision of affordable housing', Lonmin refers to the Marikana Housing Development Corporation (MHDC) as a vehicle to sell houses to its employees. The information that 85% of staff do not want to buy houses is converted to:

> *"The various surveys and information gathered concluded that 15% of our category four (4) to nine (9) employees are interested in ownership, and 85% prefer rental accommodation."*[141]

The MHDC is an initiative from the 1990s. It built some 1,798[142] houses prior to 2006. Some are now rented by community members and some by Lonmin employees. Fewer than 400 have been sold. It is unclear how the MHDC contributes to a new housing strategy in 2013. As far as Amnesty International could discover the MHDC has not built any new houses for mine workers in more than a decade.

Ignoring the fact that selling MHDC houses repeats a strategy that has failed for years, Lonmin focuses on the ability of employees to get mortgages.

> *"most of the potential beneficiaries of Lonmin's Integrated Human Settlements Programme, fall into the so-called "gap market" which comprises individuals who earn above the threshold for government [social] houses and below the threshold for access to commercial banks' home loans."*[143]

In light of this Lonmin states:

> *"Given this constraint, a strategy has been agreed upon to enable the option of access to finance through using employees' provident fund credits as surety for the home loans, once approved. The current strategy is to facilitate ownership for all Lonmin tenants via accredited funding vehicles, e.g. UBank / Provident Funds, loan agreements etc. for employees."*[144]

Lonmin's 2013 SLP strategy is to continue to try and sell the MHDC houses to its staff, most of whom do not want to buy them.

Under Pillar III, which refers to future housing, Lonmin states:

> *"… Lonmin has made housing and accommodation a Board initiative because it recognises that, if done correctly, access to housing has the capacity to improve people's lives. The access to decent living conditions is a basic human right, which affects numerous areas of human settlements including health and family relationships. By providing affordable housing, Lonmin will demonstrate that it is a caring organisation of choice, as a trade-off for improved productivity / performance, reduced absenteeism, stability of operations and security. This vision forms part of a larger integrated strategy to enhance employee and community value propositions."*[145]

The company goes on to outline two concrete plans. One is the donation of land to the government, described above, which has yet to result in Lonmin employees obtaining houses and would presently only yield 171 apartments.

The second initiative is the development of Marikana Extension 5 and its potential to deliver 6,000 housing units.

In saying how the company will achieve this development Lonmin states that it will be partnering with

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141 Lonmin Social and Labour Plan, October 2013 to September 2018, page 127
142 See Lonmin, Sustainability Report 2013, page 101: "In addition to the 1,149 houses in Marikana, we built 369 houses next to Karee mine and 280 in Wonderkop between 2000 and 2004, bringing the total number of houses that we have built to 1,798. These houses are rented out to employees and community members."
143 Lonmin Social and Labour Plan, October 2013 to September 2018, page 127
144 Lonmin Social and Labour Plan, October 2013 to September 2018, page 127
145 Lonmin Social and Labour Plan, October 2013 to September 2018, page 127

developers, capital funders and all levels of government, provincial authorities and local municipalities. And then admits: "The identification of a viable partner has been a major challenge given the criteria set by Lonmin."[146]

The latter is an understatement. Lonmin claims that in 2006 it wanted to establish financial partnerships to deliver on housing at Marikana. As noted above, this was never a clear plan. Moreover – and critically – it spectacularly failed. Lonmin established no financial partnerships to deliver the housing promised in its 2006 plan. Notwithstanding this failure, the 2013 plans rests on the same strategy.

CONCLUSION ON NEW SLP

The housing commitments in Lonmin's 2013 SLP rest of three pillars. The majority of the concrete proposals put forward are initiatives that date back several years, have already been done or are in the process of completion, and have, in various ways, failed to actually address the housing shortage or the quality of accommodation. The two new initiatives – the construction of infill apartments and developing Marikana 5 – are already at risk; the former because, just two years after committing to devotee 100 million Rand per year to the plan, Lonmin is backtracking on the basis of economic challenges; the latter because the scheme is dependent on achieving a partnership that Lonmin was unable to secure in the preceding decade.

To recap, following the failure of its 2006 housing commitments, Lonmin has argued that its plan was based on finding financial partners, but this did not happen; that it assumed employees would buy homes, but they did not want to; and that the financial crash impacted the company's ability to pay for the housing. In 2013 Lonmin is repeating many of the same plans, and – on current evidence – with the same results.

