The Bermuda Connection:

Profit shifting, inequality and unaffordability at Lonmin 1999-2012

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ROGER BAXTER, COO Chamber of Mines: "… transfer pricing is an issue that has come under the tremendous spotlight of the global financial and revenue authorities. South Africa is no different … we have a section in the Income Tax Act, section 31, which deals with transfer pricing mechanisms and how government and SARS (South African Revenue Service) in particular handle it. Here we are ranked number one in the world for auditing standards, number one in the world for the efficacy of our corporate boards, number one in the world for minority protection of minority shareholders, we're ranked number one in the world for our regulations related to our stock exchanges and here we have multinational companies listed on stock exchanges, so they've got all the listing requirements. Why would they be involved in activities, which could prejudice their licences, which could lead to draconian action against them?"[1]

PATRICK BOND: "South Africa has 'the most corrupt corporate class on earth according to the business consultancy Price Water House Coopers in February 2014. In the words of *The Times,* South African management *'is* the world leader in money-laundering, bribery and corruption, procurement fraud, asset misappropriation, and cybercrime', with 77 percent of all internal fraud committed by senior and middle management."[2]

GAVIN HARTFORD*: "*RDOs conditions of employment are characterised by the following features: the RDO's are doing the toughest, most dangerous, most production critical, core mining function; they have longstanding perceptions of underpayment relative to their colleagues in the industry; there are typically no serious service increment differentials in platinum (gold sector has some incentives) or other significant allowance in their pay and as such few real cash incentives to do RDO work. In addition there is no prospect of any career progression for RDOs given their functionally illiterate status and the structure of the mining work team in respect of job categories – a structure which requires basic academic training for advancement to blasting certificate status."[3]

Lonmin Plc's 2013 Annual Report, footnote on page 94: "Following the Events at Marikana, Mr Seedat agreed to re-join the Executive Committee and increase very materially the number of days per month he committed to the Company. His daily rate was increased to reflect the value of the services being provided to R25,000 per day, which the Committee was advised was in line with market norms. Mr Seedat reverted to his originally contracted number of days per month and previous daily rate of R11,700 per day from 1 October 2013."

1 Transcript of TV interview by Business Day LIVE, 3 June 2014. Full transcript on: URL: http://www.bdlive.co.za/national/labour/2014/06/03/business-day-tv-amcu-wage-demands-are-unaffordable(2014-07-16).

2 Bond, P. (2015), "Bretton Woods narratives about inequality and economic vulnerability on the eve of South African austerity"; forthcoming in *International Journal of Health Services.* Bond's quotes are from*:* Hosken, G. "World fraud champs", *The Times*, 19 February 2014; at URL http://m.timeslive.co.za/thetimes/?articleId=11053736 and FM Fox. "8 out of 10 managers commit economic crime in SA, PwC survey". Financial Mail, 20 February 2014. At URL: http://www.financialmail.co.za/fmfox/2014/02/20/8-out-of-10-managers-commit-economic-crime-in-sa-pwc-survey (2015-02-12). PricewaterhouseCoopers' 2014 Global Economic Crime Survey is available at URL: http://www.pwc.co.za/en_ZA/za/assets/pdf/global-economic-crime-survey-2014.pdf(2015-03-08).

3 Hartford, G. (10 October 2012), "The mining industry strike wave: what are the causes and what are the solutions?" published by GroundUp at URL: http://groundup.org.za/content/mining-industry-strike-wave-what-are-causes-and-what-are-solutions#sthash.eg7R-P0ei.dpuf (2015-03-09).

Contents

Acronyms

AFS - Annual Financial Statement
AIDC - Alternative Information and Development Centre
Amcu - Associated Mining & Construction Union
Amplats - Anglo Platinum Ltd
AR - Annual Report
CFC - Controlled Foreign Company
CIPC - Companies and Intellectual Property Commission
COO – Chief Operating Officer
CPI – Consumer Price Index
DMR – Department of Mineral Resources
DOL - Department of Labour
DTI - Department of Trade and Industry
EPL - Eastern Platinum Limited
EEA - Employment Equity Act
FY - Financial year
Implats - Impala Platinum Ltd
LIL - Lonmin Insurance Ltd
NUM - National Union of Mineworkers
PGM - Platinum Group Metals
RDO - Rock Drill Operator
SLP - Social Labour Plan
SACC - South African Competition Commission
SARS - South African Revenue Service
SDR - Sustainable Development Report
TCTC - Total Cost To Company
WMSL - Western Metal Sales Limited
WPL - Western Platinum Limited
ZAR - Rands

1. Introduction, Sources & Method

The President's office set up the Marikana Commission chaired by Judge Ian Farlam to investigate responsibility for the disastrous events that took place between August 10–16, 2012, which shook South Africa and resulted in the deaths of 46 people as well as large numbers of injured. The events leading to these killings which culminated on 16 August in the massacre of 34 mine workers were sparked by the rock drillers at Lonmin's Marikana mine demanding a wage increase. One of the issues the Commission investigated was whether Lonmin was in a financial position to meet the workers' demands. An initial background paper was prepared to investigate this affordability issue by examining Lonmin's financial position at the time on the request of a senior Marikana Commission researcher.

A first version background paper was forwarded to the Evidence Leaders in August 2014, in preparation for the cross examination of Lonmin on financial issues. This final version has been adjusted, expanded and corrected to take into account developments during and post the cross examination of Lonmin's officials in September 2014, including new facts, statements and documents which surfaced. These demanded further research, scrutiny and reflection.

This report was prepared to address three central financial issues posed by the Commission namely:

1. The competitiveness of rock drill operator wages paid by Lonmin prior to the protest in 2012.
2. The affordability for Lonmin of the increases demanded by the rock drillers.
3. The financial capacity of Lonmin to provide decent work and living conditions for its employees.[4]

In contributions to the debate about platinum mine worker wages and the future of the industry consultants such as JP Morgan and academics like Bowman & Isaacs drew conclusions from access to official Lonmin financial statements.[5] This report however sees the audited public financial statements as only part of the truth. The Marikana Commission made it possible to easily access financial reports from Lonmin's South African (SA) subsidiaries for the financial years (FYs) 2000-2010, archived at the Companies and Intellectual Property Commission (CIPC) as hard copies, where they are publically accessible but only after due procedure. The 2011 and 2012 annual financial statements (AFS) from Lonmin subsidiariese are missing after a problem with the electronic filing system at CIPC. Companies were obliged to file documents electronically only from 2011. The 2012 AFS (Annual Financial Statement) of WPL denominated in US$ was however lodged at the Commission in September.

4 These issues formulated for **Phase 2: Underlying Causes** of the Marikana Commission where forwarded to me by the senior Commission researcher for Phase 2.

5 **JP Morgan** (13 May 2014), "Platinum Foresight: Looking into a new future – farewell to labour", CEEMEA Equity Research. **Andrew Bowman & Gilad Isaacs** (May, 2014), "*Demanding the impossible? Platinum mining profits and wage demands in context"*, Wits University: Society, Work and Development Institute (SWOP).

Information in documents lodged at the South African Competition Commission (SACC) before two acquisitions made by Lonmin in 2005/6 and 2006/7 was useful. In addition, the report accessed employment equity reports from 2006-2013 submitted to the Department of Labour (DOL) by Lonmin as well as labour data lodged at the Department of Mineral Resources (DMR) which inform StatsSA's labour and GDP statistics.

The Marikana Commission asked Lonmin to provide financial and other information on its subsidiaries Western Metal Sales Limited (WMSL) in Bermuda and Lonmin Management Services (LMS) covering the period 2009-2012. A Commission Evidence Leader, Matthew Chaskalson, was in September permitted to see, but not copy, financial statements from WMSL. This information was given late in the day, making it too difficult to request clarifications.

There was confusion during the cross examination on 16 September 2014 of Lonmin Director Mohamed Seedat on whether or not LMS – Lonmin Plc's "external company" in SA – is a separate legal entity (see Annexure A). It is described as "legally indivisible" from Lonmin Plc in the 2013 annual report (where LMS was mentioned for the first time).[6] However, LMS is taxed in SA and keeps financial records for that purpose through audited financial statements denominated in ZAR that are sent to the SA Revenue Service (SARS).[7] At CIPC, on the other hand, no AFSs of LMS in its current juridical form as an external company has ever been lodged. The physical CIPC files with LMS' name and present company registration number only contain official annual reviews and reports (AR) of the mother company Lonmin Plc. In the CIPC data base the name is "Lonmin Plc" and LMS is the trading name of its branch in SA. A company with the same name but a different registration number was liquidated by Lonmin in 2003 and dissolved in 2005.[8]

At any rate, Western Platinum Limited's (WPL) finances show that "LMS" – first as a subsidiary that was dissolved and from about 2003 as Lonmin Plc's branch in SA[9] – was the recipient of management fees from local SA subsidiaries at least as far back as 1999. On 16 September, Seedat responded positively to Chaskalson SC when he stated: "You couldn't do a transaction between LMS and Lonmin PLC, they are the same entity" (Annexure A). We will however see that LMS, whilst receiving management fees from Eastern Platinum Ltd (EPL) and (much larger amounts) from WPL, in its turn had been paying R429mn in "management fees" to Lonmin Plc between 2007-2010, i.e. legally speaking within the same company, so it seems, but in transactions out of South Africa.[10]

Lonmin was asked by Evidence Leaders to produce AFSs from LMS, but this never transpired. For LMS' finances the report relies on CFO Simon Scott's 29 September written testimony that did not give any information on tax expenses, but gave other useful insights.[11]

With reference to missing information, we can add the financial statements of Lonmin Insurance Ltd (LIL), incorporated in Bermuda until 2012 and on Guernsey from 2013, both tax havens. In hindsight, such documents would have been useful because "WPL, EPL and Lonmin buy most of

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6 **Lonmin Plc**, 2013 Annual Report, page 65.

7 **Marikana Commission of Inquiry**, 16 September 2014, Real Time Transcription, Cross Examination of Mr Mohamed Seedat, pages 38241f. **Lonmin Plc**, Annual Report 2013, page 65. The registration number "1969/00015/10" provided in the AR has a typo: the correct number is 1969/000015/10.

8 The information is provided by WINDEED for Lonmin Management Services, 1947/024975/07. WINDEED takes its data from CIPC. As this dissolved company obviously was a subsidiary and not an "external company", one should be able to find AFSs in a file with this number at CIPC before 2005.

9 **Lonmin Plc** (2005-09-19), "WESTERN PLATINUM LIMITED and EASTERN PLATINUM LIMITED (together constituting Lonmin Platinum) and Lonmin Plc South African branch company trading as Lonmin Management Services -- MANUAL COMPILED IN ACCORDANCE WITH SECTION 51 OF THE PROMOTION OF ACCESS TO INFORMATION ACT, 2 OF 2000 ("the Act")". The year 2003 is consistent with the year when a management service agreement is struck between Lonmin Plc and WPL, as stated in the "Facts Agreed" document, page 1.

10 **Marikana Commission of Inquiry**, Real Time Transcription 2014-09-16, page 38240-38241. See Annexure A.

11 We know from a note in Simon Scott's 29 September Testimony that LMS does have AFS's. He notes in his tables over payments and incomes FY2012 that "AFS not yet finalised/signed"

their insurance through LIL".[12] LIL and transactions with LIL are not mentioned in the section called Related Parties in the AFSs of WPL and EPL where they would be expected to appear. This is a third inter-company relation that should have been studied, but we have no data. For the purposes of this report it was accessed from Lonmin's answers to the Mail and Guardian's Craig McCune, appearing in a document dated 14 October 2014.[13]

In September 2014, at the Marikana Commission, Lonmin however lodged five 2007-2011 Special Purpose financial statements from WPL directed to the SA Revenue Service (SARS) and denominated in rand (ZAR). Simultaneously, the 2012 WPL financial statements were lodged denominated in US$ for WPL shareholders (just as AFSs FY2006-2010 filed at CIPC).

Information regarding the finances of Lonmin's SA subsidiaries is crucial to the content and conclusions of this report.

In general, the methodology used is inspired by the "structured data analysis" and "witness hermeneutics" developed by the late Swedish psychologist Arne Trankell. This means going back and forth through a substantial collection of data and statements about past events to separate fact from fiction.[14] The method has its origins in forensic investigations, with detailed examination of contradictions and possible cause-effect relationships. This painstaking process of collecting evidence and isolating anomalies is important as the report points to serious evidence regarding Lonmin's ability to pay. The report thus demands patience from the reader but a *Summary of Findings* is provided for those not wishing to follow the full evidence.

The report is not guided by any belief that Lonmin Plc is more unequal, negligent or ruthlessly profit-maximising than any other mining company. It may well be the opposite. And if this is the case, these findings are of a more damning and generalised application to the mining industry in South Africa as a whole.

12 **Lonmin Plc** (10 October 2014), "Questions and Answers", page 12 at URL: https://www.lonmin.com/downloads/QA_Allegations_of_Tax_Evasion_Lonmin_Plc_101014_FINAL_3.pdf

13 Ibid.

14 **Trankell A**, 1972: *Reliability of Evidence: Methods for Analyzing and Assessing Witness Statements* (Stockholm: Beckmans).

2. Summary of findings

Part 1 The competitiveness of rock drill operator wages paid by Lonmin prior to the protest in 2012.

Part 1 of the report examines the competitiveness of Rock Drill Operator (RDO) wages at Lonmin. This implies a comparison with RDO wages at Anglo Platinum (Amplats) and Impala Platinum (Implats) before August 2012. In July 2012, Lonmin managers made the comparison themselves and drew the conclusion that Lonmin RDO wages were lower than at the other two big platinum companies and had to be increased.

The actual number of permanently employed workers in RDO roles and cost calculations might be confused because of Lonmin's use of contracted labour. On 16 August 34 mine workers were shot down by police. The pay roll data of 28 of the workers was made available to the Marikana Commission but the other 6 individual records were missing, possibly because they were contract workers.

The documentation shows that, compared to Amplats and Implats, Lonmin was late in introducing special RDO allowances. After examining documents from June 2012 and forward, there is still an unanswered question on whether the implementation of the RDO allowances was made from 1 October 2012, or earlier from 1 July as recommended in a Lonmin memorandum, or in August, which was the impression created in a SAPA (SA Press Agency) release on 25 August. This was never clarified by the Commission in its cross examination of Lonmin.

After August 2012, a public discussion started about economic stress caused by so called "Garnishee orders" that oblige companies to make deductions from workers' wages for all kind of debts, despite many of these orders being fraudulent, outdated or questionable for other reasons. The sparse records of 28 deceased Marikana workers' pay slips show that mine workers' indebtedness to the company itself through advance payments that are rolled over were even more serious.

Part 1 of this report was never used in the cross examination of Lonmin on its finances that took place at the Marikana Commission on 16 and 29 September 2014.

Parts 2 & 3 and The affordability for Lonmin of the increases demanded by the rock drillers
The financial capacity of Lonmin to provide decent work and living conditions for its employees.

Part 2 describes, through the analysis of financial statements and other documents, the consequences for affordability of two transfer pricing arrangements. The first involves a subsidiary on Bermuda, which allegedly marketed and sold the Lonmin Group's platinum group metals (PGM) for a commission. The second is a service arrangement with Lonmin Management Service (LMS) – the South African branch of the UK based Lonmin Plc – rendering a range of services for which WPL was paying management fees. Both the commissions and the fees were based on a percentage share of the revenue of Western Platinum Ltd. Investigation shows that from 2006 commissions and fees were substantially higher than the 2% and 1.9% of WPL's revenue that was stipulated in the inter-company agreement, possibly due to a double accounting error. Lonmin's Mr Mohamed Seedat, gave another

explanation for the anomaly during cross examination at the Commission on 29 September, which doesn't concur with other data. In addition, CFO Simon Scott's written testimony of 29 September, when untangled, shows that LMS in turn paid "management fees" of between 20% and 37% of its revenue to Lonmin Plc in UK to the amount of R429mn between 2007-2010.

The inter-company exchange of actual services should be examined in transfer pricing arrangements. The issue of "substance" concerns whether the service paid for is really provided or if its commercial value is being exaggerated (or under stated).[15]

Terminating the Bermuda profit shifting arrangement could have released R3 500-R4 000 extra per month for a RDO wage. In its contra factual ('what if ') examples, the report has also arbitrarily taken 28% of the transfer payments to provide additional financing of Lonmin's South African subsidiaries' Social Labour Plan (SLP) commitments which they seriously neglected.[16] Collapsing the Bermuda arrangement and cutting back on fees to LMS to a reasonable amount, would have allowed the Lonmin subsidiaries – the actual employers of Lonmin's workers – to meet the 2012 RDO demands for a basic wage of R12 500 after tax, even after allocating 28% of resources to meet their SLP commitments. This would have been possible if pension costs and other "knock-on effects" like medical benefits hadn't been added in full to the increase, mimicking the platinum strike agreement of June 2014, in which a part of the wage increase was agreed to be "non-pensionable". To this should be added huge extra incomes given to managers in the form of share based payments, costing the key subsidiary WPL R100 million per annum 2010-2012 or R2000 per Rock Drill Operator.

The cost of the profit shifting arrangements to workers, to mining communities, to BEE shareholders in the subsidiaries and to South African society at large, is estimated to be well over R400 million per year.

A public argument broke out in September 2014 over Lonmin's claim that the "Bermuda connection" was terminated during FY2008 and that WPL paid 100% of both the commissions and fees to LMS from October 2008, which is when the 2009 financial year (FY) startes. This is contradicted by all WPL's annual financial statements 2008-2012, except for the FY2011 Special Purpose AFS.[17] Lonmin paradoxically denied that this was the case and its auditor KPMG supported Lonmin's position, in an email to this author. Whether WPL's payments are made to Bermuda or to the head office company LMS does not matter to the depletion of its funds. It has however importance for taxation in SA. The taxable profits of an external company like LMS were taxed at a rate of 33% before 2013, but there are of course no taxes paid to SA from Bermuda. Furthermore, no taxes have to be paid on profits on Bermuda and Lonmin paid nil in taxes in UK, 2000-2013.

Chapter 4 also speaks to a 2006 once-off transfer of R758 million when one SA Lonmin subsidiary bought all shares in the Messina Ltd and the Messina platinum mine from Lonmin Plc after taking out a loan. This inter-company acquisition has no meaning from the point of view of corporate power. WPL is controlled by Lonmin Plc. It has had importance, however, from a tax planning point of view. Between 2008-2012, WPL every year gave a loan to Messina and then declared the loan impaired (To impair a loan is to declare it as valueless, assuming that it will never be paid back). in the same financial year, and then reduce WPL's taxable profit by that amount in its books.

Two general insights should be highlighted:

Firstly, profit shifting starts at the domestic level and should be studied from the point of view of stakeholders in subsidiaries. The subsidiaries of transnational mining companies hire and pay

15 **Davis Tax Committee** (December 2014), "ADDESSING BASE EROSION AND PROFIT SHIFTING IN SOUTH AFRICA, INTERIM REPORT, ACTION 8: ASSURE TRANSFER PRICING OUTCOMES ARE IN LINE WITH VALUE CREATION WITH REGARD TO INTANGIBLES", pages 18ff.