LONMIN'S RE-FRAMING OF THE LIVING OUT ALLOWANCE

One additional action that Lonmin has reported on as a company housing initiative post-2012 is the living out allowance (LOA). Up to 2012 Lonmin had acknowledged that there was a serious lack of housing around Marikana. However, in its public reporting in recent years it has begun to shift the blame onto mine workers, making statements such as:

"Many employees have opted not to invest their resources in formal housing and have chosen to live in informal housing. This has precipitated the emergence of a backroom informal economy, which brings with it a host of negative socioeconomic issues, not least of which is a rapidly growing community without basic services and infrastructure."[147]

These statements completely disregard the fact that there is a chronic shortage in availability of housing in the region, that Lonmin has known about this for years if not decades, that the company committed to address it and has repeatedly failed to do so.

Moreover, Lonmin presents the LOA as a choice that employees make when, in fact, Lonmin has no alternative to offer most employees.

146 Lonmin Social and Labour Plan, October 2013 to September 2018, page 127
147 Lonmin Sustainable Development Report, 2014, page 44

CHAPTER 7: GOVERNMENT FAILURES TO ENFORCE SOCIAL AND LABOUR PLANS AND THE MINING CHARTER

The Farlam Commission recommended, in its final report, that:

> *"Lonmin's failure to comply with the housing obligations under the SLPs should be drawn to the attention of the Department of Mineral Resources, which should take steps to enforce performance of these obligations by Lonmin."* [148]

Amnesty International asked the Department of Mineral Resources (DRM) if it was taking any enforcement action.[149] The DMR did not respond. As noted above, Lonmin believes it received tacit approval from the DMR not to build the 5,500 houses. The DMR did not confirm or deny this. The SLP reports that companies make to DMR are not published, and therefore stakeholders cannot know what is agreed or discussed.

SLPs are critical documents in terms of ensuring mining activity benefits workers and local communities. The DMR has published Guidelines on the content of SLPs, and these guidelines make clear that companies should consult with workers and communities.[150] As a mechanism to make companies commitments legally binding, SLPs are a valuable tool. However, their efficacy has been questioned by civil society groups, in particular the extent to which the content of SLPs is properly consulted with stakeholders and implementation is enforced by the government.[151]

Responsibility for approving and enforcing SLPs lies with the DMR. Amnesty International interviewed two of the three staff who work at a Unit in the DMR's Klerksdorp office which monitors SLPs for the North West province.[152] They were clearly highly committed and professional. However, their capacity to monitor SLPs was limited by the fact that they are three individuals covering almost 250 SLPs.

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148 Farlam Commission Report, Chapter 25, Section H, para 1.
149 Amnesty International letter to Department of Mineral Resources, 21 July 2016.
150 DMR, Revised Social and Labour Plan Guidelines, 2010 available at: http://www.dmr.gov.za/guidelines-revised-social-and-labour-plans/finish/119-how-to/221-guidelines-revised-social-and-labour-plans-/0.html.
151 See for example: Actionaid: Social and Labour Plans, an unequal outcome at: http://www.actionaid.org/south-africa/2016/02/social-labour-plans-unequal-outcome-part-4 and Centre for Applied Legal Studies (CALS) , Social and Labour Plans First Report Trends and Analysis, March 2016, available at: https://www.wits.ac.za/cals/our-programmes/environmental-justice/social-and-labour-plans/#sthash.sKI0hP7N.dpuf.
152 Amnesty International interview, DMR office, Klerksdorp, 4 May 2016.

APPROVING AND MONITORING SLP DOCUMENTS

The Unit approves all SLPs for the North West province. While at the Klerksdorp office Amnesty International saw an SLP proposal document, which was a couple of inches thick. According to the Unit, this is not uncommon, and it takes approximately 2.5 days to read, assess and approve each SLP. They focus on ensuring that SLP projects are viable and sustainable.

However, a review of Lonmin's current SLP (described in the previous Chapter) exemplifies the challenges in assessing the content of SLPs. Lonmin's 2013 SLP is more than 150 pages in length. It should reflect the requirements of the DMR's 2010 Revised Social and Labour Plan Guidelines which run to 25 pages.

In relation to housing these Guidelines require companies to "Provide the current status of available dwelling for employees".[153] Lonmin does not do this. It does not provide data on the number of employees living in informal settlements, nor the conditions in which they live. In the absence of this basic information it is challenging to see how well the proposals Lonmin has set out are addressing the housing needs of the workforce. In addition, Amnesty International's analysis of the 2013 Lonmin SLP raises some serious questions about whether this SLP will be any more effective than the previous one. Because the DMR does not publish information on its assessment of individual SLPs, and would not authorise its staff to discuss individual SLPs with Amnesty International, it was not possible to discover how Lonmin's current SLP was assessed.