16 **Bench Marks Foundation** (Oct 2013), "Coping with unsustainability: Lonmin 2003-2012", Policy Gap No. 7, (Johannesburg: Bench Marks Foundation), URL: http://www.bench-marks.org.za/

17 We don't know how the US$ denominated 2011 AFS, gone missing at CIPC, books the sales commissions.

workers and pay tax on profits. They hold the mining licenses as well as the SLP obligations. It is also in the subsidiaries that BEE partners hold shares from which they receive dividends. It is the subsidiaries' funds that are depleted by exaggerated intercompany invoicing in the first link of a chain of transactions. To combat such abuse, full disclosure of these domestic finances to the public is imperative. Transfer pricing is not only a cross border arrangement.

Secondly, when profits are shifted from subsidiaries out of the country, the effect on wages is bigger than the effect on tax revenues. Schematically: if the corporate income tax is 28%, a company has to move R100mn to a tax haven in order to avoid R28mn in taxation. In this way, R100mn is effectively moved from the stakeholder table in SA. Hence we have coined the concepts *wage evasion* and *wage avoidance*; "evasion" refers to illegal arrangements and "avoidance" to legal. To only estimate how large tax expenses a company evades or avoids is misleading. We must look at the total value that every year is moved out of reach of domestic stakeholders through transfer pricing or in other ways.

In the Lonmin case, the affordability of wage demands and social obligations under the Mining Charter was about a choice of what to afford and Lonmin chose not to afford these obligations. Affordability is a matter of choice.

Chapter 5 examines Lonmin's reporting on employment equity to the Department of Labour (DOL) and income disparities in the company. Reports on equity were submitted on EEA4 forms for 2003-2012 and in a separate report from April 2012 when DOL made an audit. This part discusses what measures the 1998 Employment Equity Act (EEA) obliged Lonmin and the DOL to take to ensure equity and whether either party took such measures. The statistics are used to examine wage disparities between high and low paid employees in the year before August 2012. Huge gaps in income emerge above the 95th and again above the 99th percentile. There are 75 individuals at the very top of the company's income hierarchy. These employees are probably also the beneficiaries of the share based payment expenses of R100mn per year, mentioned above. Twelve directors and the 45-50 employees of LMS with very high salaries are excluded from the equity reports to DOL. The chapter raises questions about the social reasonableness, fairness, and contribution to political stability and whether Lonmin by flattening the wage curve could not have distributed its production of monetary wealth more equitably.

The documentation showed that the DOL was in breach of Section 27 of the EEA (1998). This is reinforced by the very manner in which the Employment Equity report form (EEA4) is designed. Lonmin has been informed by the DOL to focus only on income equality between the apartheid categories and between men and woman *within the same wage band or category*, as opposed to a focus on widening gaps between bands, i.e. between ordinary workers and higher paid employees, like managers and supervisors. It is not a concern of DOL to compare the wages of so called semi- and unskilled workers in general and RDO wages in particular with higher paid groups.

The average wage is the simplest concept to employ when making earnings comparisons between groups of employees, but average wage levels in the different groups demarcated by the EEA report forms does not allow for such reporting and consequently Lonmin was not asked to do this by DOL.

Contract workers are outside the moral and political realm of the equal pay for equal work regime upheld by the EEA. Blue collar contract workers at Lonmin earned about 55% of an established (permanent) blue collar worker in 2011 (the ratio is about the same for the whole platinum mining industry). Statistics submitted by Lonmin to the DMR on contract workers' wages were highly unreliable, but Lonmin effectively reported exactly the same average wage between 2009-2013. This means a real wage loss of about 22% over that period.

3. The "competitiveness" of rock drill operator wages paid by Lonmin prior to the protest in 2012.

Part 1 examines the competitiveness of RDO wages at Lonmin. This implies a comparison with RDO wages at Anglo Platinum (Amplats) and Impala Platinum (Implats) before August 2012. Lonmin managers made the comparison themselves and drew the conclusion that Lonmin RDO wages had to be increased.

The actual number of permanently employed workers in RDO roles and cost calculations might be confused because of Lonmin's use of contracted labour. On 16 August 34 mine workers were shot down by police. The pay roll data of 28 of the workers was made available to the Marikana Commission but the other 6 individual records were missing, possibly because they were contract workers.

Compared to AAP and Implats, Lonmin was late in introducing special RDO allowances. After examining documents from June 2012 forward, the question must also be asked if the implementation of the new Lonmin RDO allowances were made on 1 October 2012, not earlier and not retroactively from 1 July, as recommended in a Lonmin memorandum.

3.1 Rock driller demands before June 2012

"The recent community unrest and industrial action experienced highlighted the importance of pro-active stakeholder engagement", commented CEO Ian Farmer in his introduction to the 2011 Lonmin Sustainable Development Report (SDR).[18] This refers to an unprotected strike at the Karee mine between 17 May and 10 June 2011 during which the company first dismissed "approximately 9000 workers" and then rehired "approximately 8200 of these people who expressed a wish to be reemployed".[19]

These events are no doubt a part of the 2012 context, just as the 2012 rock driller strike at Implats in January and February was. "After industrial action of this type it is important to re-establish relations with affected employees" says the 2011 Lonmin Annual Report.[20] "In 2012", it continues, "we will be focusing on employee relations and enhancing communication within the Company, with the aim of improving understanding, establishing open two way dialogue and avoiding disruptive industrial action. This includes ensuring the trade unions are fully informed on Lonmin's policies and procedures and have a thorough understanding of our business."[21]

18 **Lonmin Plc**, 2011 Sustainable Development Report (SDR), page 3.
19 Ibid, page 49.
20 Ibid.
21 Ibid.

The final sentence above does not marry with the secrecy surrounding the financial statements of Lonmin's subsidiaries. Non-disclosure is an integral part of how corporate leaders understand their businesses.

3.2 The June and July encounters

In the documentation, the RDO demand for a R12 500 basic wage per month first appears in a Lonmin memorandum to the Marikana Commission called "Feedback to Karee Rock Drill Operators regarding their request for an increase in wages". The memorandum dated 27 June 2012 is written by the Vice President of the Karee mine, Mike da Costa. He writes to "The Lonmin Exco" that a delegation of about 50 people marched to his office on Thursday 21 June, after a larger meeting. He writes: "When asked how they had arrived at the requested number, they replied that this is what they would consider fair compensation for the work that they do under extremely difficult conditions."[22]

This report will interpret and base its calculations on a demand for a basic wage of R12 500 after taxation. This seems to be the most plausible interpretation of workers' R12 500 demand.

From this document, as well as other documents from the end of July (Print Screen 2 and 3), it is clear that Lonmin's RDO earnings in June 2012 were not "competitive" with RDO remuneration at Implats and Amplats.

This request should also be seen in the context of the increases that have been agreed to at Impala recently and also the discussions regarding increases that are currently taking place at Anglo American Platinum. The table below shows a breakdown of the increases for Rock Drill Operators at Impala and also a comparison to the current Lonmin package for Rock Drill Operators and the package as it will be after the increases have been applied in October 2012.

	Impala Pre-Strike	Impala Current	Lonmin Current	Lonmin Post Increases Oct 12
Basic	4 935	6 540	5 405	5 891
Holiday Leave Allowance	411	545	450	490
Living Out Allowance	1 500	1 850	1 850	1 950
Retirement Contribution	797	1 056	801	873
Total	7 643	9 991	8 506	9 204

Print Screen 1: *Mike da Costa's comparison of RDO wages before and after the Impala strike, and after the scheduled wage increases from 1 of October (Source: Marikana Commission of Inquiry, Exhibit XXX3).*

Mike da Costa continues by comparing with Anglo Platinum:

> **"[L]onmin's remuneration packages have fallen a little behind that of Impala's after the significant increases that were granted by Impala. As part of their 2011 wage agreement, Anglo American Platinum had agreed to review Rock Drill Operator positions with a view to enhance and uplift the status of Rock Drill Operators in recognition of the physical demands of the position. This review**

22 **Marikana Commission of Inquiry** (2014), "Pages from Lonmin Bundle 444-545", pages 448ff. This is Marikana Commission Exhibit XXX3.

> **has recently been concluded and the outcome is an agreement to pay a fixed monthly allowance of R 1000 to Rock Drill Operators.**[23]

There will be a feedback meeting with the workers on the 2 of July, he writes, and suggests that Lonmin then should promise "a review of the rock drill bonus system within 6 months".

This date, 2 July, is mentioned again in the minutes from a 13 August meeting between Lonmin and Associated Mining & Construction Union (Amcu) officials, but the events of 2 July evidently took a different route than envisaged by Da Costa as he wrote:

> **"2 July 2012 - RDO marched to Karee offices demanding the increase and management told them that there is a two year wage agreement and that there [sic] company cannot negotiate with them."**[24]

And again three weeks later:

> **23 July - RDO marched to Karee offices. They were informed that the company has taken a decision to implement RDO Allowance, and it is not negotiable. Company cannot open the current wage agreement.**[25]

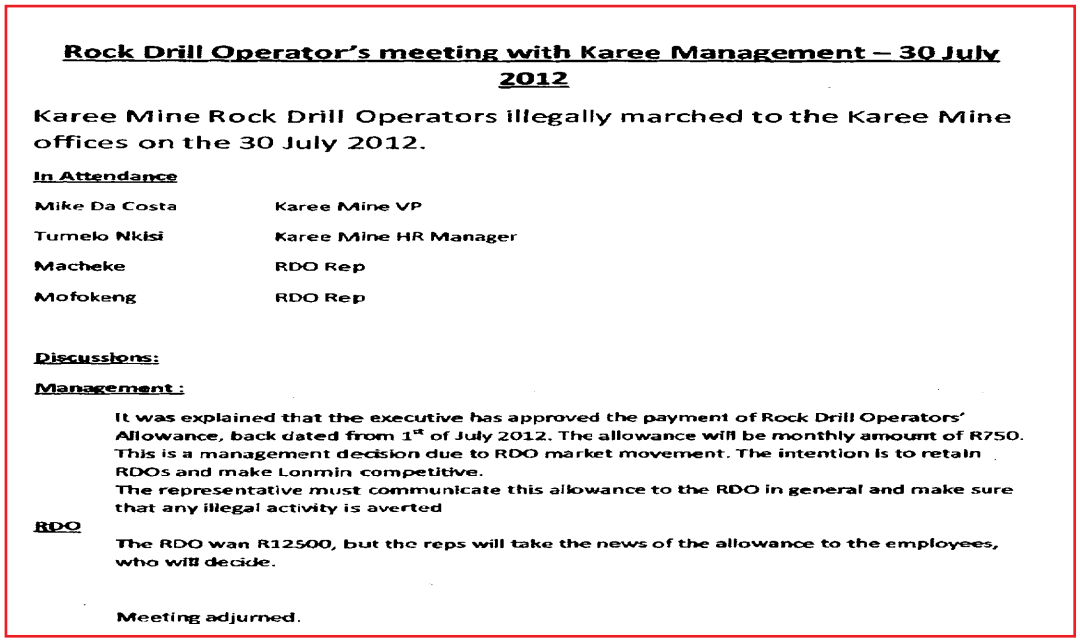
On 27 June, da Costa argued it would be unwise to hold back RDO wages for long, warning of labour unrest. He suggested increasing the Drilling Bonus by 20%, saying such a raise would give a well performing RDO team about R1 350 per member and month in bonus, at the time, representing R200 more per person per month. This seems to be an error: R1 350 minus R200 is R1 050, but when we add 20% to R1 050 we reach R1 260.

When calculating the cost to company for a 20% bonus increase, basing this on the past 12 months, he estimates that the *average* monthly Drilling Bonus per month paid to a RDO team member was only R500. We know this because 20% of R500 is R100 and because da Costa writes:

> **Based on the average Drilling Bonus earned by Rock Drill Operators for the year to date, it [the 20% increase] would mean an additional cost of R 100 per person per month."**[26]

He further suggests a RDO allowance of R1 000 for single hand drillers, R800 for drillers who are assisted and R500 per month for assistants. This schedule is cut to R750, R500 and R250 when meeting two worker representatives on 30 July, after the "Karee Mine Rock Drill Operators illegally march to the Karee Mine offices".

23 Ibid, page 449.
24 Marikana Commission of Inquiry (2014), "Pages from Lonmin Bundle 444-545": "Minutes of Meeting held on the 13 August 2012 between Lonmin Mining Management and AMCU Head Office in Hossy Boardroom", pages 478f.
25 Marikana Commission of Inquiry (2014), Page 478
26 Ibid.



Rock Drill Operator's meeting with Karee Management – 30 July 2012

Karee Mine Rock Drill Operators illegally marched to the Karee Mine offices on the 30 July 2012.

In Attendance

Mike Da Costa	Karee Mine VP
Tumelo Nkisi	Karee Mine HR Manager
Macheke	RDO Rep
Mofokeng	RDO Rep

Discussions:

Management :

It was explained that the executive has approved the payment of Rock Drill Operators' Allowance, back dated from 1st of July 2012. The allowance will be monthly amount of R750. This is a management decision due to RDO market movement. The intention is to retain RDOs and make Lonmin competitive.
The representative must communicate this allowance to the RDO in general and make sure that any illegal activity is averted

RDO

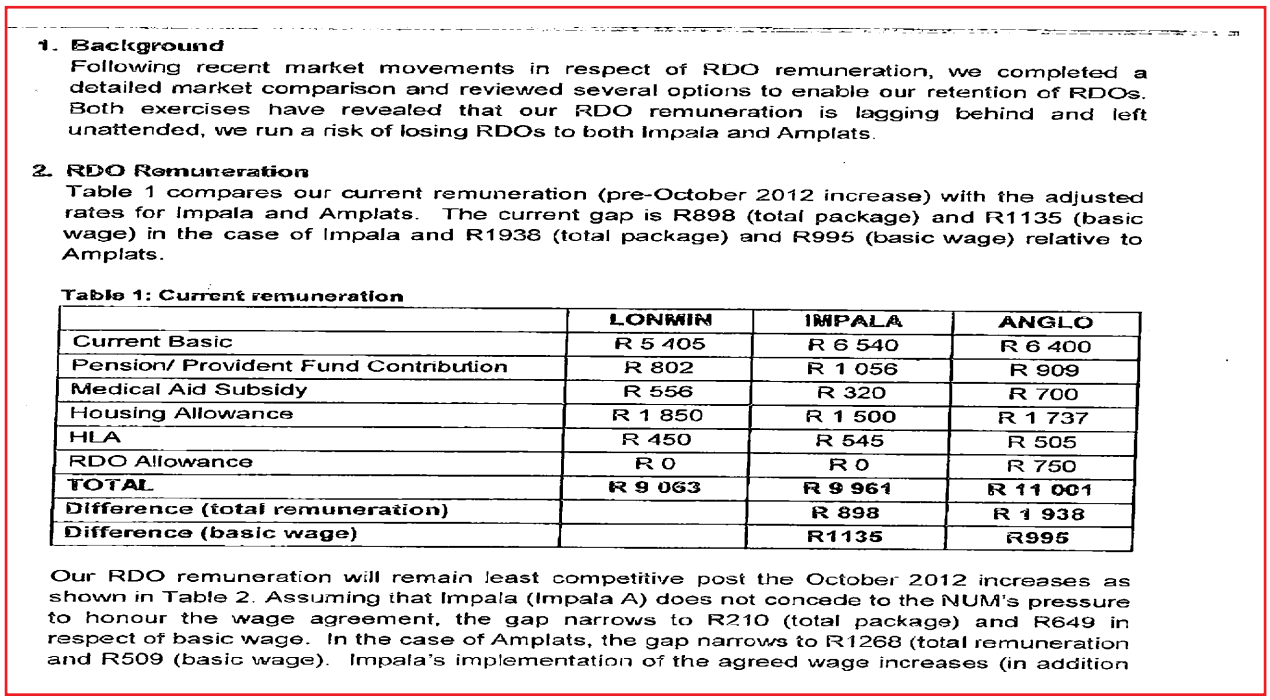
The RDO wan R12500, but the reps will take the news of the allowance to the employees, who will decide.

Meeting adjurned.

Print Screen 2: *Minutes of meeting with RDO representatives 30 July (Source: Marikana Commission of Inquiry; the picture has been enhanced for readability).*

That the managers decided on a lower RDO allowance schedule than Da Costa's, and without an increase in the bonus, is made clear in the 27 July Memorandum from Abey Kgotle, which was approved by EVP Barnard Mokwena and EVP Mark Munroe (Print Screen 3 and 4 below).

Abey Kgotle writes that the yearly total cost to company would be R29.6 million. Thus he corroborated that there were 4 200 workers in the three rock drill professions, as Da Costa reported in his June memorandum: 1 300 single hand rock drillers, 1 450 assisted rock drillers and 1 450 rock drill assistants.[27]



1. **Background**
Following recent market movements in respect of RDO remuneration, we completed a detailed market comparison and reviewed several options to enable our retention of RDOs. Both exercises have revealed that our RDO remuneration is lagging behind and left unattended, we run a risk of losing RDOs to both Impala and Amplats.

2. **RDO Remuneration**
Table 1 compares our current remuneration (pre-October 2012 increase) with the adjusted rates for Impala and Amplats. The current gap is R898 (total package) and R1135 (basic wage) in the case of Impala and R1938 (total package) and R995 (basic wage) relative to Amplats.

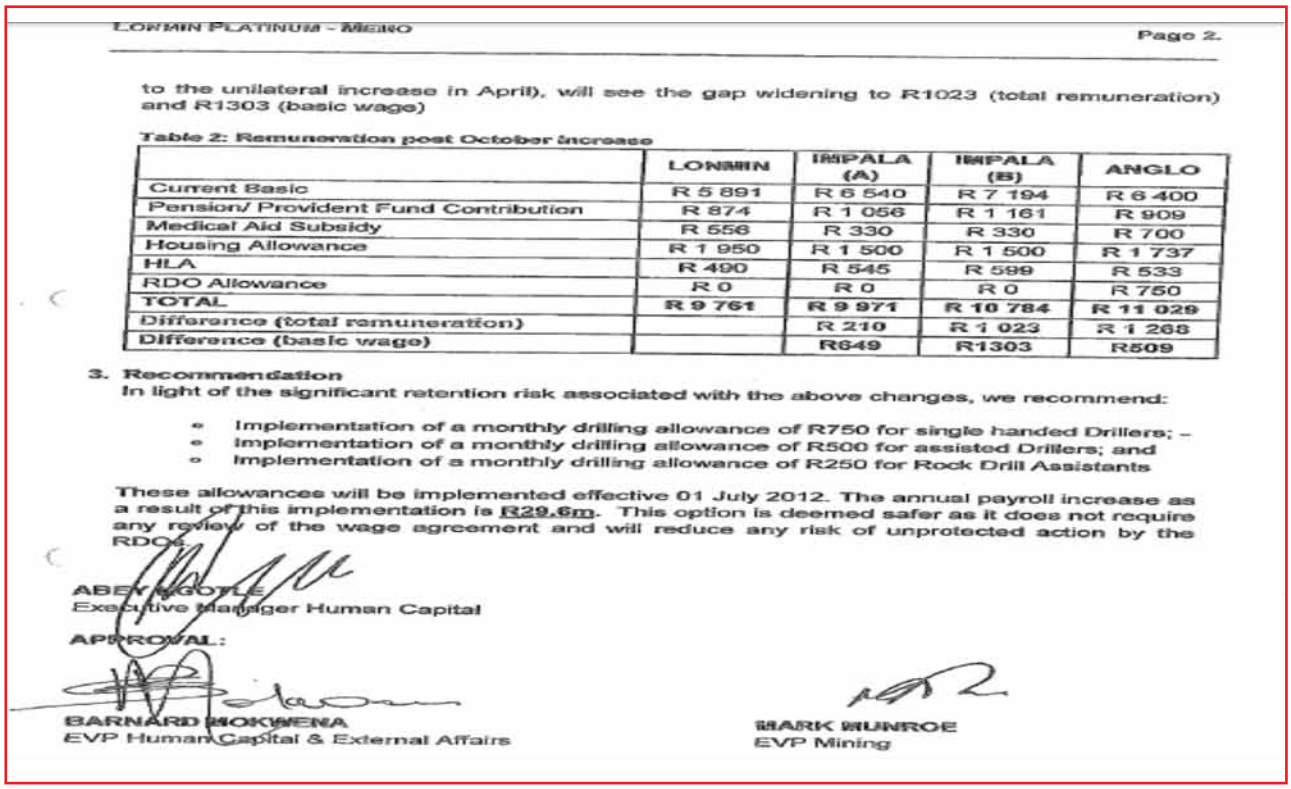
Table 1: Current remuneration

	LONMIN	IMPALA	ANGLO
Current Basic	R 5 405	R 6 540	R 6 400
Pension/ Provident Fund Contribution	R 802	R 1 056	R 909
Medical Aid Subsidy	R 556	R 320	R 700
Housing Allowance	R 1 850	R 1 500	R 1 737
HLA	R 450	R 545	R 505
RDO Allowance	R 0	R 0	R 750
TOTAL	**R 9 063**	**R 9 961**	**R 11 001**
Difference (total remuneration)		**R 898**	**R 1 938**
Difference (basic wage)		**R1135**	**R995**

Our RDO remuneration will remain least competitive post the October 2012 increases as shown in Table 2. Assuming that Impala (Impala A) does not concede to the NUM's pressure to honour the wage agreement, the gap narrows to R210 (total package) and R649 in respect of basic wage. In the case of Amplats, the gap narrows to R1268 (total remuneration and R509 (basic wage). Impala's implementation of the agreed wage increases (in addition

Print Screen 3: *"Drilling Market Allowance", Memorandum 27 July 2012 from Abey Kgotle. Page 1 – motivating the recommendation for RDO allowances of R750, R500 and R250. (Source: Marikana Commission; picture has been enhanced).*

27 But if using Mike da Costas numbers from 27 June, the total annual cost seems to be R29,100,000.



LONMIN PLATINUM - MEMO

Page 2.

to the unilateral increase in April), will see the gap widening to R1023 (total remuneration) and R1303 (basic wage)

Table 2: Remuneration post October increase

	LONMIN	IMPALA (A)	IMPALA (B)	ANGLO
Current Basic	R 5 891	R 6 540	R 7 194	R 6 400
Pension/ Provident Fund Contribution	R 874	R 1 056	R 1 161	R 909
Medical Aid Subsidy	R 556	R 330	R 330	R 700
Housing Allowance	R 1 950	R 1 500	R 1 500	R 1 737
HLA	R 490	R 545	R 599	R 533
RDO Allowance	R 0	R 0	R 0	R 750
TOTAL	R 9 761	R 9 971	R 10 784	R 11 029
Difference (total remuneration)		R 210	R 1 023	R 1 268
Difference (basic wage)		R649	R1303	R509

3. Recommendation

In light of the significant retention risk associated with the above changes, we recommend:

- Implementation of a monthly drilling allowance of R750 for single handed Drillers; –
- Implementation of a monthly drilling allowance of R500 for assisted Drillers; and
- Implementation of a monthly drilling allowance of R250 for Rock Drill Assistants

These allowances will be implemented effective 01 July 2012. The annual payroll increase as a result of this implementation is R29,6m. This option is deemed safer as it does not require any review of the wage agreement and will reduce any risk of unprotected action by the RDOs.

ABEY KGOTLE
Executive Manager Human Capital

APPROVAL:

BARNARD MOKWENA
EVP Human Capital & External Affairs

MARK MUNROE
EVP Mining

Print Screen 4:*"Drilling Market Allowance", Memorandum 27 July 2012 from Abey Kgotle. Page 2 – motivating the recommendation for RDO allowances of R750, R500 and R250 "implemented effective of 01 July 2012". (Source: Marikana Commission; picture has been enhanced).*

In June 2012, Lonmin's RDOs earned substantially less than RDOs at Amplats and Implats.

3.3 Some Outstanding Questions

Firstly, the number of workers in the three rock driller roles is not clear. When manually counting the number of category "A" employees[28] – "unskilled workers" in the terminology of the Paterson grading system – that have a rock driller title of any kind in the pay roll list sent to the Department of Labour in April 2012 (cut-off date 30 September 2011), 2 997 individuals appear.[29] Was a mistake made by including contract workers in RDO jobs in the 4 200 number previously mentioned?

However, in part 3 of this report we have still calculated "affordability" assuming 4200 permanent RDOs in 2012, disregarding that 30% of them may have been contracted employees, thus possibly erring on the side of the higher number.

Secondly, it is not clear from when the RDO allowances were implemented. From Kgotle's 27 July memorandum which makes a "recommendation", it appears that the implementation date was 1 July. There are however indications that the RDO allowances were introduced from 1 October, when the scheduled general wage increase took place, together with the additions as a result of the strike. Furthermore, a 25 August 2012 SAPA article published in many newspapers quoting Lonmin representatives gave another impression that a R750 RDO allowance was in place in August.[30]

RDO tables appearing in the media after 16 August included the R750 allowance. A fact sheet from Lonmin dated 2012-09-14 contained the following table:

28 RDO's were moved from grade A4 to B1 after FY2011.

29 Department of Labour (May 2014), "COPY OF DOL AUDIT MARCH 2012 FOR SUBMISSION"; Excel work sheet.

30 See for example the 25 August 2012 article from SAPA: "We need peace at Lonmin" http://www.citypress.co.za/news/we-need-peace-lonmin-20120825/ (2014-08-28) which appears in at least 7 other publications and announces that RDOs have a R750 allowance.

Remuneration

Remuneration remains a key issue in the South African mining industry and Lonmin is committed to a fair and balanced approach in this regard. It is important to recognise the national context of wages and salaries and the prevailing conditions in the mining industry.

The breakdown below provides details of the average earning potential of a Rock Drill Operators (RDO)

Basic Wages	**5 405**
Housing Allowance (1)	1850
RDO Market Related Adjustment	750
Medical Allowance	556
Holiday Leave Allowance	450
Company Contributions (Prov Fund)	802
Total Guaranteed Pay	**9 814**
Attendance Allowance	208
Total Variable Pay (Excluding Bonus)	**208**
Total Cost To Company (Excluding Bonus)	**10 022**

(1) Employees living in the hostel are provided with free accommodation as well as a monthly allowance

Print Screen 5: *Lonmin Plc (2012-09-14), "Lonmin Fact sheet" (Source:* www.lonmin.com *(2013-05-07)).*

First: the minutes from 30 July (Print Screen 2) show that the worker representatives were going to take the news about the allowances to the employees, "who will decide". The workers were demanding R12 500. The strike continued into September. It is likely that the offer was rejected.

Second: In the SABC radio debate of 15 August between the Amcu President Mr Mathunjwa, Lonmin's Mr Mokwena[31] and NUM President Mr Zokwana, the RDO allowance was up for debate, starting with the Amcu President mentioning that "R700" was offered to the workers outside of bargaining structures. Lonmin EVP Mr Mokwena seemed not to want to sort out the confusion, finally replying that the increase had been given to 4 200 RDOs as a "market adjustment", refusing to admit that this was a response to the marches and the strike. Mr Mokwena's responsibility was Human Capital, but he didn't change "R700" to the correct R750 in his response. This indicates that the RDO allowances hadn't been implemented. The information was not "out there".

Third: Pay slips for July, August and September of 28 shot workers, were given to the Marikana Commission.[32] There are RDOs among the deceased, but no RDO allowances are recorded for any of the months. In addition, 28 known pay roll records of the "deceased miners" instead of 34 speak to the suspicion that contract workers participated in the strike and were amongst the deceased.

Fourth: When the NUM and Amcu presidents addressed the workers on the koppie, it appears that none of them mentioned that management had already made a concession to their protests. Given the situation and the aim of getting workers to leave the koppie it would have been relevant to mention that they already had got an increase, pointing to this as a partial victory for the workers.

Fifth: Lonmin workers are paid monthly, but in batches starting from the 23rd to the end of the month.[33] If the RDO allowance hadn't been paid because of the strike at the end of August, it should have been paid at the end of September (albeit with a "hair-cut" because of the No work-No Pay rule). There are no reports about such a payment calculated from the 1 July.

31 Marikana Commission of Inquiry (2014), "Pages from Lonmin Bundle, 444-545": "SAFM RADIO INTERVIEW CONDUCTED ON 15 AUGUST 2012" The transcript starts from page 479. In the transcript, Mr Mokwena is called Mr Mokoena.

32 Marikana Commission of Inquiry (2013), "Deceased Miners 131118", Excel work sheet.

33 Telephone interview with Gift Antonio, AMCU head office, 2014-08-28.

Sixth: There is no mention of the implementation date of the "R750" RDO allowance above in Print Screen 5. It would have been in Lonmin's favour to inform that the implementation was from 1 July.

Below in a box is Lonmin's description of the agreement that ended the strike in 2012. It does not bring clarity on the implementation date of the RDO allowances.

Lonmin executives were not cross examined on this issue at the Commission so there is no clarity on when the R750 was implemented.

Lonmin Plc, 2012 Sustainable Development Report on the strike

"The wage dispute

Lonmin has formal agreements with a number of trade unions in South Africa, which govern organisational rights and behaviour. A two-year wage agreement between the Company and unions was entered into in December 2011.

Prior to the events of August, Lonmin's RDO guaranteed wage was around R10,000 per month (US$1,242 per month). RDOs were also eligible for performance bonuses, the average of which was R1,500 per month (US$186 per month), while some were of the order of R6,000 per month (US$745 per month). In the five years from 2007 to 2011, RDOs were granted a cumulative pay rise of 62%.

Negotiations and a final deal

On 6 September, Lonmin signed a peace accord with the NUM, Solidarity and UASA. As part of the peace accord, a framework was established according to which wage negotiations could proceed.

A final deal was signed late on 18 September 2012. The agreement included a once-off signing bonus of R2,000 and an average rise in wages of between 11 and 22% for all employees that fall within the Category 3-9 bargaining unit effective from 01 October 2012. This figure includes the previously agreed wage increases for this bargaining unit. The approach was different in many aspects, but was taken to expedite a peaceful settlement, and with the guidance and support of recognised mediating bodies. The Company's workforce returned to work by 20 September, although normal operations were only resumed by 01 October 2012."[34]

The information on RDO average performance bonuses in the Lonmin 2012 SDR (box above) differs three times from the notes in Da Costa's 27 June 2012 internal memorandum. We saw above that he estimated the bonus paid to a RDO "in a crew that is performing well" to R1 050 and the *average* individual RDO bonus for the past 12 months to R500. At any rate, an increase in the bonus was probably not decided to start from September or earlier.

34 **Lonmin**, 2012 Sustainable Development Report (SDR), page 6.

In records of pay slips of 28 mine workers killed 16 August, compiled by the Marikana Commission's evidence leaders, the monthly average "Drilling bonus" is R717 and a "Stope Team bonus" averages R685 per month if paid.[35]

The reasons for these differences between public and internal reporting on RDO bonuses were not clarified by the Commission.

Bench Marks Foundation Foundation monitored the 2012 agreement from September 2012 to February 2013. Workers soon started to complain that the R2 000 once-off signing in for work bonus, was later deducted from their wages and that Lonmin hadn't honoured the agreement (see Annexure B).[36]

35 **Marikana Commission of Inquiry** (2013), "Deceased Miners 131118", Excel work sheet. For some of the deceased mine workers the period May-September 2012 is covered, for some only one or two months. There are 55 months recorded for "Drilling bonus" and 43 months recorded for "Stope Team bonus".

36 **David van Wyk**, Telephone interview 2014-08-03. **Bench Marks Foundation** (2012-12-13), "Letter to Lonmin management", signed Director **John Capel**. The letter starts: "The Bench Marks Foundation is concerned at recent reports from workers and community members in Marikana alleging that the agreed pay rise of 22% was only paid for the first month after the strike, and was then discontinued. Further, there are allegation that the "return to work bonus" of R2000 that was received by all workers is now being deducted from workers' salaries, as if it was a loan. The Bench Marks Foundation requests that Lonmin provides a clarification on this issue, and urges Lonmin to honour the agreement that was made when the strikes came to an end." See also image of pay slip, Annexure B.

4. Affordability of wage demands and profit shifting

The affordability for Lonmin of the increases demanded by the rock drillers in 2012

and

The financial capacity of Lonmin to provide decent work and living conditions for its employees.

This section looks at whether Lonmin in 2012 could have afforded to pay what the rock drillers were demanding and further whether it could have afforded to provide decent living conditions to mine workers in accordance with its Social Labour Plan (SLP).

4.1. Background

4.1.1. Illicit capital outflows

Several macro-economic studies show that illicit capital outflows from South Africa are massive. Ashman, Newman and Fine (2011) estimated them to be in the region of 20% of GDP in 2007.[37] Among the industrial sectors, they put the SA mining sector in the lead when it comes to trade mis-invoicing, to an estimate of about US$31.7 million in 2006. Dev Kar and Brian LeBlanc (2013) ranked South Africa number 11 among the 15 developing countries with the highest illicit capital export.[38] For the ten years 2002-2011, they calculate that illicit capital flows from South Africa amounted to US$100.7 billion or US$10.7 billion on average per year. In the latest Global Financial Integrity's 2014 report, Dev Kar and Joseph Spanjers claim that SA has advanced to number 10 in 2012. Thus 2012 is a new top year, with US$29.1bn (more than R300bn) in illicit outflows.[39] These reports should completely displace the debate about what worker wages can be "afforded" in SA or in Africa as a whole.[40] It is baffling that only tax consequences are recognised as a problem in the public discussion.

37 **Ashman Samantha, Ben Fine and Susan Newman** (2011), "Amnesty International? The nature, scale and impact of capital flight from South Africa", *Journal of Southern African Studies*, 37(1): 7-25.

38 **Dev Kar and Brian LeBlanc** (December 2013), "Illicit Financial Flows from Developing Countries 2002-2011", Global Financial Integrity.

39 **Dev Kar and Joseph Spanjers** (December 2014), "Illicit Financial Flows from Developing Countries 2003-2012", Global Financial Integrity

40 **High Level Panel on Illicit Financial Flows from Africa** (2015), "Track it! Stop it! Get it! Illicit financial flows from Africa", (Joint African Union Commission/United Nations Economic Commission for Africa (AUC/ECA) Conference of African Ministers of Finance, Planning and Economic Development). This report estimates illicit capital out flows from Africa to over US$50bn per year (page 2). This is lower than the estimates made by GFI.

4.1.2 Transfer pricing

Transfer pricing schemes are the focus of this report. They are often legal, and importantly do not register in the above estimates that compare export figures in one country with import figures in another. Transfer pricing is important in discussions on tax avoidance and tax evasion, but we introduce it here also as part of the discussion on affordability of wage demands and SLPs.

In its first interim report from December 2014, the Davis Tax Committee gives an account of cross border 'non-goods' payments 2008-2011. The Committee writes:

> **[J]ust after the financial crises in 2008, outflows increased by nearly one quarter. It is a well-known fact that the South African economy did not feel the full brunt of the aftermath of the financial crises but it seems peculiar that legal, accounting and management consulting services increased by nearly R6.5bn (an increase of 32.6%) and engineering and technical services by R3.7bn (an increase of 39.5%). […] [L]egal, accounting and management consulting services increased disproportionately in relation to the other non-goods payments.** [41]

The report uses data from the SA Reserve Bank. Total non-goods cross border payments 2008-2011 amounted to R205bn. Of them "Legal, accounting and management consulting services" comprised R101bn. The Committee also provided a table for the top 16 entities of the SA economy, which stood for a little more than half of the cross border payments (R103.3bn) in 2008-2011. The mining sector transferred R19.7bn out of SA in non-goods payments, of which R16.5bn were payments to "legal, accounting and management consultancy service companies".[42] The issue of *substance* of the non-goods services provided from companies based abroad is a theme in the Committee's report: Is an inter-company service fabricated for resource transfer and tax planning purposes or is its value exaggerated for such purposes?

One of Lonmin's transfer price arrangements has been a large "sales commission" paid from the Group in SA to a subsidiary in Bermuda. The other involved paying almost equally large management fees to what is called an "external company" in the legislation: Lonmin Management Services (LMS). It is a part of Lonmin Plc's (UK) Head Office, but registered in SA. It is the "branch" of Lonmin Plc in SA. The management fees were paid as a percent of WPL's annual revenue just like the sales commissions.

4.1.3 Intercompany loans

The financial statements of Eastern Platinum Ltd (EPL), Western Platinum Ltd (WPL) and Messina Ltd reflect that intercompany loans have been given between Lonmin's subsidiaries in SA, as well as from Lonmin Plc to its SA subsidiaries and from its subsidiaries Southern Platinum Corporation (Cayman Island) and AfriOre (British Virgin Islands). Intercompany loans including from "tax havens" are often used by multinational corporations to book the interest as a tax deductible cost in South Africa and the income in the country with no or low tax on profits. If not most of the capital invested in SA consists of loans, this is not in conflict with the tax legislation.

From the AFSs we did not find that Lonmin Plc's subsidiaries in SA are "thinly capitalised". This is a term used for exorbitant financing of fellow companies with loans instead of equity. In this part of the report, we will however examine a loan arrangement between the subsidiaries WPL and Messina Ltd that has tax implications.