Under the Mineral and Petroleum Resources Development Act, 2002 (MPRDA) companies are required to report on implementation of SLPs annually.[154] These reports go to DMR. In addition to the annual reporting requirements the DRM conducts site visits. These visits are an important opportunity to verify what the company has reported, view and assess physical developments, and engage with a range of stakeholders. The DMR's capacity to do these visits is limited by the annual budget allocated to the Unit, as well as its limited human resources. According to the DMR office in Klerksdorp their target for 2016 is 24 inspections of SLP in the North West province.[155] This is reduced from 2015 when they carried out 29 SLP site inspections. The maximum number of SLP inspection visits they have ever done was 45; this was in 2013.

During site visits all three staff members work together. They explained to Amnesty International that there can be 20 or more people present from the company being inspected and they need all three DMR staff to ensure they can cover all of the issues. A typical site inspection lasts three days and starts with a presentation by the company. DMR then checks paperwork and visits physical sites where projects are taking place. They try to meet with the community, and local municipality and traditional authorities are invited to participate in the DMR's monitoring process. For each inspection they do they write a report. These reports go to a regional manager but it is not clear what scrutiny they get at this point.

ENFORCEMENT TOOLS

If a company is non-compliant the DMR writes them a letter – known as a Section 93 letter, referring to the section of the MPRDA that enables the DMR to "order the holder of the relevant right, permit or permission to take immediate rectifying steps"[156] if if the DRM finds "a contravention or suspected contravention of, or failure to comply with - (a) any provision of this Act; or (b) term or condition of any right, permit or permission".[157] Section 93 letters set the company specific tasks to accomplish and timelines within which these tasks have to be completed. If a company does not take the required action their mining licence or right can be revoked, under Section 47 of the MPRDA. The DMR in Klerksdorp told Amnesty International that they have "never had to issue a section 47" for failure to comply with SLP obligations. Because the DMR would not authorise any discussion on specific SLPs, Amnesty International was unable to find out why Lonmin's failure to construct the houses referred to in its 2006 SLP was not a clear breach of the MPRDA

153 DMR, Revised Social and Labour Plan Guidelines, 2010 available at: http://www.dmr.gov.za/guidelines-revised-social-and-labour-plans/finish/119-how-to/221-guidelines-revised-social-and-labour-plans-/0.html.
154 Section 28 (2) (c)
155 Amnesty International interview with DMR office in Klerksdorp, 4 May 2016.
156 Section 93 (1) (b) (i).
157 Section 93 (1) (a) and (b).

and why no Section 47 action was taken. Amnesty International sent the Director-General of the DMR a letter asking him to explain why no action was taken. Amnesty International did not receive a response.

THE MINING CHARTER AND EMPLOYEE HOUSING

SLPs are based on the MPRDA and, as noted previously, are the main tool by which mining companies give effect to provisions in the Mining Charter. The Mining Charter makes certain provisions with regard to housing. Section 2.7 of the Charter requires that:

> *"mining companies must implement measures to improve the standards of housing and living conditions for mineworkers as follows:*

- Convert or upgrade hostels into family units by end of 2014;
- attain the occupancy rate of one person per room by the end of 2014; and
- Facilitate home ownership options for all mine employees in consultation with organised labour by the end of 2014." [158]

There are two challenges with regard to this provision. One is that it does not address the need for affordable rental accommodation. The 2010 revised SLP Guidelines produced by DMR give a little more guidance, stating that companies must identify "the preferred requirements for housing and living conditions of the workforce"; and that the company plan should "include but is not limited to promotion of home ownership."[159]

A second challenge is that the only element of the Mining Charter provision that is measured is the hostel conversion. It is not clear why the DMR does not measure the action taken by companies to facilitate home ownership.

The DMR assessed overall compliance with the Mining Charter in 2015, a decade after the Charter came into force. It found that overall only 55% of mining right holders had met the target for "improving the living conditions of the mineworkers by either reducing occupancy rate to one person per room or converting hostels to family units."[160] Lonmin was one of the companies that achieved the objective with regard to hostels. However, the fact that the company made no progress on home ownership or any other dimension of the objective to improve the standards of housing and living conditions for mineworkers is not captured in the review.

The Mining Charter places emphasis on home ownership, which is an important issue; however, the absence of a reference to affordable rental accommodation is notable and problematic. In the case of Lonmin's Marikana mine, the company has promoted the concept of home ownership to the detriment of many of its employees, the majority of whom are migrant workers. Lonmin has stated publicly that its efforts to provide decent accommodation for its workforce has been hampered because the majority prefer to buy homes in their places of origin and not at the mine site. Lonmin has done very little to ensure that employees can access adequate rental accommodation, although its 2006 SLP committed to providing employees with a variety of tenure options, including rental.