41 **Davis Tax Committee** (Dec 2014), "ADDRESSING BASE EROSION AND PROFIT SHIFTING IN SOUTH AFRICA DAVIS TAX COMMITTEE INTERIM REPORT", page 21f; available at URL: http://www.taxcom.org.za/docs/New_Folder/1%20DTC%20BEPS%20Interim%20Report%20-%20The%20Introductory%20Report.pdf

42 Ibid, page 24.

4.2 The sales commissions to WMSL on Bermuda

In the 2002 Lonmin Plc Annual Report one sentence reads: "Western Metal Sales Limited markets the PGM's [sic] produced by both WPL and EPL".[43] This is all. There is no other mention of Western Metal Sales Limited (WMSL) or this arrangement in any other Lonmin Plc Annual Report 1999-2013.[44] The only way of uncovering this and another transfer pricing arrangement detailed in this report was through accessing some of Lonmin's SA subsidiaries' financial statements.

WMSL is 100% directly owned by Lonmin Plc, as for example shown in one of the three organograms in annex B1 of Lonmin Plc's 2005 Merger Notice for acquisition of the Southern Platinum Corporation group.[45] WMSL is incorporated and located on Bermuda.[46] Bermuda has no income taxation on individuals or firms, no tax on capital gains, no branch profit tax and no transfer pricing legislation. It is a so called "tax haven".[47]

Lonmin Plc held 37 subsidiaries before 2005. However, the Southern Platinum group was bought in 2005 comprising 8 companies and the AfriOre group in 2006 comprising 14 companies.[48] This brought the total to 59 subsidiaries in 2007. The UK company information website *DueDil* lists WMSL as 'Active' amongst Lonmin Plc's 62 subsidiaries in 2014.[49] We will below display the facts and the arguments between the Marikana Commission and others that have arisen about when WMSL became "dormant", or not in use.

The 2007 Financial Statement of the subsidiary Western Platinum Limited (WPL) reads: "[A] fellow subsidiary acts as a sales agent in respect of all the company's sales".[50] In 2007, WPL paid R276 million to WMSL in commissions (2006: R248 million). The name also appears in the 2006 financial report of Lonmin's other main SA subsidiary, Eastern Platinum Ltd (EPL) where a similar short phrase in the 2006 financial statement reads: "Western Metal Sales acts as a sales agent in respect of certain sales made by the company."[51]

A "Facts Agreed" document lodged by Lonmin Plc at the Marikana Commission in September 2014 states in its tables that sales commission transfers to Bermuda halved in the FY2008 and stopped completely from FY 2009.[52] Lonmin also responded in a media statement of the 23 September that the sales commissions had been redirected to LMS starting from FY 2008, saying: "It is incorrect to state that from 1 October 2008 to 2012 Western Platinum Limited booked sales commission payments to Western Metal Sales in Bermuda", only conceding that the 2012 AFS contained "a clear error".[53] The statement is contradicted by the 2008-2010 AFSs filed at the CIPC (the 2011 and

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43 **Lonmin Plc**, 2002 AR, page 4, (our emphasis)

44 The electronic research facility has been used in all the **Lonmin Plc** annual reports 1998-2013 and in all **Lonmin Plc**'s Sustainable Development Reports 2002-2013.

45 **Competition Commission** (1 April 2005), Merger Notice Schedule 1, annexe B, page 32 in a dossier on the acquisition of Southern Platinum Corporation group (2005) and AfriOre Ltd group (2006) supplied to the Marikana Commission. The B1 annexure with the organograms was added to the material given to the **Marikana Commission of Enquiry** following a subpoena.

46 Visit URL: http://bermudafirm.com/western-metal-sales-limited.31894.company (2014-06-29). It reads: "WESTERN METAL SALES LIMITED is ACTIVE company incorporated in Bermuda with identification number of 12714. Company was incorporated on 1987-02-24, so the age of company is approximately 28 years."

47 www.pkf.com (2014-06-26). Companies pay pay-roll tax and annual fees depending on the size.

48 Information from the two Merger Notices, provided to us by the Competition Commission. The organogram mapping Southern Platinum Corporation is published in the Competition Commission's "Reason for Decision" document. In the document sent to the Marikana Commission, two of the companies were whitened by the Competition Commission's officials. But the whole document lies open on the web.

49 URL: https://www.duedil.com/about?ref=ft for information about the DueDil service website. For **Lonmin Plc** on the UK based Action Aid website, URL: http://aamapping.torchboxapps.com/taxhavens/location/1279/ or URL: http://aamapping.torchboxapps.com/taxhavens/.

50 2006 Financial Statement of **Western Platinum Limited** ("WPL"), page 40.

51 **Eastern Platinum Ltd**, 2006 Financial Statement, Note 23, "Related Parties".

52 **Lonmin / Marikana Commission** (2014) "FACTS AGREED BETWEEN LONMIN AND THE EVIDENCE LEADERS TO AVOID THE NEED FOR INTRODUCING CONFIDENTIAL AGREEMENTS AND DOCUMENTS AS EXHIBITS IN THE COMMISSION"; 8 page pdf document ending with tables over transfers, given to Evidence Leader Chaskalson SC at the Lonmin offices beginning of September. This is Marikana Commission's exhibit SSSS5.

53 **Lonmin** (26 September 2014), "Lonmin heeds the law", Mail and Guardian, 26/9-2/10, page 45. M&G published the whole media statement Lonmin made 23 September.

2012 AFSs had been lost at CIPC).[54] All statements are audited by KPMG. In an email of 7 January 2015 to this author, KPMG's Director Alwyn van der Lith stated on this matter: "Lonmin appropriately addressed your question in a statement made on 23 September 2014" and then simply copied in Lonmin's denial of facts (starting: "It is incorrect to state"…as quoted above) together with point 5, 6 and 7 in the Lonmin media statement from 23 of September, published 26 September in the *Mail and Guardian*.[55]

In summary: The media statement says: "No payments have been made by a Lonmin Group company to Western Metal Sales since the end of the 2008 Financial Year".[56] The 2008 AFS's of WPL (and up until 2012 except for the 2011 AFS denominated in ZAR) instead says that the whole sales commission went to WMSL.[57]

When official statements conflict with documentation (example provided in Annex C) the matter becomes open to interpretation. Lonmin brought a conflict with its BEE partner Incwala Resources into the discussion, saying that Incwala wanted to keep the Bermuda connection alive, so the new arrangement was only "signed on 12 June 2012, but had a commencement date of 1 October 2008".[58] Incwala's opposition is inexplicable unless individual interests conflicted with Incwala's interests as a company. As a company, Incwala loses from any transfer of funds externally that diminishes WPL's profits as Incwala holds shares in WPL. Still, the 23 September media statement reads: "The new agreement with LMS, based in South Africa and Western Platinum Limited, which superseded the previous agreement with Western Metal Sales, was given effect to in 2008, but only ratified by Incwala in 2012. Western Platinum Limited therefore proceeded to pay LMS (as opposed to Western Metal Sales) the full commission from 1 October 2008." During the cross examination of Mohamed Seedat at the Marikana Commission on 16 September 2014, Lonmin's advocate Schalk Burger SC intervened saying: "I have an instruction from the chief legal adviser to Lonmin to say the reason for the lateness of that agreement was that Incwala for very many years refused to agree to the new structure and it was only by the middle of 2012 that that agreement could be obtained and that the agreement could be concluded."[59] If Incwala representatives only read the audited statements of WPL, this implies that they were not informed before 2012 that the payments had been redirected. To the *Mail and Guardian's* question if the change was "declared to SARS", Lonmin's answered "Yes", full stop, without saying when.[60] In March 2015 we got the US$ denominated 2013 AFS of WPL filed at CIPC. Both the sales commissions and the management fees are now booked as paid to LMS. Why what the eye can see in WPL's AFSs before that year (Annexure C) has to be denied is beyond our understanding. In relation to WPL, a cost is a cost no matter to whom a payment for a service is made and the anomaly cannot affect its taxation or financial standing. If the AFSs of LMS – a so-called external company that paid a 33% tax on profits at the time – took up the income from the very beginning of the shift in its AFSs, then SARS was of course adequately informed the whole time.

It is not possible to make a final conclusion. We have to leave it at that.

54 It is also contradicted by WPL's first four 2008-2010 Special Purpose statements to SARS that were exhibited at the Marikana Commission. WPL's FY2011 Special Purpose statement (dated 4 October 2012) confirms Lonmin's public position, but the FY2012 again contradicts it and says that the whole sales commission was paid to WMSL on Bermuda, not to LMS.

55 KPMG (2015-01-07) email to the author, in his possession.

56 The "Facts Agreed" document reports US$22.2mn to LMS and US$22.2mn to WMSL in the FY2008 that ends 30/9 2008 (i.e. half-half) and books all the commissions to LMS for the following years.

57 These AFSs for tax purposes were the ones lodged in September 2014 at the Marikana Commission. Also the US$ denominated AFSs at CIPC FY2008-2010 state that WMSL were paid the commissions just as before, not LMS.

58 Lonmin Plc (September 2014), "Facts Agreed", page 2.

59 Marikana Commission,(2014-09-16), Real Time Transcriptions, page 38265

60 Lonmin Plc (14 October 2014), "Questions and Answers", page 3, available at URL: https://www.lonmin.com/downloads/QA_Allegations_of_Tax_Evasion_Lonmin_Plc_101014_FINAL_3.pdf

4.3 Consequences of transfer payments for affordability

A sale between subsidiaries is a transaction that is "consolidated" in the over-arching annual report of Lonmin Plc, meaning that these transactions cancel each other out at the Group Accounts level: an income to one is the other's expense when they trade with each other.

It is however crucial to realise that Lonmin's legal relations with the vast majority of employees, with the BEE partner Incwala Resources and with the SA Revenue Services is situated on the level of SA subsidiaries, save for the fact that the head office company LMS with some 45-50 employees in August 2012 also was obliged to pay a 33% tax on profits (CIT) at the time (but no tax on dividends, which is the rule for *external companies*, branches of foreign companies in SA). As the financial statements of subsidiaries show, it is *their* profits that are taxed in SA. They have the mining licenses. It is from the SA subsidiaries that the BEE partner Incwala Resources is paid dividends, not from Lonmin Plc. It is by the Principal Group Companies in SA, mainly the two Lonmin subsidiaries WPL and EPL (Eastern Platinum Ltd), that workers are employed, not by Lonmin Plc in UK.

Any transfer of money from subsidiaries in SA to a member of the Group residing legally outside SA or even to another entity in SA, like LMS, thus has consequences for *this subsidiary's* capacity to pay wage increases, its SLP or dividends to a minority BEE partner.

For the alleged sales and marketing services, WMSL was paid commissions which appear under the Note "Related parties" in the subsidiaries' financial statements. At some point in time, the actual payments were shifted to LMS. LMS also received management fees from WPL and EPL at least back to 1999.[61] Almost all of the management fees (and sales commissions) are paid by WPL.[62]

This is consistent with the "Facts Agreed" document (see below) where WPL is the dominant subsidiary.

Detail from the "Facts Agreed" document filed at the Marikana Commission:

1.1. The agreement was signed on 30 January 2003.

1.2. In terms of the agreement

1.2.1. Lonmin Management Services (Pty) Ltd ("LMS" - the external company in respect of which Lonmin PLC is the holding company) provides management and other services to WPL;

1.2.2. WPL pays a monthly fee of 1.9% of turnover to LMS for these services;

1.2.3. The fee is payable on the 15th day of the following month;

1.2.4. The agreement does not contain any express hardship or unfairness clause.

1.3. Eastern Platinum Limited ("EPL") is not a party to the agreement.

1.4. As EPL's concentrate is sold through WPL, the WPL turnover includes the EPL turnover.

1.5. The 1.9% fee of LMS on WPL turnover therefore effectively includes 1.9% of the EPL turnover and LMS performs its management services for EPL as well as WPL.

1.6. WPL recovers from EPL its pro rata share of the LMS expense in terms of a services agreement between the two companies.

Print Screen 6: *Management service agreement between Lonmin Plc and WPL described in the "Facts Agreed" document (Marikana Commission, Detail of Exhibit SSSS5).*

61 As mentioned above: First as a subsidiary and then as an external company with the same name.

62 For some years EPL declares management fees paid to LMS, but they are many times smaller than what WPL pays in 2009 and 2008, EPL paid US$ 23 000 and 22 000 to LMS. WPL paid LMS US$42 074 000 and 20 313 000 respectively. In 2010 EPL paid US$65 000 in fees to LMS, which is less than R500 000. WPL paid US$ 30 123 000, or some R224mn (and more than 400 times more than EPL). (EPL, AFS 2009, Note 18 and EPL and WPL AFSs 2010; all data from CIPC archives.

As for the sales commission to WMSL that allegedly was shifted to LMS from FY2008 even if this isn't reflected in WPL's AFSs, the agreement is 2% of WPL's revenue.[63] EPL is not mentioned. It is from WPL the final PGM product is sold and "the WPL turnover includes the EPL turnover". For this reason, the sales commissions are levied on WPL's turnover only. For clarity and the following discussion we also copy in this part of the "Facts Agreed" document (Print Screen 7).

Detail from sales commission agreement between WPL and LMS

2.2. Prior to 1 April 2007, all of the products of WPL were marketed by WMSL in terms of an agreement which provided for WMSL to be paid a 2% commission on the turnover of WPL.

2.3. This arrangement was changed by Lonmin and now the products of WPL are marketed by LMS in terms of an agency agreement concluded by Lonmin, WPL, EPL and several other operating subsidiaries of Lonmin.

2.4. The agency agreement was signed on 12 June 2012, but has a commencement date of 1 October 2008 and governs the relationship between the parties with effect from that date.

2.5. In terms of the agency agreement, LMS is the exclusive agent of WPL in relation to

2.5.1. the sale of WPL products (which would include products derived from the concentrate WPL obtains from EPL),

2.5.2. the treatment or purchase of third party products by WPL, and

2.5.3. the treatment by third party refiners of any WPL products.

2.6. WPL pays LMS a monthly commission of 2% on turnover for the services provided by LMS under the agency agreement.

Print Screen 7: *Sales Commission agreement between Lonmin Plc and WPL described in the "Facts Agreed" document, page 1f (Marikana Commission).*

From 1999 to 2005, the sales commissions and the management fees were 2.0% and 1.9% share of WPL's revenue.[64] From 2006 occurs however an upward change of both rates by 0.3-0.4 percentage points. The following table can be constructed for the sales commissions.

63 Lonmin / Marikana Commission (Sept 2014) "FACTS AGREED", point 2.9.
64 Western Platinum Limited, 2000-2005 Financial Statements (CIPC archives).

Table 1: Sales commissions paid by WPL as share of its revenue and Lonmin Plc's revenue

WPL, FY	2006 ZAR & US$ mn	2007, US$ tn	2008 US$ tn	2009 US$ tn	2010 US$ tn	2011 US$ tn	2012 US$ tn
WPL Revenue (A)	R11,181 US$ 1686.43	1,736,323	1,959,327	968,657	1,325,683	1,664,912	1,379,675
Commissions (B)	R248 US$37.406	39,069	44,396	20,738,	31,566	39,607	25,350
B as share of A	2.29%	2.23%	2.26%	2.14%	2.38%	2.38%	1.84%
B as share of Lonmin Plc revenue	2.0%	2.0%	2.0%	1.95%	2.0%	2.0%	1.6%

Table 1: *The sales commissions paid by WPL: For FY2006 the exchange rate 6.63 is used, advised by Lonmin Plc's 2008 AR, page 115. The share's drop in 2012 is due to the "unfairness agreement" 30 August 2012-30 March 2013 (discussed below). Note that the sales commissions paid as reported in "Facts Agreed" were US$ 25,510,431; 39,902,873; 31,633,630; 20,761,891 "by WPL & EPL" starting from 2012 and back to 2009. (Source: Our calculations, CIPC archives for 2006-2010 and the Marikana Commission for FY 2011-2012).*

The reason for the drop in commissions in FY2012 was that a situation of "unfairness" had occurred explains the "Facts Agreed" document in its section 3: Lonmin Plc released their subsidiaries from the obligation to pay commissions and fees from 30 August 2012 to 30 March 2013. [65]

The fact that the commissions were higher than agreed was highlighted during cross examination on 29 September, 2014. When responding, Mr Seedat blatantly contradicted the "Facts Agreed" document and accounting principles. The anomaly is worth R161mn in topped up commissions and R157mn in fees 2007-2011 as displayed in Exhibit SSSS9 of the Marikana Commission and pointed out by Evidence Leader Chaskalson SC.[66] This is what the deviation from 2% to 2.3-2.4% of WPL's revenue cost WPL.

4.4 What is double accounting?

It is worthwhile to study closer the exchange between Chaskalson and Mr Seedat on this matter. It also gives a picture of how the time constrained cross examination on financial issues proceeded during the hearings.

> Mr Chaskalson SC: […] And you'll see that over the five years what was paid in sales commission was actually R161 million more than 2%. Are you able to explain that in any way?
>
> MR SEEDAT: I think so.
>
> MR CHASKALSON SC: Can you try?

65 Lonmin / Marikana Commission (Sept 2014) "FACTS AGREED", points 3.1-3.3.

66 Marikana Commission of Inquiry (Sept 2014), "WESTERN PLATINUM LIMITED SALES COMMISSION, MANAGEMENT FEE AND DIVIDEND PAYMENTS, 2006/7 TO 2010/11, Exhibit SSSS9.

> MR SEEDAT: The sales agreement covers the turnover of both WPL and EPL. The way the WPL turnover is shown here [Mr Seedat refers to Mr Chaskalson's table, exhibit SSSS9] excludes the EPL turnover. So if you add the EPL turnover then that will explain the commission difference and the reason why the difference is small, relatively speaking, is between EPL and WPL the sales is of ore, of concentrate and obviously that value is a lot lower than the finished product.[67]

Mr Seedat is wrong. The "Facts Agreed" explains in point 1.4 (Print Screen 6 above) that EPL's turnover is a part of WPL's turnover, the reason being that EPL sells its concentrate to WPL in an intercompany transaction. The exchange continues:

> MR CHASKALSON SC: So the figures for turnover that we see on WPL –
>
> MR SEEDAT: Exclude the EPL 2 – [possibly "2" should be "to" / our comment].
>
> MR CHASKALSON SC: Exclude, although the financials speak of amounts paid to EPL for concentrate and so you're saying that's not accounted in the WPL turnover figures?
>
> MR SEEDAT: No, that's what I'm told by the accountant, it's not because otherwise it would have been double accounting.

This is also incorrect. EPL's revenue is included in WPL's revenue, as the "Facts Agreed" document states. If EPL's revenue is again added separately to WPL's revenue then EPL's revenue has been accounted for twice. Such a procedure is called double accounting. EPL is neither a part of the commissions nor the fees agreement (Print Screen 6 and 7 above). What LMS charges WPL is based on the sales to external customers. EPL's sales to external customers were very small (Annex E).[68] Chaskalson SC was correct to exclude EPL from the table shown at the Commission to Seedat. He is adhering to the "Facts Agreed".

The exchange continues on why LMS had also been charging WPL more than the 1.9% of revenue agreed for management services. Mr Seedat again contradicts the statements in the "Facts Agreed" documents:

> MR CHASKALSON SC: Okay. Then the next set of rows [refers to Exhibit SSSS9] has WPL turnover 1.9% and the management fee payments over those five years and again there is a difference of approximately 157 million. Would that be for the same reason, are you suggesting?
>
> MR SEEDAT: Yes and another reason, because one of the clauses in the agency agreement is that WPL and EPL have to reimburse LMS for all taxes, duties, insurance premiums, cost of transport, sampling, assaying, stevedoring and warehousing and all other charges and expenses of a like nature properly and reasonably incurred by LMS in respect of sales, so it's that turnover difference as well as these charges that I've just mentioned, I would think would be included in that –
>
> MR CHASKALSON SC: Let's leave those difference columns for now and look at the cumulative figures. […]

67 Marikana Commission of Inquiry (29 Sept 2014), Real Time Transcriptions, pages 38456-38458 for this and the following quotes from the cross examination.

68 EPL, 2010 AFS, Note 26. Xstrata is a 24% shareholder in Lonmin Plc at the time and the sales are therefore reported under the Related Parties in the EPL AFS, but it is not a part of the Lonmin Group's value chain. There were US$6,026,000 in sales of chrome to Xstrata in the financial years 2009 and 2010

There is no clause about reimbursing LMS for various costs in the agreement, according to "Facts Agreed". The only documentation that relates to Mr Seedat s improvisation are the small R150 000 to R500 000 expenses per year, booked in EPL s AFS as paid to LMS and discussed in 3.3 above. They are more than hundred times smaller than the anomaly Mr Chaskalson SC points to. When cross examined an hour later by Lonmin's own advocate Mr Bham SC, Mr Seedat contradicts himself and says that the 2% commissions and 1.9% fees cover every expense and he has no problem with the logic of both "Facts Agreed" and CFO Simon Scott's Testimony (which we will examine below).[69] Furthermore, every year between 2006-2011 WPL's management fees to LMS are exactly 1.9% of *Lonmin Plc's* total revenue (Table 4 below). In its turn Lonmin Plc's revenue is either equal to or only a little higher than the sum of EPL's and WPL's revenue, depending on the year (Table 2 below). In the FY2009 and 2010, the sum of EPL's and WPL's revenues is equal to the total revenue reported by Lonmin Plc in rounded US$ million (Annex F). All EPL's revenue, not only the external sales, seems to have been added to WPL's revenue. This cannot be correct.

With small exceptions, EPL's whole revenue every year comes from the internal selling of concentrate to WPL. Those sales should be eliminated when accounting for what the Group sells to "the outside world". It appears however that EPL's revenue has been added to WPL's revenue. Table 2 indicates that this is the case.

Table 2: Lonmin Plc's, EPL's and WPL's revenues compared

Table 2: *For 2011 and 2012, WPL purchase of concentrate from EPL has been used as proxy for*

US$ million	2006	2007	2008	2009	2010	2011	2012
1. LONMIN Plc Revenue	**1 855**	**1 941**	**2 231**	**1 062**	**1 585**	**1 992**	**1 614**
2. WPL's Total revenue	1 686.425	1 736.323	1 959.327	968.657	1 325.683	1 664.912	1 379.675
3. EPL's Total revenue	*164.253*	201.016	271.490	93.437	259.372	*312.040*	*225.174*
Sum of WPL & EPL revenue (2 + 3)	**1 850.678**	**1 937.339**	**2 230.817**	**1 062.094**	**1 585.055**	***1 976.952***	***1 604.849***
Commissions' share of Lonmin Plc	2.02%	2.02%	1.99%	1.95%	1.99%	1.99%	1.57%
Commissions' share of WPL	2.22%	2.26%	2.27%	2.14%	2.38%	2.38%	1.84%
"SALES COMMISSION'	37.406	39.193	44.396	20.738	31.566	39.607	25.35

EPL 'Total revenue' (italics & underlined) 2006, 2011 and 2012. WPL's purchases from EPL are recorded as R60m less (US$9m) than EPL's sales to WPL FY 2006 (italics and underlined). WPL's purchases were chosen. The 'Lonmin Plc Revenue' in top row is the Group Revenue given in even US$ million in the public annual reports. Exchange rate 6.63 has been used for WPL and EPL year 2006 – the only year ZAR had to be converted to US$. Smaller sales from EPL to external customers (like Xstrata 2009 and 2010) are included in EPL's revenue 2007-2010, and should be included in Lonmin Plc's revenue as should any other smaller external sales by other subsidiaries (Sources: CIPC archive for EPL and WPL FY2006-2010 and Marikana Commission of Inquiry for WPL FY2012 and 2011. See also Annex F.

The CIPC archives show that the jump by 0.3 to 0.4 percentage points in sales commission occurs in 2006. Thereafter Lonmin Plc's revenue appears exaggerated. A control of Cost of Sales for 2007-2010 shows however that EPL and WPL's cost of sales *also* must have been added in the

69 Marikana Commission of Inquiry (29 Sept 2014), Real Times Transcriptions, page 38470 and 38472. The extremely limited time for cross examination on financial issues at the Commission made it possible for Mr Seedat to drive on both sides of the road.

consolidated income report.[70] This means that Lonmin Plc's reported gross profit (Revenue minus Cost of Sales) was not affected by the double accounting of EPL's revenue, even if the size of the Lonmin Plc turnover was.

The anomaly addressed during cross examination substantially affects the commissions and fees paid by WPL from 2006. At any rate, all resources shifted from the SA subsidiaries are an additional source of finance that must be taken into account when discussing the affordability of workers' wages and social investments (i.e. mining companies' SLP obligations).

Before examining what these revenue streams could have afforded, it is necessary to discuss the substance of the services that WPL was paying for.

4.5 The issue of 'substance'

4.5.1 "Lonmin's metal is sold directly by WPL"

On the issue of whether there have been sales of PGMs from Bermuda, Lonmin representatives gave a confused account. In the 23 September media release Lonmin commented on the closing of the Bermuda connection in August 2007 : "The move was based on cost concerns (having a company registered in Bermuda and operating out of London was expensive) and resulted in marketing personnel being based closer to Lonmin's operations". In essence they were admitting in a parenthesis that no one was selling Lonmin's PGM from Bermuda. In a written Question and Answer session with the Mail and Guardian, Lonmin stated that all sales were made from Western Platinum Ltd in South Africa: "Lonmin's metal is sold directly by Lonmin's operating subsidiary (WPL) direct to third parties at prices which are market prices" or "WPL negotiates prices with customers as all commercial entities do". The Mail & Guardian also quoted an email from Lonmin saying: "The fact is that all of Lonmin's metal is sold directly by Lonmin's operating subsidiary (WPL) direct to third parties."[71]

The Lonmin respondent does not appear to care that their answers are inconsistent. In other parts of the same document, it is also repeatedly stated that it was LMS that sold the produce of WPL, starting in 2008 and that was where the narrative stabilised in September.

WMSL's official address since 1 October 2003 has been the offices of the law firm Appleby Services in Bermuda "an offshore legal, fiduciary and administration service provider" with "offices in the key offshore locations of Bermuda, the British Virgin Island, the Cayman islands, Isle of Man, Jersey, Guernsey, Mauritius and Seychelles..."[72] (see also Annexure D).[73]

70 There is no line item Cost of Sales in the Lonmin Plc's Income Statements from 2011. There might have been a change in accounting standard for listed companies. We will not investigate that further here.

71 Lonmin Plc (10 Oct 2014), Questions and Answers, page 8, 12 and 4 respectively; URL: at URL: https://www.lonmin.com/downloads/QA_Allegations_of_Tax_Evasion_Lonmin_Plc_101014_FINAL_3.pdf

72 URL: http://en.wikipedia.org/wiki/Appleby_Spurling_Hunter (2014-09-11).

73 Search Report (8 August 2014), Register of Companies and Supreme Court on Bermuda (print out): Marikana Commission of Inquiry. First page of pdf copied in Annex D.

Registration No.: EC 12714
Date of Incorporation: 24-Feb-1987

REGISTER OF DIRECTORS AND OFFICERS
for
WESTERN METAL SALES LIMITED
as at 8 August 2014

Name	Address	Position
Robin Christian Bellhouse	4 Grosvenor Place London SW1X 7YL	Director President
Bothwell Anesu Nazarura	Lonmin Plc Farm Middlekraal Marikana North West South Africa 0284	Director Vice-President
Appleby Services (Bermuda) Ltd.	Canon's Court 22 Victoria Street Hamilton HM 12 Bermuda	Secretary

Print Screen 8: *WMSL in the Bermuda company register (Source: Marikana Commission).*

Lonmin's Mr Seedat referred to tax purposes under cross examination at the Commission on 16 September 2014 when he was asked why Lonmin Plc officially sold its metals from Bermuda: "Western Metal Sales, again it's not an unusual arrangement to have a marketing company which is generally located in a jurisdiction where the tax regime is much more favourable... many of the mining companies … have this arrangement".[74] This was retracted by Lonmin in the 10 October Q/A document as well as in the 23 September media statement. The Q/A document states:

> **The WMS structure and fee did not provide a tax benefit as there was a CFC [Controlled Foreign Company] relationship between Bermuda and the UK in terms of which Lonmin Plc was required to pay taxes in the UK on the dividends declared by WMS. In terms of the agreement WMS has to declare dividends in terms of a dividend distribution policy acceptable to the UK revenue authorities. Mr Seedat, whilst continuing with his evidence on 29 September, corrected this position and confirmed that the WMS structure and fee did not provide a tax benefit.**[75]

Mr Seedat was obviously instructed to confirm the implausible position that the Bermuda connection was not for tax planning purposes, when he appeared again on 29 September. In fact he did not, even if he spoke about taxation. [76]

As for the CFC relationship referred to by Lonmin in the quote above, it hasn't produced any tax income for the UK government. Lonmin Plc had not paid tax in the UK for the past 15 years. The UK has a double tax agreement ("DTA") with SA but not with Bermuda. A dividend paid by WMSL would have been taxed because of the UK's CFC legislation and left a plus taxation in UK, but Lonmin Plc's taxation in UK for all the years 2000-2013 was nil (marked with "-" in the annual reports). [77] A plausible conclusion is that WMSL never paid any dividends, possibly because of expenses balancing the incomes from the sales commissions, leaving no significant profit. There is no account for tax paid under the CFC rule in the annual reports of Lonmin Plc.

74 Marikana Commission of Inquiry (14 September), "Real Time Transcription", Day292-140916, page 38232.
75 Lonmin Plc (10 Oct 2014), Questions and Answers, page 7.
76 Marikana Commission of Inquiry (29 Sept 2014), "Real Time Transcription", Day 293.
77 Lonmin Plc, 2000-2013 Annual Reports and Accounts; Search for: "Double tax" to come to the right page.

A sole focus on tax planning when scrutinising such an arrangement is however misleading. The perspective must be wider. From the perspective of workers' wages and financing of the SLPs of Lonmin's SA subsidiaries, the amounts taken from the subsidiary are of direct importance. We cannot see how the Bermuda pie was divided between Appleby Services and others, because the AFS of WMSL is not publically available.[78] However it is clear that WPL and EPL workers saw nothing of it.

The alleged sales service performed from Bermuda (and later by LMS) can also be looked at from a bench marking perspective. Lonmin is the third largest platinum mining company in the world. Implats is the second largest. At Implats a group of 4-5 employees sells the PGMs from offices in South Africa.[79] By contrast, Lonmin in SA has paid R200-R300 million per year to a company in Bermuda and to LMS for the same service. This cannot be a cost effective solution for Lonmin's South African subsidiary WPL.

From Simon Scott's Marikana Commission testimony on 29 September, the following Table 3 on sales commissions paid and marketing costs incurred to LMS can be constructed, after taking payments to WMSL in FY2007 and 2008 into account.[80] The Table gives an idea of marketing costs at LMS in relation to commissions paid. The margin most of the years is exorbitant. The jump in 2009 is due to a contribution to the "Jewellery Council" according to Mr Seedat.[81] (CFO Scott's unorthodox way of accounting for LMS's total incomes is discussed below in relation to management fees.)

Table 3: CFO Scott's 29 Sept 2014 Testimony on LMS' marketing costs and commissions

R million	Commissions	LMS' "Marketing Costs"	SURPLUS
FY2007	276 (all to WMSL)	3	n.a.
FY2008	335 "half of it to WMSL"	26	142
FY2009	181	154	27
FY2010	232	20	212
FY2011	280	17	263
F012	204	19	185

The 2013 Lonmin Plc annual report, notes that the company also uses external marketing and management services. The section *A Deeper Look* has a line item "Management and Marketing Service" recorded for the years 2009-2013. WPL paid R1.742bn for the two internal services of marketing and management from 2009-2012, to Bermuda and to LMS (we go by the WPL's AFSs). But 1.029bn was also paid to external providers of such services during that period.[82] When asked about this by the *Mail & Guardian*, the reply in different versions is "Lonmin pays management and marketing fees to LMS only".[83] So we have to interpret and analyse.

Mr Seedat on the 29 September mentioned costs for "consultants" at LMS, but as we saw above he may have been improvising.[84] In Chapter 5 it is noted that 300-450 white collar contract workers have been reported every month to the DMR under the head line "Lonmin Business Services". They are not LMS staff.

78 Evidence Leader Chaskalson was allowed to look at the WMSL AFS's in beginning of September 2014, but not to copy them. The purpose was to see if WMSL had been dormant since FY2009, which it also appeared to be.
79 Telephone interview 11 July 2014 with former Chief Executive for Marketing at Impala Platinum, Derek Engelbrecht (retired 30 June 2014).
80 Which it was a mistake not to do in the much shorter 7 October 2014 preliminary report from AIDC.
81 Marikana Commission of Inquiry (Sep 2014), Real Time Transcriptions, page 38470.
82 Lonmin Plc, 2013 AR, page 174.
83 Lonmin Plc (10 Oct 2014), Questions and Answers, page 5.
84 Marikana Commission (16 Sept 2014), Real Time Transcriptions, page 38470.

Then there are Lonmin Plc's two big customers. Its 2012 AR reads: "We have long-term cornerstone customers in BASF and Mitsubishi. We deliver our metals directly to them and their underlying customers. Together with our customers we continuously analyse and review market trends to inform our investment decisions."[85] BASF and Mitsubishi stood for 78% of Lonmin sales 2012 (2011: 86%).[86]

In the merger notice lodged at the SA Competition Commission on the Southern Platinum acquisition in 2005 it states: "Note: All sales by Lonmin into Japan are made via Mitsubishi Motor Corporation".[87]

It is likely that Mitsubishi takes a commission for this sales service. The same may be the case for BASF, which sells PGMs on the London market that originate from Lonmin's mines and is one of four players that decide the spot price of platinum and palladium on the London market twice a day in the London Fix teleconference. Together with Goldman Sachs, HSBC Holdings Plc and South Africa's Standard Bank, BASF in November 2014 was implicated in a law suit. The companies were accused by Modern Settings LLC (USA) of unlawful price fixing from 2007.[88]

BASF sells PGMs in Europe and has cooperated with Lonmin Plc for many years. Commissions to BASF can be a part of the external costs for management and sales services accounted for in Lonmin Plc's 2013 Annual Report.

4.5.2 Commission as payment for "taking all risks"?

Under cross examination at the Marikana Commission Lonmin's Mohamed Seedat argued that the Bermudian "structure"[89] WMSL had been paid hundreds of millions of rand in commissions because it was taking all the risks. It was a prepared and lengthy answer to Lonmin's own advocate Mr Burger SC. It is perhaps for the Davis Tax Committee to investigate if arguments along such lines are accepted by the SA Revenue Services in disputes with mining companies about transfer pricing.

There is no discussion in annual reports or WPL's AFSs of any party paid for taking risks, whether significant or at all (even if it would have been appropriate to report the transactions with Lonmin Insurance Ltd on Bermuda under "Related Parties: Transactions", as we mentioned before). There is on the other hand the mandatory enumeration of different kinds of risks taken by WPL itself. This is how the transfer of risk reads in Lonmin Plc's 2012 and 2013 annual reports:

> **A sale is recognised when: the significant risks and rewards of ownership have passed to the buyer (this is generally when title and insurance risk have passed to the customer, and the goods have been delivered to a contractually agreed location); recovery of the consideration is probable; the associated costs and possible return of goods can be estimated reliably; there is no continuing management involvement with the goods, and the amount of revenue can be measured reliably. In certain circumstances, for example sometimes in the sale of part-processed material, metal prices at the point of sale may be provisional. The impact of changes in metal prices to the point of settlement are [sic] reflected through revenue and receivables. All third party metal sales are recognised as revenue[90]**

85 Lonmin Plc, 2012 AR, page 44.
86 Ibid., page 120.
87 Competition Commission South Africa (2005-04-01), Merger Notice, page 26 in the bundle on Southern Platinum and AfriOre merger delivered to the Marikana Commission. The whole passage on the five most important customers has been censored by the SACC, but this sentence remained.
88 Jonathan Stempel (2014-11-25) "Goldman, BASF, HSBC accused of metals price fixing - U.S. lawsuit", Reuters, available at URL: http://uk.reuters.com/article/2014/11/25/uk-platinum-palladium-lawsuit-idUKKCN0J92J420141125 (2015-03-10).
89 This is Mr Seedat's expression during the 14 September interrogation at the Marikana Commission.
90 Lonmin Plc, 2013 AR, page 112 and 2012 AR, page 110.

Transfers of risk are connected to a sale being concluded or almost concluded, to an external customer. There is no mention in Lonmin documents of any other transfer of risk other than through a sale.

According to Seedat, however, it is instead works like this: "[A]s soon as they leave the boundary of the refinery, it becomes owned by this marketing company and all risks then pass on to this marketing company…"

The notion of a "pass on the metal" to WMSL on Bermuda in a fictional transaction avoids the crucial issue of real activity, of substance. Mr Seedat did not argue that WMSL had been doing a job of marketing and selling.

> **Western Metal Sales, again it's not an unusual arrangement to have a marketing company which is generally located in a jurisdiction where the tax regime is much more favourable... many of the mining companies … have this arrangement… And what happens is that the moment the metal, in this case the platinum and platinum group metals are produced, as soon as they leave the boundary of the refinery … it becomes owned by this marketing company [sic] and all risks then pass on to this marketing company and what kind of risks? Well, there's logistical risks. You could lose product in transfer, the price could significantly drop from the day you pass the metal on to the marketing company to the day it sells it. The counter-party risk in terms of the customers and payment are risks that are taken on by this marketing company and the costs of bearing these risks translate into a charge that the marketing company charges for the metal itself and I've seen these charges range from, in Lonmin's case while it had this arrangement, around 2% to cases where it could be as high as 7, 8%, depending on the risk. All of these arrangements are subject to scrutiny by our auditors, subject to scrutiny by SARS both – I'm talking about the marketing arrangement as well as the LMS entity and throughout the period there have not been any concerns raised by SARS with these arrangements.**[91]

Has SARS historically been accepting such a line of defence in contrast to showing that there is any substance in the marketing and sales service a SA subsidiary is paying for?