CONCLUSION

Neither the Mining Charter nor the SLPs effectively address the question of adequate accommodation for migrant workers in the mining sector. Enforcement of both the Charter and SLPs is weak. A decade after the Charter came into force, almost half of mine rights holders have failed to achieve the targets set for elimination of the hostel system. With regard to SLPs, Lonmin's clear failure to build houses has gone without sanction.

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158 Mining Charter, para 2.7.
159 DMR, Revised Social and Labour Plan Guidelines, 2010, Section 4.7.
160 DMR, Assessment of the Mining Charter, May 2015, page 19.

CHAPTER 8: COMMUNITY HOUSING AROUND MARIKANA

The squalid conditions in which so many Lonmin employees live are exactly the same conditions experienced by many local communities. Informal settlements have grown over time, in part because of the influx of migrant workers, including both those employed by mining companies and those seeking work.

> TM[161] is one of thousands of people living in the zinc shacks in and around Nkaneng the informal settlement on Lonmin's mine lease area and right next to the mine. Her home is situated right beside the only toilet in the area. TM is from Eastern Cape and came to Marikana looking for work in 1998. She worked in a local shop for six years but is now unemployed. TM describes the grim reality of her life in the informal settlement:
>
> "As you can see we are living in shacks with no sanitation, no water and no electricity. The electricity I have I get from "source" (illegal connection) and from help of the neighbours.
>
> When it is raining I am forced to wear gumboots and work outside … shoving the water not to come into my place. If I am not home and it rains you will find water inside my shack as you can see how this place is, I have to work to take all the water out before I can sleep.
>
> If you can go just behind my house and see this toilet. We are more than 100 in this yard and are sharing this toilet…The toilet is full and the smell comes into my house."
>
> TM blames the government and Lonmin for failing to address the living conditions around the mine. "The ruling government says 'better life for all' but there is not better life here," she says. TM is one of a number of women who are challenging what they see as Lonmin's broken promises to people living around the mine. These are the promises of the SLP but also promises made in relation to financing provided by the International Finance Corporation (IFC) to Lonmin in 2007 which included commitments to community development. (see below)

The primary responsibility for realising the right to adequate housing lies with the Government of South Africa. Both the UN Committee on Economic, Social and Cultural Rights (CESCR) and the African Commission on Human and Peoples' Rights recognise that governments may not be able to fully realise economic, social and cultural rights immediately and they allow for progressive realisation.

However, within the meaning of "progressive realisation" the government must show that it is taking all possible steps to ensure people have access to adequate housing. A full review of South Africa's policy and progress on housing is outside the scope of this report. This Chapter looks at key provisions made by the government in relation to mine-affected communities and the efficacy of these provisions.

The Government of South Africa has made commitments to providing decent accommodation, and in

161 Amnesty International interview at Nkaneng, 16 July 2016.

THE SANITATION SITUATION IN NKANENG

Above: *Government-built latrines. One interviewee told us that up to 100 people share these facilities.*
Below: *Construction of a latrine. The shallow depth means that the toilets are prone to overflowing, which is made worse by rain.*
© Amnesty International

particular to addressing the situation of those living in informal settlements and sub-standard housing. Mining companies are explicitly mentioned by the government in its strategy and the condition of mine-affected communities is addressed in legislation such as the MPRDA.[162] Such legal measures can be a valuable means of realizing the State's obligations, so long as they are enforced.

As noted above, South Africa has legislated to require mine companies to engage in and provide financial resources for community development. The Mining Charter specifically requires that there is a "meaningful contribution towards community development both in terms of size and impact".[163] Mining companies are required to consult with communities and develop projects that meet community needs. As with housing for mine employees, the main vehicle through which companies deliver on these Mining Charter obligations is the SLPs.

Housing and associated services, such as water and sanitation, are key issues for many mine-affected communities. However, there is no requirement in the Mining Charter for companies to address housing issues specifically and the community development projects proposed under SLPs vary widely. So too does implementation. In an assessment of progress against Mining Charter objectives published in May 2015, the Department of Mineral Resources (DMR) stated: "The data shows that nationally only 36% of mining right holders have met their set target on mine community development."[164] This is a decade after the Mining Charter was introduced.

162 South African Government website: http://www.gov.za/about-sa/housing
163 Revised Mining Charter, 2010, Section 2.6
164 Assessment of the Broad-Based Socio-Economic Empowerment Charter for the South African Mining and Minerals Industry (known as the Mining Charter), May 2015, page 30.

While mining companies are not necessarily best placed to address local community housing needs, one issue that has not been considered under the Mining Charter is the direct impact, on local communities and resources, of the inward migration that is commonly associated with mining in South Africa.