In the 2009 WPL "Statement of Changes in Equity", there is for example Balances per 1 October 2007 and 1 October 2008. The item "Derivative Instruments Movement" takes up a plus item of more than US$12 million 2007 and a minus item of more than US$19 million 2008.[92] Being the owner of the metals on its way to the final customer, WPL is guarding the revenue against risks, just as would be expected.[93] By so doing, WPL also takes the "alternate risk" of forfeiting revenue in excess of the locked-in price, should the price and/or exchange rate movements develop positively from WPL's point of view, but which the company in that case cannot benefit from.

The argument that a marketing company, whether it is WMSL or LMS, is charging WPL for "taking over all risks" without taking over ownership does not fit with the figures and texts in any financial statement. It might have a traditional importance in disputes with SARS, but has no practical basis and cannot be defended theoretically. Even if there is real substance in the sales services, a 2% commission on total revenue will of course never take more than 2% of the risk that the price drops or of an unfavourable change in the ZAR/US$ exchange rate or that a whole cargo is lost. The rest of the risk is born by the owner of the product.

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91 Cross examination of Mr M I Seedat: The quote is from Marikana Commission of Inquiry (14 September), "Real Time Transcription"; pdf named: "day292-140916, page 38232f.

92 WPL, 2009 AFS (CIPC archives).

93 Lonmin Plc, 2007, 2008 and 2009 ARs, page 52, 74 and 101, contain for example a standard statement on the matter of guarding against exchange rates and price movements.

4.5.3 Transfer pricing and margins of acceptance

For the period 1999-2005, the sales commission to WMSL is strictly 2% of the total revenue of WPL. From 2006 the commission starts to increase, as shown above.

If this was a commission paid to an external service provider, one would expect the sales commission to be some 1.5% for the FY 2001-2004, because WMSL couldn't take the credit for all WPL's sales: Sales commissions were also being paid to Implats these years in proportion to its 27% ownership of EPL and WPL. In 2002, 2003 and 2004 the Implats commission is 1.7-2.2 % of 27% of Lonmin Plc's total revenue.[94] Impala Platinum sold its shares in WPL and EPL in September 2004, in an operation that brought in Incwala Resources as a BEE partner and 18% shareholder.[95]

Impala was paid a sizeable commission for selling Lonmin's metals, but WMSL's commission stays put at the same rate, namely at a 2% of WPL's total revenue, indicating that the character of the latter is a routine transfer, not an agreement between two independent business parties.

The same is the case for the waiver of demand for commission and fees that took place in August 2012 because they were "unfair" at that time. This led Mr Chaskalson SC to ask Lonmin's Mr Seedat if not Lonmin Plc/LMS also could have waivered R665mn of transfers to LMS during five years up to 2012, when R2.5bn was shifted from WPL, in order to meet the legal obligation to build 5500 mine worker houses instead of three (3).[96]

The underlying issue is the "arm's length agreement" concept. Are the rules that regulate the transfers and the size of commissions and fees "market related"? As for the size, Lonmin's answers to Mail and Guardian: "Lonmin has done transfer pricing studies that confirm that our fee margin is at the bottom range of the margin interval." We saw M r Seedat above saying: "I've seen these charges range from (…) around 2% to cases where it could be as high as 7, 8%, depending on the risk."

A subsidiary of a multinational enterprise (MNE) doesn't choose between competing marketing companies. There is no market for internal transfer pricing constructions and "structures" in tax havens or with head office companies, (other than that law and accounting firms compete in how to set up and monitor the best arrangements). These are inter-company agreements decided by the majority shareholder outside of markets for management or marketing services, but inside of traditions. There is certainly a factor of path dependency and praxis involved: what you historically have been allowed to get away with, even if there is little or no real substance in the service provided, in relation to tax authorities and in relation to minority shareholders who might revolt against too heavy invoicing of the mine where they are junior partners, but which for some reason hasn't occurred at Lonmin, as we discussed before.[97]

The contingency of inter-company agreements is further illustrated by the relation between LMS and Lonmin Plc, which have been involved in transactions as two parties inside and outside SA although they are "legally indivisible".[98] From a resource transfer point of view, they have been divisible.

Two tables in the Testimony by Lonmin's CFO Mr Simon Scott show this. His Testimony gives an unorthodox account for LMS' incomes and costs. First, in the table at the top of a page Mr Scott

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94 Lonmin Plc, 2004 AR, page 59 and 2003 AR, page 56: 2004: Revenue US$1030mn and US$5mn in commissions; 2003: US$ 779 and US3.5mn; 2002: US$ 697mn and US$2.6. This might also be a 2% agreement as the numbers are rounded to closest hundred thousands of US$.

95 Lonmin Plc, AR 2004, page 59.

96 Marikana Commission of Inquiry (29 Sept 2014), Real Time Transcription, pages 38458ff. R665mn was Lonmin's official housing budget that never became implemented.

97 AIDC (16 April 2015), "Transfer pricing and the erosion of tax, wage and local investment base in South Africa", Submission to the Davis Tax Committee; available at URL: www.aidc.org.za .

98 Lonmin Plc, AR 2013, page 65

deducts a 'management fee' paid to Lonmin Plc 2007-2010 before he calls LMS' total income for "Total income" (Print Screen 9 below). The reduced "total income" is then the starting point for calculating LMS' operating profit in the lower table. Second, in the lower table the management fee to LMS is not added as a part of LMS' costs.

The profit to be taxed in SA is not affected by these two moves alone, because both the total incomes and the operational costs 2007-2010 have been cut by the R429mn (something that has been made invisible in LMS's AFS, as only the lower table is representing LMS's accounts). Under what circumstances "the fee paid to Lonmin Plc is for services that it renders to LMS and for which it in turns incurs costs"[99] could have tax consequences in SA is discussed in the AIDC's submission to the Davis Tax Commission.[100] Simon Scott adds in another note that "LMS is subject to taxation in South Africa, and Lonmin Plc to taxation in the United Kingdom". We mentioned above that there haven't been any practical consequences from the latter fact.

ANNEXURE C:

Sales commissions and management fees paid to Lonmin Management Services (LMS) by WPL and EPL

Financial Year	Management Fees received from related parties (R)	Commission received (R)	Management fees paid to PLC (R)	Sundry income/Other (R)	TOTAL INCOME (R)
FY2007	265 962 904	-	-88 046 150	70 267 733	**248 184 488**
FY2008	317 752 192	167 324 627	-98 117 583	5 273 454	**392 232 690**
FY2009	172 274 237	181 394 668	-134 578 958	6 346 934	**225 436 880**
FY2010	220 935 796	232 008 266	-108 620 197	164 194	**344 488 059**
FY2011	265 276 496	279 819 598		1 693 505	**546 789 600**
FY2012	193 924 326	203 790 933		2 016 462	**399 731 721**
	1 436 125 951	1 064 338 093	-429 362 888	85 762 282	**2 156 863 438**

Operating profit in LMS's accounts was calculated as follows:

Financial year	Income (R)	Operating expenses (R)	Operating Profit (Per LMS AFS) (R)	
FY2007	248 184 488	114 388 211	**133 796 277**	
FY2008	392 232 690	241 393 009	**150 839 681**	
FY2009	225 436 880	264 744 688	**-39 307 808**	
FY2010	344 488 059	124 562 714	**219 925 345**	
FY2011	546 789 600	226 164 485	**320 625 116**	
FY2012	399 731 721	222 581 956	**177 149 765**	*AFS not yet finalised/signed*

Print Screen 9: ***CFO Simon Scott's unorthodox accounting for LMS' Incomes and costs.***

Save for FY2009 (when there was a R130-R140mn contribution to a "Jewellery Council" we saw Mr Seedat saying before), LMS' profit rates are extreme, up to over 60%, creating the inter-company accounting illusion that the staff of LMS are the most profitable staff of the whole Group.

The share of LMS's income paid as management fees to UK 2007-2010 differ from year to year (Table 4). They are completely out of bounds of rates mentioned by Mr Seedat and appear among

99 Quoted from a note CFO Simon Scott adds to the tables in Print Screen 9.
100 AIDC (16 April 2015), "Transfer pricing"….

other things have serviced the purpose of paying average salaries of about R1.5 million per year to some 40 individuals in UK.[101]

The 45-50 management and administrative staff of LMS are neither a part of 10-12 Directors nor of the about 15 'purview managers' in salary category "F", which we will study further in Chapter 5 of this report. We add the staff of LMS to the income elite of Lonmin. In total it comprises of some 75-80 individuals, or about 0.2% of the total workforce (including 8000 contractors).

Table 4. The management fees paid by LMS (SA) to Lonmin Plc (UK)

LMS	True INCOME	Fees to PLC	Fees/Income
FY2007	**R 336 230 637**	R 88 046 150	26,2%
FY2008	**R 490 350 273**	R 98 117 583	20,0%
FY2009	**R 360 015 839**	R 134 578 958	37,4%
FY2010	**R 453 108 256**	R 108 620 197	24,0%
FY2011	**R 546 789 599**	R -	0,0%
FY2012	**R 399 731 721**	R -	0,0%

Table 4: *Save for FY2007, where the 'sundry income' was very high, fees share of income has been calculated on the commissions and fees only. We have of course not deducted any fees to Lonmin Plc in the left column (Source: Calculated from Print Screen 9 above). Transfer of resources from local subsidiaries shifts away resources from local needs and wages to serve other purposes. In the real economy, these other purposes are about consumption.* [102]

That the fees paid to the UK were waivered from 2011 could be related to the move of staff from the UK to SA in 2010/11. We will examine the high labour costs and other costs at LMS further below. Let us first study the consequences of "the Bermuda connection"

4.6 Economic consequences of profit shifting

The effect on African state budgets from multinational corporations evading and avoiding taxes on profits is widely debated, but transactions of the type we are discussing here does not only reduce taxation expenses. *The amounts removed from the wage bargaining table in South Africa by evading taxation are in fact much larger than the amounts that potentially could be paid to SA Revenue Service.*

We can also call the practice "dividend avoidance" in relation to investors holding shares in the subsidiaries.

This relation between taxes and wages is represented in Table 5 below as a 28% and 72% share of the transfer money. The corporate income tax in SA has been 28% since 2008/9, but mining companies get a special tax treatment, in that all investments are immediately deductible from the profit.[103] As wages are costs (from a company point of view) that reduce the taxable profit just like

101 It would clearly have been in order to include the internal agreement between Lonmin Plc and LMS in the "Facts Agreed" documents to the Marikana Commission, if such an agreement exist or can legally exist between two "legally indivisible" parties.

102 Adam Smith (1776), Wealth of Nations, Book 8 Chapter 4: "Consumption is the sole end and purpose of all production."

103 The corporate income tax rate was 35% in 1994/95, 30% in 1999/00, 29% in 2005/06 and 28% in 2008/09.

commissions or fees, the choice of 28% is only a marker. In our contra factual example we could have used a higher share for wages, but we chose to use 72% of the sales commissions which we "redirect" from to Bermuda to RDO wages reserving the rest for SLP investments.

From a minority shareholder's perspective, sales commissions to Bermuda add to the losses in 2009 and 2012 and reduce the profits for all other profitable years in these SA subsidiaries. If the company receiving them is part of Lonmin's consolidated Group Accounts, then the commissions do not affect the results of the Group. If the company receiving them is not a part of the Group Accounts, the commissions will affect the results of the Group Accounts as a cost, as if the commissions are paid to an outside party.

As for distribution of value added on company level, one can imagine many alternatives. Any share of the transfer to Bermuda that was not spent on wages or costs in SA could have been declared "retained profit" and reinvested and the rest handed out as dividends.

TABLE 5: Contra-factual reallocation of Bermuda transfer

	FY2008	FY2009	FY2010	FY2011	FY2012	Average
Bermuda Commissions US$	44 425 403	20 761 891	31 633 630	39 902 873	25 510 431	*32 446 846*
Bermuda Commissions ZAR	**R 334 822 650**	**R 181 394 668**	**R 232 008 266**	**R 279 819 598**	**R 203 790 933**	***R 246 367 223***
ZAR/US$ X-rate used here	R 7.54	R 8.74	R 7.33	R 7.01	R 7.99	
X-rate in annual reports	**7.45**	**9.00**	**7.45**	**6.95**	**8.05**	
28% "Tax" on Commissions	R 93 750 342	R 50 790 507	R 64 962 314	R 78 349 487	R 57 061 461	*R 68 982 822*
72% remaining for wages	R 241 072 308	R 130 604 161	R 167 045 952	R 201 470 111	R 146 729 472	*R 177 384 401*
Estimated No of RDOs	3045	3088	3551	4186	4202	*4200*
Add average wage per RDO	**R 6 597**	**R 3 525**	**R 3 920**	**R 4 011**	**R 2 910**	***R 3 520***
Estimated No of A & B empl.	17203	17446	20062	23650	23740	*23729*
Adding per A&B empl.	**R 1 622**	**R 866**	**R 964**	**R 986**	**R 715**	**R 865**

Commissions paid in US$ and ZAR according to "Facts Agreed". *The rest of the numbers are derived from own calculations. We noted in Table 1 that the commissions between 2009 and 2012 in the "Facts agreed" document are slightly higher than in the WPL AFSs. There might be small commissions paid by EPL to WMSL, even if not spelled out in the EPL financial statements.*

Number of employees *in category A and B ("unskilled" and "semi-skilled" in the Paterson grading system), according to EEA4 forms 2006-2013, A, B and C employees constitute 97.5% of total work force for 2002-2005, which also is the 2006-2013 average. A & B employees constitute 90% of the A, B and C workforce. The number of workers in the three rock drill professions was estimated at 4200 in a 27 June 2012 Lonmin Memorandum. The 4200 number is used, which comprises a 17.7% RDO share of A and B employees in 2011 and 2012. We assume this share for all years.*

The 28% *subtracted from the "commission" transfer simulates additional financial capacity for social infrastructure spending of R68mn per year for 2008-2012 (or US$9mn). Lonmin average SLP spending 2003-2012 was US$6.7mn per year according to the Sustainable Development Reports.* ***The 28% deduction from the transfer is here arbitrary.*** *If we redirect the flows to another cost, like wages, the transfer will not be taxed as a profit: it is a cost that decreases the taxable profit, just as do "commissions" or "fees". We can use the whole transfer for wages in this exercise or, alternatively, for the building of houses. If it is used for paying dividends, this is another matter.*

The remaining 72% *is used to make a contra factual and additional average wage level increase, across the board to the RDO professions or to all A and B category employees. The Marikana Commission's terms of reference for Phase 2 limited the query to RDOs. Estimated number of RDOs in 2012 is the number given by Lonmin's Mike da Costa in June 2012, and not the average of previous years. "R3520" follows from that.*

The ZAR/USD average exchange rates Oct-Sept for incomes and costs *are published in Lonmin Plc's income statements. The exchange rates used in the "Lonmin Agreed Facts" are a little different and both are displayed in the table. It is not a crucial argument, even if the exchange rate used in "Lonmin Agreed Facts" are different for Fees and Commissions and FY 2010 deviates quite a lot from the annual reports. We use the less advantageous exchange rates for our conclusion on "affordability".*

Sources: Lonmin Group's EEA4 forms 2006-2013 and the document "Lonmin Agreed Facts" lodged 4 September at the Marikana Commission.

4.6.1 Lonmin's financial capacity for higher wages and social spending

A contra factual narrative answers the question "What if?"

If the Lonmin Group in South Africa had not paid US$162 million (amounting to the equivalent of more than R1.2 billion) between 2008-2012 in "commissions" to a Lonmin Plc subsidiary on Bermuda, the total remuneration of rock drill workers (TCTC), could at least have been about R3 500 higher during the 2012 financial year. It would have been over R4 000 higher if we even out the reallocated resource over the 2006-2012 period as an average, using the first exorbitantly fat years when ensuring against the more meagre years in the future, along the lines suggested by Bowman and Isaacs in their critique of Lonmin's historic dividend payments that were way above the JSE average[104] (which CFO Mr Simon Scott defended in his testimony to the Commission as being below the average of Lonmin's platinum peers).

The 28% tax rate in this example is arbitrary, simply inspired by the present tax rate on profits. For the sake of discussion, 10% of the redirected commissions can for example be contra factually added to social labour plans and 90% used for an increase on the average RDO wage.

One important assumption behind Table 5 is that rock drillers comprise 17.7% of the established (permanent) A and B category work force. This fits with the report of Mike da Costa, that there were 4 200 rock drillers employed in three different roles at that time. We mentioned in Part 3 of the report that a report to DOL in seemed to place less than 3000 workers in RDO roles on 30 September 2011. Should we use that number instead, the contra factual allocation of the Bermuda money of course increases wages much more.

The number of employees was 4 495 at Lonmin in the whole B1 category to which level the RDO workers were upgraded from category A4 on 1 October 2012.[105]

The earnings of a contracted blue collar workers at Lonmin's Marikana operations were a little less than 55% of the average earnings of an established (permanent) Lonmin worker.[106] About 30% of the workforce in platinum mining is contracted.[107] At Lonmin it was some 5 percentage points lower.

104 Bowman A. & Isaacs G. (May 2014), "Demanding the Impossible".
105 Amcu (2014) power point presentation "Platinum employee stats" with employment numbers for the different grades, built on company statistics given to AMCU negotiators in January 2014, and photographed wage tables, named "Lonmin CAT 4-9".
106 Department of Mineral Resources (4 April 2014), "Lonmin 2013" and "Lonmin 1999 2012", Excel documents with data reported by Lonmin to DMR.
107 Department of Mineral Resources: regularly published statistics called "Public Labour", available on request.

A table sourced from Amcu (Annex H) shows that the C category workers ("skilled") have much higher basic wages at Lonmin than at Amplats and Implats.[108] In Table 5 they have been excluded from the contra factual raise in wage level. The average *addition* to the A and B category remuneration level in 2012 becomes an additional R865 per month to all. Contract workers are in principle excluded although they may comprise the difference between Da Costa's figure and the account made to DOL per 30 September 2011 mentioned in Chapter 3.

4.7 The expensive services of Lonmin Management Services

Under the head line "Legal form of the company", the 2013 Annual Report from Lonmin Plc informs:

> Lonmin Plc is a company incorporated in England & Wales, with company number 103002. It conducts very limited business activities on its own account, and trades principally through its subsidiary undertakings in various jurisdictions. The material subsidiary undertakings are listed in note 32 to the accounts on page 146.[109]

There follows information about Lonmin Management Services (LMS):

> A branch of Lonmin Plc operates in South Africa, trading as Lonmin Management Services or 'LMS' and which is registered in that country as an external company with company number 1969/00015/10 [it should read 1969/000015/10 – df] The branch and the English company are legally indivisible.

This is the first time LMS is mentioned by name in Lonmin Plc's annual reports from 1998-2013.

In the organograms presented in the 2005 merger notice concerning Southern Platinum, LMS is reported to be "under liquidation".[110] This is a subsidiary with the same name that was closed 2005.[111]

Payments to LMS of more than 2.1% of WPL's revenue are recorded for all years since 2006 (Table 6). We have already discussed why the share didn't stay at 1.9% as internally agreed. The explanatory text reads: "Fees for managerial, technical, administrative and secretariat services paid to Lonmin Management Services".

These fees more than halve between 2008 and 2009 at the beginning of the global financial crisis: from US$42 million to US$20 million, just as is the case with the payments to Bermuda.

WPL Financial Years	2007 US$ tn	2008 US$ tn	2009 US$ tn	2010 US$ tn	2011 US$ tn	2012 US$ tn
A. PGM Sales	1,736,323	US$1,959,327	US$968,657	US$1,325,683	1,664,912	1,379,675
B. "Managerial fees" to LMS	37,558	US$42,074	US$20,313	US$30,123	37,569	24,187
B as share of A	2.15%	2.15%	2.1%	2.3%	2.26%	1.75%
B as share of Lonmin PLC's revenue	1.9%	1.9%	1.9%	1.9%	1.9%	1.5%

Table 6: *Management fees paid to LMS as share of WPL's PGM sales and as share of Lonmin Plc's total revenue. Compare with Table 1 above. FY 2012 the fees are lower due to the unfairness agreement* (Source: *WPL's Annual Financial Statements 2008-2010 (CIPC archives) and 2012 (Marikana Commission).*

108 This is why the settlement in June 2014 stipulated increases for A and B categories were R1000 for three consecutive years at Lonmin (and not R950 for the 3rd year as at the other two companies), balanced by not as high percentage increases for C as at Amplats and Implats.

109 Lonmin, 2013 AR, page 65.

110 Competition Commission South Africa (2005-04-01), page 34.

111 Something that we realised late because of the missing zero in the company number published 2013.

Lonmin's expenditure for "social capital", aimed at uplifting the residential areas of 85 000 people in the "Greater Lonmin Community", averaged US$6.7 million 2003-2012 according to Lonmin's Sustainable Development Reports.[112] Could lower management fees paid to LMS by WPL have raised this amount significantly to provide decent services, just as we discussed above for the Bermuda money? What would be a reasonable cost for the provision of LMS' management services taking into account that over 1 200 white collar workers, established and contracted, are employed in the Lonmin Group in SA.[113]

We have followed the 1.9% fee back to 1999, when LMS was not mentioned in Lonmin Plc's annual reports, the head office had its staff in the UK and the shift at the end of 2010 had not taken place.[114] From 2010, Lonmin starts to report the number of LMS staff deployed in SA from UK, and also their TCTC as the part of head office called LMS.

In Table 7 below, the TCTC labour costs for LMS in SA are used. They are reported in overly rounded numbers in the annual reports of Lonmin Plc's (Company Accounts). In public administration, labour costs are generally estimated to be 80% of total costs. Similarly, management is a very labour intensive activity. Therefore we have added 25% to the TCTC labour costs in Table 7. The difference between this and the actual fees we regard as Lonmin simply shifting surplus out from the SA subsidiary WPL to the head office.

The average total cost to company (TCTC) at LMS is very high. In this contra factual exercise we have however not decreased these salaries as a means of paying for additional wage increases to RDOs. We have just used what appears to be a huge mark-up added to the high labour costs (TCTC) and the estimated over heads.

Table 7: Comparing estimated cost price for LMS services with actual fees.

LMS FY	Employ-ees in SA.	LMS lab--our costs, US$ mn	Average TCTC per employee in ZAR (rounded)	Sum of LMS employee TCTC costs in ZARmn	Adding 25% to the sum of LMS TCTC labour costs.	Actual operating expenses (excl. fees to UK in 2010) according to Simon Scott	Management Fees paid to LMS by WPL	Estimated net transfer from WPL (SA) to LMS.
2010	12	3	R1,862,500	R22.350	R27,937,500	R124,562,714,	R220,935,796	-R192 mn
2011*	45*	9	R1,544,500	R69.500	R86,875,000	R226,164,485	R265,276,496	-R178 mn
2012	51	10	R1,420,600	R72.450	R90,562,500	R222,581,956	R193,924,326	-R103.5
2013	46	9	R2,008,700	R92.400	R115,500,000	No data	R135,504,600	N.A.

Table 7: *TCTC is estimated from the rounded sums of reported Wages & Salaries, Social costs and pensions. The 2012 Company Accounts "Other information: Employees" contradicts the 2011 Company Accounts, which state that LMS only had 10 employees in 2011 and 20 at the Head Office in total. For 2013, the WPL AFS has been used: stating management fees of US$14,665,000, which we have converted to ZAR at the 9.24 ZAR/US$ rate. (Sources: "Facts Agreed" document, WPL AFS 213 lodged at CIPC and Lonmin Plc's Annual Reports 2010-2013).*

112 Bench Marks Foundation (Oct 2013), Policy Gap 7, p. 13.
113 Department of Mineral Resources (DMR), Lonmin specific labour data from the Public Labour work
114 Lonmin Plc, 2011 AR, page 32 and 73 describe the move of "the operational head office" in the first quarter (of the 2011 financial year, we must assume) and the move of the finance function.

Table 8:

LMS FY	2010	2011	2012	AVERAGES
From Table 8	**192 000 000**	**R178 000 000**	**R103 500 000**	R157 800 000
Added to RDO wages	**R 4 506**	**R 3 544**	**R 2 053**	**R3 367**

Table 8: *Adding average increase of RDO monthly wage from LMS what is deemed in Table 7 as exaggerated charged for other costs than labour costs. Number of RDOs according to Table 5*

This is a contra factual play with numbers. Alternatively, we could just look at LMS's operating profits, which are huge even after adding operating expenses of 200-500% to the estimated labour costs; expenses about which we know nothing (Print Screen 9 and column 5 in Table 7). In Table 7 we have only accepted to add 25% in other expenses than labour costs. If we however add the resources we claim are shown in the far right column in Table 8 above, to the increases in the monthly averages shown in the last two "Bermuda" columns in Table 5, the monthly amounts by which the average pay has been increased for the 4 200 Rock Drill Operators or to all A&B workers close to doubles in Table 5.

The average addition to the RDO wage per month will be roughly R6 900 for these three years.

The years 2010-2012 are not the years of the platinum boom, but years of down turn. The 2012 financial year lowers the three year monthly average by R1000 per month. One reason is the strikes, starting in June. A big strike also disturbed production in 2011 (Chapter 3). For 2010 and 2011 the monthly possible average addition to the RDO wage in this exercise instead adds up to R8000.

2010-2012, WPL also had R301.4 million in "share based payment expense". This is remuneration of top and (possibly) middle managers and directors in addition to their salaries, undeclared to how many. It is based on the share price and paid if certain conditions are fulfilled, like the manager staying in the company for a period for at least three years. During the period, WPL had four such schemes. Three of them were paying out shares to employees and one scheme, called "Stay and prosper", was paying cash. These expenses affect profits and crowd out alternative expenses, just like other company costs (except for FY2009 in this case). They are specified under a Note to the line item "Cash generated from operations", which is first item in the "Cash Flow Statement". Without going further into explanations on how this complicated remuneration works, WPL's share based payments expenses 2006-2012 sum up to R494 million.

Table 8.1 Share based payment expenses for managers and directors at WPL 2006-2012

FY2006	FY2007	FY2008	FY2009	FY2010	FY2011	FY2012
R32mn	R72.5mn	89.4mn	-0.9mn	R102.5mn	R98mn	R100.9mn

Sources: *WPL's financial statements filed at CIPC and the Marikana Commission of Inquiry.*

The share based payments expenses didn't become a part of the Marikana Commission's discussions and cross examination on "affordability". The cross examination focused on the sales commissions and fees to Bermuda and LMS, and on the payments of dividends.

To the critical analysis of the Bermudian sales commissions and the management fees paid to LMS, we add this third element of expenses that Lonmin chose to "afford" instead of affording higher worker wages and implementation of the housing program. For example: If this money 2010-2012 had been redirected from the already very high or exorbitant salaries of directors and managers, the

RDO wages could have been R2000 higher per month in 2012. Also the "knock-on effects", of the "R6900" drastically higher RDO wage level where we landed in the analysis above, now appears as possible to finance.

We would posit, that if the RDOs had substantially higher wages compared to the levels that have triggered strikes since 2011, and if the SLPs had been implemented, and not abandoned (as was the case when Lonmin ignored its obligations to build 5 500 houses), there would not have been any strike in August 2012 and hence no extraordinary demands to cover wage expenses in 2011 and 2012. In this contra factual account these years would therefore have been quantitatively and qualitatively different.

4.8 The affordability of the RDO demand for R12500: Conclusion

WPL paid over US$330 million in "sales commissions" between 2002 and 2012. This is equivalent to R2.455 billion at the average exchange rates for these 11 financial years.

Pension benefits of 14.8% and medical benefits of 10.4% of the basic wage is added to the total cost to company (TCTC) in a basic wage increase.[115] Payments for overtime also increase when calculated on a higher basic wage. There is a large difference in costs between a basic wage increase and an increase in an allowance. The allowance has no "knock-on effects".

The Lonmin RDO demand in June 2012 must be interpreted as a demand for R12 500 after tax and before bonuses. This could have been achieved in August 2012 if one profit shifting arrangements was collapsed (Bermuda) and the other (LMS) drastically reformed. A reallocation of the Bermuda payments alone would have created a potential additional resource in 2012 of about R3 500 TCTC per rock driller operator on the average 2010-2012.

Lonmin's permanently employed RDOs earned a R5 405 basic wage in 2012, a R450 holiday allowance and a R1 850 Living Out Allowance (LOA) if they were not staying in mine hostels.[116] Their cash remuneration was R7 705 in July 2012, according to a Lonmin memorandum.[117] To this can be added about R500 in bonuses that were not guaranteed, according to that memorandum (Chapter 3).[118]

Reallocating 72% of the flow to Bermuda could have added R3 500 more to the average pay of 4 200 RDOs in June 2012. Added to their remuneration of R7 700 this amounts to about R11 200.

To achieve R12 500 net, about R15 000 in cash payments before tax had been needed, i.e. another R3 800 must be added.[119] 30% in "knock-on effects" must however also be added to a conventional basic wage increase.[120] In this exercise the necessary increase would be R7 300. The additional cost for this is R2 190. Therefore the total cost for the increase is in fact R9 490 when knock-on effects are included.

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115 This is based on the pdf "Lonmin-offer-in-real-money-" published on the platinum company's website during the 2014 platinum strike (pdf in possession of the author). Lonmin's pension and medical aid benefits were a little less than Amplats and Implats.

116 In 2012 there was 49 mining hostels left to "convert" with about 70-80 beds in each hostel, i.e. there were about 3 500-3 900 workers who did not receive the LOA. See: Bench Marks Foundation (2013), "Coping with Unsustainability".

117 Lonmin (27 July 2012), "Drilling Market Allowance", Memorandum 27 July 2012 by A. Kgotle (see Part 2). This internal document says that the LOA is R1850. The 2012-11-29 response from Lonmin to Bench Marks Foundations' Policy Gap 6 (URL: www.lonmin.com) report states that the LOA is R1800.

118 Mike da Costa (27 Jun 2012), Memorandum, quoted in Part 2.

119 SARS and the National Treasury, Tax Statistics 2013, page 31. The tax rate was 18% between R59750 and R150000 in 2012 financial year. The sum above R150 000 was taxed at a 25% rate. Calculations can be made keeping in mind that medical aid payments are tax deductible. It is however meaningless to be exact in contra factual accounts and illustrative arguments made in principle.

120 We added 14.8% in pension costs, 10.4% in medical aid, and put the remaining 5 percentage points on the overtime account, following Amcu's demand during the 2014 negotiations that overtime must be cut. A 50% addition was argued on the employer side during the negotiations in 2014 because of increased overtime costs. Implats' Johan Theron claims this should be "100%" for increasing costs for bonuses when the basic wage increases. The counter argument would be that bonuses, paid for work "well done", should pay themselves. They are almost by definition decided having a certain operating profit on the margin in mind.

Redirecting the flows from Bermuda and cutting down transfers to LMS would not have sufficiently financed an increase in the basic wage proper with knock-on effects to R12 500 net per month. This is also because we have chosen to use only 72% of the Bermuda diversion of funds for wages.

If we instead explore the affordability of the rock drillers' demand as a simple increase on the rock drill *allowance* without knock-on costs, as was done in the final platinum strike agreement June 2014, then a combination of the redirected Bermuda flow and a cut in the management fees would cover this (even if only 72% of the Bermuda commission is used). This conclusion is further supported by the extra R100mn per year in "share based payment expenses" to a minority group of high wage earners 2010-2012, which we discussed before.

In Part 3 of this report we saw that Da Costa suggested an allowance of R1000, R800 and R500 increase for 1 300 single hand rock drillers, 1 450 assisted rock drillers and 1 450 rock driller assistants. This was reduced to R750, R500 and R250 respectively. His suggestion would have resulted in an average increase of R758 per driller per month and the total annual cost would have been R38 220 000 (without bonuses).[121]

The total cost of Da Costa's suggestion is about five times smaller than 72% of the Bermuda transfer. This transfer cost the workers and other stakeholders R204 million in 2012 (Table 5).

Over 3 500 workers were staying at 49 Lonmin hostels in 2012. They did not receive the R1 850 LOA. However if 28% of the "commissions" to Bermuda had been used instead to finance housing and social infrastructure, the hostels would have been dismantled by 2012 without sending workers to the shack lands. The amounts available for spending in Lonmin's Social Labour Plan (SLP) could have been more than doubled if the Bermuda connection had been severed as shown in Table 5. Lonmin's abandoned SLP plans for decent housing and social infrastructure would have had more than twice the resources than were allocated.

"Affordability" is about choosing what to afford. It is a political and malleable notion. Lonmin Plc chose in 2012 to continue implementing two profit shifting arrangements – together costing the local subsidiaries well over R400 million per year – instead of meeting its SLP obligations and responding adequately to demands for much higher worker incomes, both crises coming to the fore already in 2011 through a two week strike, with Lonmin firing 9000 workers, and "community unrest".[122] If the company had made different decisions on how to allocate the new monetary wealth that is produced at the mines every year, the Marikana disaster could have been avoided.

4.9 The 2006 "acquisition" of Messina

In the WPL 2006 and 2007 financial statements a Note "Acquisition of Messina Limited" appears (Annex G). Messina Ltd is the holding company of Messina Platinum Mines Ltd. From July 2006 they become subsidiaries of WPL.[123] This ended a process which started in 2005 when Lonmin Plc bought the Southern Platinum Corporation and its subsidiaries.[124]

121 Da Costa added a 20% bonus increase arriving at a monthly cost of R3.6mn (R3 605 000).

122 This is reported in the 2011 Sustainable Development Report in those terms. See also Bench Marks Foundation (2013), Policy Gap 7.

123 In the 2008 Financial Statement from WPL the Note "Investments in subsidiaries" lists Vlakfontein Nickel (Pty) Ltd, but its ownership is not recorded on the CIPC report form. It is a small asset.

124 Lonmin Plc, 2005 Annual Report, page 7: "On 15 April 2005, the Company announced that *its* wholly owned subsidiary, Lonmin Investments Canada Inc. (the 'Offeror'), had made a cash offer to the shareholders of Southern Platinum to purchase all of the issued and outstanding common shares of Southern Platinum at a price of C$2.66 per common share. The offer was subsequently extended and eventually closed on 28 June 2005, at which time the Offeror had acquired 85,096,881 Southern Platinum shares representing approximately 97.2% of the aggregate number of Southern Platinum shares issued and outstanding. Under Canadian law, this enabled the Offeror to acquire compulsorily all outstanding shares, which process was duly completed on 28 July 2005, on

A contradiction about when Lonmin takes control over Messina appears in the material which should be mentioned in parenthesis, even it might signify nothing.

In the mandatory labour data reporting to the DMR, the Lonmin Group employment reports for the Messina mine start from April 2001, four years earlier than when the mine is bought. There are reportedly 20 "established" employees and 756 "outside contractors" (DMR) in "Messina Platinum Mines Ltd" reported by Lonmin to DMR in 2001. There follows a substantial leap to 447 established employees and 1 087 contractors in February 2002, long before Lonmin's formal ownership of Messina. In the months before the retrenchments at the beginning of 2009, Messina employed about 1 400 established workers and over 400 contractors.[125] 2009-2013, about 50 established and 100-200 contractors were employed by Messina Platinum Mines Ltd, to keep it under maintenance.[126]

As for the acquisition:

First, the cash payment from WPL to its parent company Lonmin Plc was R758 million (Annex G). The "acquisition" was not reported in the public annual reports and it did not change the fact that the parent company stills controlled them both. WPL is 82% controlled by Lonmin Plc whilst the other 18% of shares are controlled by the BEE partner Incwala Resources.

Second, WPL's direct ownership of Messina made it possible to deduct R1.9 billion from WPL's profit before corporate taxation recorded in the 2008 annual report. A hundred percent of an inter-company loan from WPL to Messina Ltd which stood at R1.172 billion in 2008[127]and 80% of the estimated value of WPL's investment in 2006 (R730.7 million) were declared "impaired" in 2008 "due to economic conditions and lower commodity prices".[128] They were losses that WPL had the right to deduct from its taxable profit before corporate tax.[129] At a tax rate of 28% the value of these two deductions from the 2008 gross profit would be worth some R530 million in reduced taxes, just to give a bench mark, but mining profits get special treatment by legislation.

The inter-company loan to Messina that is impaired in 2008 was given in 2006 and has increased up until 2012. The increase of the loan has been impaired every year, reducing the taxable profit. The 2012 financial statement is denominated in US dollars. The impaired loan increases again from US$ 184.1 to US$187.8mn and the additional claim of US$3.7 million is again declared impaired, as it has been since 2008 (2009: R159mn; 2010: R60.5mn; 2011: R82mn).[130]

If this steadily increasing loan instead had been booked as equity, i.e. as an yearly addition to the risky investment in 2006 (which it by all means is, in our understanding), it would not be possible to use the whole additional amount supplied to Messina every year to reduce WPL's taxable profit.

As we write, we have just accessed WPL's 2013 AFS lodged at CIPC. It is also denominated in US$. FY2013, the loan to Messina in fact decreases by US$25.9mn (or by R239.7mn).[131] This is done by a reversal of impairment", and not by Messina paying anything back. There is no explanation for this

which date Southern Platinum Corp. became a wholly owned subsidiary of the Group." At that time, Southern Platinum Corporation in Canada wholly owned Southern Platinum (Cayman islands Corp), which in its turn owns 91.5% of Messina Ltd, which wholly owns Messina Platinum Mines Ltd in SA (!). The Canadian holding company also owns 50% of the shares in "Messina Platinum JV (SA) – Unincorporated" and its subsidiary on Cayman Islands owns 100% of "Southern Era Mining & Exploration SA (Pty) Ltd". The document with the full organogram was available on the internet, March 2014.