LONMIN'S COMMITMENTS ON COMMUNITY HOUSING

Lonmin's 2006 and 2013 SLPs both recognise housing as a major issue for communities in the vicinity of the mine. Lonmin's 2006 SLP also recognises – albeit briefly – the impact of migration into the area. The 2006 SLP made two specific references to community housing. It states:

> *"The hostel conversion and housing programs have created an opportunity for Lonmin to address local community housing and infrastructure needs. In particular Lonmin intends to formalise the informal settlements in Marikana and those on the Bapo ba Mogale tribal land around Wonderkop and Segawalane. In this regard land has already been identified for the purposes of creating formal settlements and a partnership has been established between Lonmin Platinum, private landowners and the Rustenburg Municipality."*[165] *(emphasis added)*

This significant commitment, which Lonmin says is agreed with key partners, does not appear to be budgeted in the SLP. Amnesty International asked Lonmin to explain the status of this commitment and what happened to the agreements made with the local government and private land owners. The company did not respond.

The 2006 Lonmin SLP also details a project, under the chapter on "Local Economic Development", on the plans to build 5,500 houses. The stated beneficiaries of this project are described as "communities of Rustenberg and Madibeng municipalities".[166] The same project states that the objective is to "enhance the quality of life for all employees and their families". It is not clear how the proposed housing project would address community housing issues or how communities of Rustenburg and Madibeng municipalities would benefit. One unstated assumption appears to be that, by providing employees with housing, it would relieve pressure on the local community housing (but it would not improve the quality of that housing); another is that it would create jobs. However, as Lonmin never built the houses, neither the community nor the employees saw any of the intended benefits.

Lonmin's main contribution with regard to living conditions in the areas surrounding its operations are support to water, sanitation and waste collection. A number of projects have been delivered, but the immediate areas such as Nkaneng remain without any viable amenities (many people do not have access to

Standard-sized jerry can used by Nkaneng residents to collect and transport water to their homes. © Amnesty International

165 Western Platinum Limited, Social and Labour Plans, 2006, page 76.
166 Western Platinum Limited, Social and Labour Plans, 2006, Project 4

safe sanitation, for example). Amnesty International asked Lonmin to explain why informal settlements which are so close to the mine still appear to have so few basic amenities but the company did not respond.

IFC-FUNDED COMMUNITY DEVELOPMENT

In 2007 the International Finance Corporation (IFC) of the World Bank provided Lonmin with finance to expand its operations at Marikana. The IFC's finance package included $15 million for local community development, based on Lonmin's SLP plans. According to the IFC, in 2006 Lonmin had in place "[a]n Extensive Community and Local Economic Development Program". In granting the loan, the IFC stated: "Management of all [social and environmental] issues by Lonmin has been assessed as consistent with international good practice. In this context, IFC's due diligence concluded that the community has been benefiting from the mining operations and that relationships are improving."[167]

This view of the IFC is challenged by the facts on the ground, at least in relation to how Lonmin has managed housing issues. In 2015 a group of women from Marikana – and primarily from Nkeneng, called Sikhala Sonke ("we cry together") lodged a complaint with the Compliance Advisor Ombudsman, which is a mechanism that receives and addresses complaints about IFC investment. Key to the substance of the complaint made by Sikhala Sonke is "life in the informal settlements around the Marikana Mine is dire. There is an absence of proper housing, proper sanitation, proper roads, and accessible and reliable running water."[168]

The complaint processes is ongoing.

GOVERNMENT FAILURES ON HOUSING AT MARIKANA

In late 2012, in the aftermath of the tragic events in Marikana, President Jacob Zuma established an Inter-Ministerial Committee (IMC) for the Revitalisation of Distressed Mining Communities to give effect to the Special Presidential Package for the revitalisation of mining districts and their labour sending areas.[169] The mandate of the IMC is "to oversee the implementation of integrated and sustainable human settlements, improve living and working conditions of mine workers and determine the development path of mining towns and the historic labour sending areas."

By 2015 over 7000 units have been delivered in the mining towns. Some 500 of these were at Marikana. These are the Breaking New Ground houses and Community Rental Units (CRUs) referred to in Chapter 6. The new houses were unveiled by the Human Settlements Minister Lindiwe Sisulu in January 2016.[170] However since then the houses have been the subject of controversy in the area, with allegations that the housing waiting list has been disregarded and tensions between Lonmin workers and local people over who has the right to the houses.

The very limited action that the government has taken at Marikana, as part of an initiative specifically set up in the wake of the tragedy of 2012, has – some four years later – led to little demonstrable improvement. A mere 500 houses or apartments have been built although the land Lonmin gave the government can be used for 2,000 homes. And the failure to have a clear and transparent plan for allocation of the houses has led to tensions and a court action to evict people who unlawfully occupied the houses.

167 IFC website at: http://ifcext.ifc.org/ifcext/spiwebsite1.nsf/0/f79e1c278b21ebc2852576ba000e2919?opendocument.
168 http://www.cao-ombudsman.org/cases/document-links/documents/ComplaintbyAffectedCommunityMembersinRelationtoSocialandEnvironmentalImpactsofLonmin20150615.pdf
169 Website of the Presidency at: http://www.thepresidency.gov.za/pebble.asp?relid=20033&t=107
170 Department of Human Settlements website: http://www.gov.za/speeches/minister-lindiwe-sisulu-hands-over-r700-million-housing-project-marikana-6-jan-2016-0000

CHAPTER 9: CONCLUSIONS AND RECOMMENDATIONS

The living conditions for many Lonmin employees at Marikana are, as the company itself has rightly acknowledged, "truly appalling", and have been so for years. A shortage of housing and the need to live close to the work place has led many to live in informal settlements such as Nkaneng, within Lonmin's mine lease area.

The UN Committee on Economic, Social and Cultural Rights (CESCR) has defined "adequacy" of housing as including, amongst other things, the availability of services, materials, facilities and infrastructure; and habitability.[171] With regard to the right to adequate housing the African Commission on Human and Peoples' Rights has stated: "it is the right of every person to gain and sustain a safe and secure home and community in which to live in peace and dignity."[172] The Commission specifies, with regard to habitability, that this includes "adequate space and [protection] from cold, damp, heat, rain, wind or other threats to health, including violence, structural hazards and disease vectors."[173] The housing at Nkaneng, built from tin sheets and scrap materials, abysmally falls short of even the most basic requirements for adequacy of housing.

Although Lonmin knows this, it has failed to take any meaningful action to address the situation. Its litany of excuses expose a company that has little genuine interest in tackling a major problem confronting its workforce, a problem that is inextricable linked to the way Lonmin, and South Africa's mining industry in general, operates.

Excuses related to economic constraints occurring in 2008/9 cannot justify the company's long standing failures to meet its responsibility. Nor can excuses related to the lack of infrastructure, when the company knew this for more than a decade, specifically stated that it would address it, and then did not.

The company's one housing achievement - the completion of the hostel conversion – was accomplished without ensuring alternative accommodation for those who lost their place in the hostels.

Lonmin has repeatedly made false and misleading statements to shareholders and stakeholders in its reporting on the housing situation at Marikana. Shareholders and stakeholders were told that employees wanted to buy houses when they did not; that financial agreement was in place that was never concluded; that more than 1,000 houses were built when the houses in question date back to the 1990s; and that the company lacked serviced land – when it had land at Marikana Extension 2.

Many of the excuses Lonmin has put forth since 2012 for not building or otherwise ensuring adequate housing for its employees were not properly reported to shareholders during the years when the 2006 SLP housing programme was supposed to be delivered.

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171 UN Committee on Economic, Social and Cultural Rights, General Comment No.4, UN Doc.E/1992/23, para 8.
172 Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights, para 78, available at: http://www.achpr.org/files/instruments/economic-social-cultural/achpr_instr_guide_draft_esc_rights_eng.pdf.
173 Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights, para79 (a) (j)

Lonmin's 2013 SLP commitments to housing do not address the problems identified in this report, particularly in light of the fact that Lonmin has already indicated that it is looking to amend its SLP obligations due to financial constraints.

Lonmin is not the only mining company in South Africa that is failing its workforce on adequate housing. But it is unique in that what can only be described as a shattering wake-up call has been ignored.

Lonmin told Amnesty International that its operations were consistent with respect for human rights and the UN Guiding Principles on Business and Human Rights (UNGPs). The evidence presented in this report demonstrates that Lonmin's operations are fundamentally inconsistent with respect for the right to an adequate standard of living, including adequate housing. The company has operated for decades in a context in which thousands of people, mostly men, have had to make a choice between dehumanising hostels or squalid housing in informal settlements. The company has breached South African law, and remains in clear breach of its responsibilities as set out under the UNGPs.

The serious failures documented in this report could not happen if the Government of South Africa enforced the legal provisions it has put in place to address historical discrimination and disadvantage in the mining industry. However, the government has allowed Lonmin to flout the law, seemingly without consequence. The failure to enforce SLPs weakens the process and undermines the objectives of the Mining Charter.

This report has highlighted problems of capacity and policy within the DMR. The DMR's capacity to monitor and enforce SLPs is limited by a lack of human and financial resources. The Department does not have a coherent approach to housing of mine workers, which means that mining companies that have converted hostels are not, under the current process, required to demonstrate measureable improvements in the quality of housing available to employees, particularly those who are migrants.

RECOMMENDATIONS

TO THE MINISTER OF MINERAL RESOURCES

- Require the DMR to investigate and, if required, sanction Lonmin over its failure to fulfil the terms of its SLP with regard to the provision of 5,500 houses, in line with the recommendation of the Farlam Commission.
- Investigate why the DMR did not take action when Lonmin failed to fulfil the terms of its SLP, in breach of the MPRDA and take any necessary action to ensure more effective enforcement of the provisions of SLPs.
- Require, whether by policy or legislative measures, that all company SLP reports to the DMR are publicly disclosed and made available, and accessible, to employees, local communities and other stakeholders.
- Review the human and financial resources available to the DMR to monitor and enforce SLPs and increase these resources to enable effective monitoring of SLPs.

TO THE DEPARTMENT OF MINERAL RESOURCES

- Investigate whether Lonmin has breached Section 47 of the MPRDA by submitting "inaccurate, incorrect or misleading information in connection with any matter required to be submitted" under the Act.
- Require Lonmin to provide the DMR with updated proposals to address employee accommodation under its current SLP.
- Ensure any amendments to the SLP terms, including any reduction in funding to SLP proposals, is published in advance of any decision by DMR to enable stakeholders to review the basis for changes.

TO LONMIN

- Develop, in consultation with all affected stakeholders, a meaningful proposal to address the "truly appalling" housing conditions for employees at Marikana. Ensure this proposal considers the impact on relations between migrant workers and local communities, including the Lonmin employees who are from area.
- Publish all reports made to the DMR on SLPs since 2006 and commit to publishing all future reports to the DMR.
- Conduct an internal review of how the company reports in its Sustainability Reports and make a public commitment to end the practice of misleading and false reporting.
- Develop, in consultation with all affected people, and in cooperation with the relevant authorities, including Rustenburg and Madibeng Local Municipalities, proposals to upgrade informal settlements on Lonmin mine license areas, including through access to essential services.

TO INVESTORS IN LONMIN

- Call on Lonmin to implement the recommendations set out above.
- Call on Lonmin to overhaul how it reports in its Sustainable Development reports and seek an explanation from the company for past reports which did not provide full and accurate information on the housing conditions for workers.

TO THE INTERNATIONAL FINANCE CORPORATION (IFC):

- Review IFC internal procedures with a view to understanding why the IFC was unable to identify the serious weaknesses in Lonmin's SLP and commitments to the IFC with regard to Lonmin's impact on mine-affected communities, and why the sustained failures with regard to housing which occurred over seven years or more were not identified by the IFC as a serious risk. Publish the results.

ANNEX

1 August 2016

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Memorandum to Lonmin from Amnesty International – Strictly Private and Confidential

We thank you for forwarding the above document to Lonmin.

Many of the issues raised in your document were interrogated at the Farlam Commission of Inquiry. We do not intend to duplicate what was a most thorough process and our failure to do so should not be construed as an admission of liability.

We would like to focus on what has been achieved by Lonmin subsequent to 2012. We believe that this is a more constructive way of addressing the complex issue of Human Settlement and hope that you choose to engage with us in a similarly constructive manner. Should you wish to meet with us we would be most open to further discussions with you and, in particular, would be open to your suggestions as to the best models to apply in providing housing to the circa 13 500 Lonmin employees who are still in need of formal accommodation.

Since 2012, Lonmin has achieved the following in the area of Human Settlements:

1. Committed to provide R100 million per annum for Human Settlement purposes.

2. Completed the conversion of all hostels, namely 776 family hostels and 1 908 single apartments. The total cost of conversion was R378 million.

3. Donated 50 hectares of land at Marikana Extension II to the North West Provincial Govt in 2013. This donation was made following the announcement of the Special Presidential Package Initiative and the land is to be used for the development of 2,658 accommodation units of various typologies. Phase 1 comprising 292 BNG and 252 CRU units has been completed and the Dept of Human Settlement has undertaken to make a specified percentage of the units available for Lonmin employees.

4. Initiated an infill-apartment project to supplement accommodation in and around the available open spaces at the hostels. Existing services used at the hostels are utilised for the infill-apartments as well and the project includes social amenities, landscaping, paving, security and access control to attract employees to a secure and attractive environment. Phase 1 at our Karee Housing Estate was completed in 2015 and comprises 100 family units and 225 bachelor units. The 2016 Phase is now being implemented.

Directors: B R Beamish* (Chairman), B Magara (Chief Executive Officer), B J van der Merwe (Chief Financial Officer), B Moolman (Chief Operating Officer),
Dr D Konar, K G Bungane, V Shine*, J C A Leslie* and J H Sutcliffe*
Company Secretary: Seema Kamboj* (*British)

Branch Committee Members: B Magara; P McElligott; S J Scott; B Moolman and G Maud **Branch Secretary:** P McElligott
Lonmin Plc trading as Lonmin Management Services (Reg. No. 1969/000015/10)

5. Continued to encourage employees to purchase stand-alone houses built at Marikana Extension 1 between 1999 and 2000. These houses are part of a rent-to-buy scheme and the purchase price has remained at R62 426 since inception.

6. Identified Marikana Extension 5 (134 hectares) as a potential site for the development of 6000 units of various typologies together with social amenities to form a sustainable development. Site readiness for the town planning and site development is in progress. The site development framework is being designed to make optimal use of the resource but the availability of bulk services remains a challenge.

7. We are planning to consolidate and rezone 25 hectares of urban land at Mooinooi to develop apartments for our Cat C band employees and the development of 1500 to 2000 apartments is being targeted. Bulk services are available, albeit it subject to consistent service delivery challenges by the Madibeng Local Municipality.

8. Indebtedness remains arguably the most debilitating burden suffered among our employee base and in the mining sector in general. It is certainly an obstacle to home ownership being achieved. Over many years, the comparatively high wages of mineworkers have been regarded as easy pickings for loan-sharks. We have sought to help our employees manage this burden by utilising external experts to challenge excessive rates of interest and to negotiate lower interest rates for our employees. We have also challenged and set aside improperly obtained garnishee orders. To date this proactive approach at Lonmin has resulted in employees recovering more than R5.2 million per year in improper charges against wages. We have also embarked on a voluntary comprehensive financial education program for our employees to assist them in managing their money affairs more effectively.

9. We continue to investigate further improvement of local living conditions with government, including the Department of Human Settlements, and the continuous improvement of collaborative projects such as the Special Presidential Package and are working more closely with the Brits and Rustenburg municipalities, and other stakeholders, to improve infrastructure and service provision.

The provision of housing for our entire workforce will of course take time and will involve the co-operation of all relevant stakeholders, particularly given current economic constraints (in this regard, we recently indicate that the provision of R100 million per annum for Housing may have to be reconsidered in conjunction with our regulator). Our initiatives will continue to focus on partnering with property developers, providers of capital, lending institutions, local and provincial municipalities and national government with a view to housing our entire workforce in due course.

Once again, we are open to meeting with you at a convenient time to discuss the above in greater detail and to hear your ideas on the way forward.

Yours faithfully

Lerato Molebatsi
Executive Vice President: Public Affairs and Communications

IT IS BETTER TO LIGHT A CANDLE THAN TO CURSE THE DARKNESS

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Cover photo: General view of Nkaneng informal settlement, Marikana, with Lonmin Mine's Roland Shaft in the background. © Greg Marinovich

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SMOKE AND MIRRORS

LONMIN'S FAILURE TO ADDRESS HOUSING CONDITIONS AT MARIKANA, SOUTH AFRICA

On 16 August 2012, the South Africa Police Service fatally shot 34 men at Marikana in South Africa's North West province. More than 70 others were injured. The men were employees of the mining company Lonmin, and had been engaged in strike action over pay and conditions at the mine.

One of the issues that emerged during a subsequent Commission of Inquiry was the appalling housing situation for mine workers, many of whom are migrant workers. Thousands of Lonmin employees were living in squalid conditions in informal settlements around the mine. Lonmin was well aware of the situation and had, under its 2006 Social and Labour Plans (SLP), committed to construct 5,500 houses by 2011. By 2012 it had built three.

The final report of the Commission of Inquiry concluded Lonmin's failure to address the housing situation had contributed "an environment conducive to the creation of tension and labour unrest".

Lonmin has put forward a number of explanations for this failure. Amnesty International has examined each and found the company's excuses fail to withstand scrutiny. In several cases Lonmin has provided false or misleading information to its shareholders and stakeholders about progress on the housing situation at Marikana.

Since 2012, despite the findings of the Commission of Inquiry, Lonmin has built no new houses for mine workers. The company's post-2012 housing plans appear to repeat the failed strategies which characterised the 2006 housing plans.

The housing situation at Marikana also exposes serious deficiencies in the way the Department of Mineral Resources (DMR) enforces the law with regard to the social impact of companies. Social and Labour Plans are legally binding under the Mineral and Petroleum Resources Development Act and the DMR is responsible for ensuring compliance with the terms of the SLP.

Amnesty International recommends that Lonmin urgently addresses the lack of adequate housing for mine workers and that the Government of South Africa overhauls the way in which mine companies deliver on their legal obligations. It also calls on Lonmin's shareholders to examine the company's reporting and require reforms that would address false and misleading reporting.

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