125 Department of Mineral Resources, Lonmin 1999-2012 Labour data; work sheet, (Marikana Commission of Inquiry).

126 Ibid as well as: Department of Mineral Resources, Lonmin 2013 Labour data; work sheet, (Marikana Commission of Inquiry).

127 WPL, 2007 Special Purpose AFS, Note 22, 29 and 32.

128 WPL, 2008 Special Purpose AFS, Note 4.

129 Ibid. As mentioned, the 2007-2011 Special Purpose AFS and the 2012 AFS (denominated in US$) were lodged at the Marikana Commission in September 2014.

130 WPL, 2012 AFS, page 27.

131 It is possible that this is a net amount, as the moth balled Messina mine incurs costs. We use the exchange rate 9.24, from Lonmin Plc's 2013 annual report. We are not sure however, what principle for exchange rates Lonmin is using in the 2013 AFS from WPL. On page 25 it says that "Messina Limited was impaired by $ 98,349,179 in 2008". The amount in ZAR in the 2008 Special Purpose financial statement is R1,171,681,974. This gives a ZAR/US$ ratio of 11.91. The exchange rate used in Lonmin Plc's annual report 2008 is 7.45.

manoeuvre in the WPL's AFS and there is no news about the Messina mine in Lonmin Plc's annual report 2013. The (still completely impaired) loan amount now becomes lower (R1.486bn). After the accounting operation its worthlessness is now worth less, as it were, and a part (R239.7mn) of what previously reduced the taxable profit 2008-2012 (R1.473bn) is now added to it (even if WPL has built up a so called tax income over the years: in WPL's Comprehensive Income Statement 2013, profit before taxation (US$188.6mn) is lower than after taxation (US$227.8mn)).[132]

The peak profit making years were 2005-2008. In February 2007, another acquisition of the AfriOre group costing US$413 million was finalised.[133] Lonmin Plc owns 100% of AfriOre Limited, located on the British Virgin Islands. AfriOre in its turn owns 76% of the Akanani mine while the remaining 24% share is owned by Incwala Resources.

In 2008, the global financial meltdown led to a downturn in the platinum price. The Akanani mine never took off.[134] It was declared impaired in the 2013 financial report.[135]

To buy the Messina shares in July 2006 from its parent company, WPL took a R2.3 billion loan from a consortium of banks.[136] It is reported fully paid in the 2011 financial statement. This loan also makes the R758mn net transfer to Lonmin Plc possible and the interest payments on this loan are tax deductible in SA, but make no tax expense difference in UK. Lonmin Plc pays nil in tax in UK 2000-2013 anyhow, as was explained above.

In July 2005, Lonmin Plc acquired all shares in the Southern Platinum group. Lonmin Plc's 2006 annual report reads:

> "As a result of the Company's acquisition of Southern Platinum Corp. in July 2005, the Company acquired a 91.5% interest in Messina Limited, a company incorporated and listed in South Africa which operates PGM mines in the Limpopo province.[137]

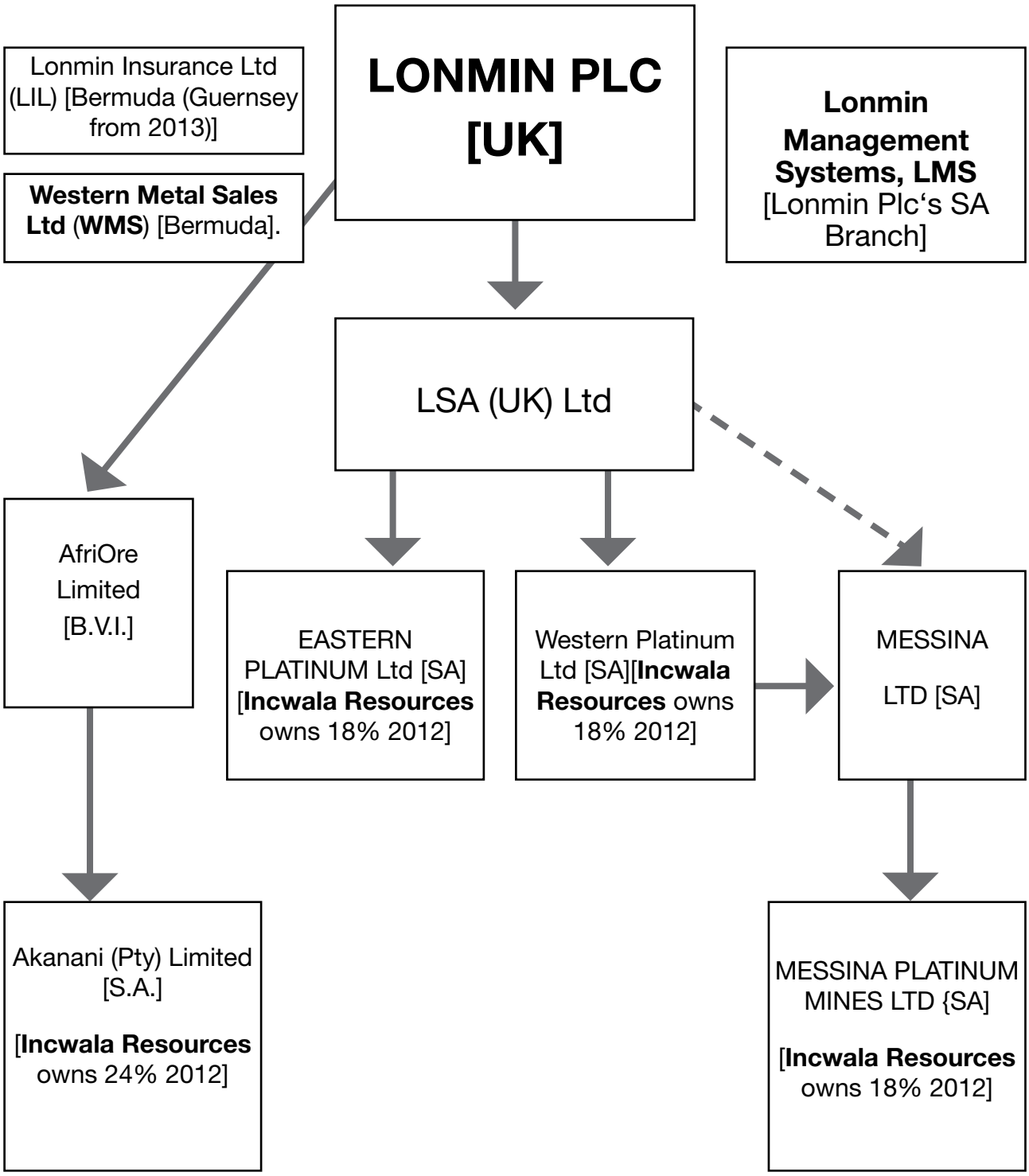
In January 2006 the remaining shares were bought and the whole purchase was "subsequently sanctioned by the High Court of South Africa on 24 January 2006."[138] That the subsidiary WPL bought the shares from Lonmin Plc six months later is not reported. All the WPL 2008-2012 financial statements and reports to CIPC confirm its ownership.

However, the publically reported ownership structure contradicts the above. From 2008 onwards, under "Investment in subsidiaries", Lonmin Plc Company Accounts reads:

> The Company's investment in shares in Group companies are [sic] stated at cost less provision for impairment. The principal subsidiaries of the Company [Lonmin Plc] are LSA (UK) Limited and AfriOre Limited. LSA (UK) Limited holds the investments in WPL, EPL and Messina Platinum Mines Limited. AfriOre Limited holds the investment in the Akanani (Pty) Limited.[139]

Lonmin Plc's annual reports do not communicate WPL's 2006 "acquisition" of Messina.

132 WPL, 2013 AFS, page 9 (CIPC archives).
133 Lonmin Plc, Annual Report 2007, pages 4 and 6.
134 Lonmin Plc, Annual Report 2008, page 6: "…given our focus on cash management and the current state of the credit markets, we believe it prudent to put these projects, including Akanani and Limpopo, on a care and maintenance basis for the short term."
135 Lonmin Plc, Annual Report 2013, page 102.
136 WPL, 2007 Special Purpose financial statement, page 37.
137 Lonmin Plc, Annual Report 2006, page 6.
138 Ibid.
139 Lonmin Plc, 2008 and following Annual Reports, Company Accounts, Headline: "Investment in subsidiaries".


Lonmin Insurance Ltd (LIL) [Bermuda (Guernsey from 2013)]
LONMIN PLC [UK]
Lonmin Management Systems, LMS [Lonmin Plc's SA Branch]
Western Metal Sales Ltd (WMS) [Bermuda].
LSA (UK) Ltd
AfriOre Limited [B.V.I.]
EASTERN PLATINUM Ltd [SA] [Incwala Resources owns 18% 2012]
Western Platinum Ltd [SA][Incwala Resources owns 18% 2012]
MESSINA LTD [SA]
Akanani (Pty) Limited [S.A.]
[Incwala Resources owns 24% 2012]
MESSINA PLATINUM MINES LTD {SA]
[Incwala Resources owns 18% 2012]

5. Earnings and equality at Lonmin Plc

5.1. Introduction and Summary

This chapter examines Lonmin's reporting on employment equity to the DOL. Such reporting was submitted on mandatory report forms for 2003-2012 and in separate detailed reports in April and July 2012 to (DOL). It discusses what measures the 1998 Employment Equity Act (EEA) obliged DOL and Lonmin to take to ensure income equity at the work place and whether either party took such measures.

We have used these reports and statistics to examine wage disparities between high and low paid employees in the year before the August 2012 calamity. Huge gaps in income start to emerge after the 90th percentile and again in a jump after percentile 95 (at the very top of the company's hierarchy). This raises questions about the social reasonableness, fairness, and contribution to political stability.

Lonmin Plc's head office or "external company" LMS in SA with an average TCTC remuneration of about R1.5mn per person in 2011 is most probably not included in the equity reports and the pay roll register supplied to DOL in April 2012.[140] The 2011 AR reports that there were 27 796 established employees in FY2011.[141] The pay-roll data sent to DOL contains 27 751 employees, which is 45 fewer. The number of head office employees ("LMS") in SA 2011 was 45.[142]

The remuneration of the 12 directors was also not included in the equity reports to DOL. Together with 15 "purview directors" in salary category "F" and some 45-55 employed at LMS and the UK head office, the 12 directors lead the income elite of Lonmin, which comprises of some 80 individuals, or 0.2% of the total established and contracted workforce. As we said before in 4.7 above, share based payments expenses amounted close to half a billion rand 2006-2012. We assume that they add to the remuneration of this income elite. These huge extra incomes are not a part of Lonmin's equity reporting. Indeed, the extravagance is explicitly to be excluded from reporting on the EEA4 form (See Annexure I). Share based payment expenses at Western Platinum Ltd are both constructed as cash payments and payments in shares (which the receiver of course can sell or keep).

The documentation shows that the DOL was in breach of Section 27 of the EEA for the whole period. As opposed to other sections of EEA, Section 27 deals with income disparities as such, but DOL doesn't seem to care. The breach is reinforced by the design of the specific form to be used for reports under Section 27. The form ("EEA4") doesn't follow the Section 27 provisions.

140 Copy of work sheet from DOL named: "COPY OF DOL AUDIT APRIL 2012 FOR SUBMISSION".
141 Lonmin Plc, AR 2011, page 58. By coincidence, Lonmin's financial year coincides with the legal cut-off date for EEA reports.
142 Lonmin Plc, AR 2012, in Company Accounts "Other Information: Employees". That LMS is excluded from the equity reports is also confirmed by the definition of "Lonmin Platinum" in this title, which is opposed to LMS: Lonmin Plc (2005-09-19), "WESTERN PLATINUM LIMITED and EASTERN PLATINUM LIMITED (together constituting Lonmin Platinum) and Lonmin Plc South African branch company trading as Lonmin Management Services -- MANUAL COMPILED IN ACCORDANCE WITH SECTION 51 OF THE PROMOTION OF ACCESS TO INFORMATION ACT, 2 OF 2000 ("the Act")".

Lonmin is directed by the DOL to focus only on income equality in the four apartheid categories and between men and woman *within the same wage band or "Paterson Group"*. No attention has been given to the gaps between bands and if they are widening or not, i.e. between ordinary workers and higher paid white collar employees, like managers and supervisors. The levels of blue collar worker wages in general and RDO wages in particular when compared with higher paid groups was not a DOL or Lonmin concern in the equity audits and reports.

About 10 000 contract workers were used by Lonmin at the time.[143] They fell outside the moral and political realm of the equal pay for equal work regime upheld by the EEA. Blue collar contract workers at Lonmin earned about 55% of an established (permanent) blue collar worker in 2012. Furthermore, their remuneration stands out as falling in real terms 2009-2013, if believing the labour statistics submitted by Lonmin to the Department of Mineral Resources (DMR).

5.2 Inequality at Lonmin and the Employment Equity Act

That political tension in society grows if the income gap between high and low income earners increases beyond a certain limit is widely acknowledged. Such instability is a likely outcome of growing inequality, especially if the majority experience their incomes as insufficient or stagnating. From this it follows that political stability is impossible in the long run if inequality between high and low income earners is growing, from an already very unequal start, even if "*horizontal*" equity in professional occupations has increased between the four apartheid categories, or even if women and men are more equally paid for the same job.

Leibbrandt et al (2010) showed that inequality in its absolute and "vertical" sense has increased since 1993 in SA.[144] Mark Wittenberg, who leads the Data First unit at the University of Cape Town, scrutinised the two Unemployment Surveys QLFS and QES in an ILO report (2014). He arrived at the conclusion that only the top 10% of employees, or to a smaller extent, the top 25%, have received real wage increases 1996-2011. The median real wage has been stagnant.[145] This is especially serious if the bread winner has to support more family members because unemployment has risen since 1994.

As for Lonmin, a widening disparity in average Rand earnings from 2010-2013 between so-called ABC and DEF category employees can be seen in Diagram 5 below. This is probably the effect of across the broad percent increases where those who earn higher get paid the most. Percent increases can have that effect thus even if they are lower for high income earners than for the rest, because their increase starts from such a high level.

Income disparity is inequality in its absolute sense which is widely discussed in South Africa and globally. However, in the correspondence between Lonmin Plc and the DOL in 2012 income inequality does not attract any interest in the company. The DOL does not check if inequality between ordinary workers and others in higher wage grades is increasing or not. The DOL uses no key indicators for measuring disparities between blue collar workers and management.

5.3 The Employment Equity Act and its Section 27

Like all companies with more than 150 employees, the Lonmin Group every year reports on employment equity to DOL. As required by the 1998 Employment Equity Act (EEA), Lonmin sends

143 Lonmin, AR 2011, page 2 and 8. On page 58 the number given for 2011 is 9567 contractors. This is 25.6 percent of the whole work force.
144 Leibbrandt, M. et al, (2010), "Trends in South African Income Distribution and Poverty since the Fall of Apartheid", OECD Social, Employment and Migration, Working Papers, No. 101, Paris: OECD Publishing.
145 Wittenberg, Martin, (2014) "Analysis of employment, real wage, and productivity trends in South Africa since 1994", Geneva: International Labour Organisation, pages 16-19.

in two forms, namely EEA2 and EEA4 (Annex I). EEA2 deals with matters like the composition of the workforce, promotions and career opportunities, disciplinary actions and the company's plans for affirmative action – everything from the perspective of the four apartheid categories, of gender and of "foreign nationals". On the EEA4 form, on the other hand, companies report about income disparities.

In other words: The EEA4 form should audit compliance with Section 27 of the EEA and the EEA2 takes care of all other aspects of the Act.

The correspondence between DOL and Lonmin in SA shows that DOL is not interested in income disparity in terms of Section 27. Even the EEA4 report form is largely irrelevant for the purposes of progressively taking "measures to reduce…disproportionate income differentials"[146], which refers to gaps in income between high and low paid employees.

On the one hand, there is broad consensus that income disparities do exist. There is also broad international consensus that income disparities can be unreasonable, unfair and unjustifiable. This is for example what the CEO remuneration debate is about. In our country this debate is very sharp.

In 1998 Cosatu (Congress of South African Trade Unions) threatened to oppose the EEA if a section on monitoring and reasonably curbing vertical income inequality was not included.[147] In a 2006 study of the SA labour market, Arora and Ricci write:

> The "apartheid wage gap" is the notion that the structure of wages in South Africa is skewed as a result of apartheid. Specifically, the ratio of the highest paid to the lowest paid is estimated at a multiple of over 40 (…), which is very high in comparison with other countries.[148]

An August 1998 press statement from Cosatu argues:

> The Employment Equity Bill must address the issue of the apartheid wage gap, if it is to have meaning for the millions of ordinary workers, who are the worst victims of apartheid discrimination, and who will not be able to reach the upper echelons of the workforce, despite the affirmative action provisions of the legislation…We have supported the philosophy of the legislation that employment equity must benefit everybody, and not just an elite few.[149]

DOL is neither operating in this spirit nor does it obey the letter of the law. In Section 27 of the EEA, "income differentials" isn't about equal rights for all citizens, it is about income equality as such. Point 27(4) reads:

> "The Employment Conditions Commission ["ECC"] must research and investigate norms and benchmarks for proportionate income differentials and advise the Minister on appropriate measures for reducing disproportional differentials."

This cannot be misunderstood. There can of course not be any recommendation to the Minister on norms and benchmarks for income differentials that are "proportionate" to membership in the four apartheid categories, to take the most obvious example: The ECC cannot recommend income differentials in proportion to degrees of Whiteness, or to degrees of masculinity e t c. Income

146 Department of Labour, Employment Equity Act, No 55 of 1998, at URL: www.labour.gov.za, Section 27(1).

147 Cosatu threatened to oppose the whole bill. Jeff Rudin, who worked for the ANC in parliament at the time, and Neil Coleman, in Cosatu Head Office drew my attention to Cosatu's stand. Thanks to Jeff Rudin for drawing my attention to how Section 27 in the EEA has been abandoned in practice.

148 Arora, V. and Ricci, L.A. (2006), "Unemployment and the labour market", in M. Nowak & L.A. Ricci (ed.), Post-Apartheid South Africa: the First Ten Years. 1st edition. Washington D.C.: International Monetary Fund: 23-47. Page 28, foot note 10.

149 Cosatu (5 August 1998), "STATEMENT ON EMPLOYMENT EQUITY BILL AND THE APARTHEID WAGE GAP", available at URL: www.cosatu.org.za (2014-04-09).

differentials can only be legitimately "proportionate" in relation to the wage difference between an experienced specialist and his or her apprentice, work that is well or badly performed, or working conditions, like tasks performed in an easy going environment as opposed to necessary work in an uncomfortable or dangerous environment and the like, or even proportionate to age and economic responsibility for one's spouse, one might argue.

In the very beginning of this report we quoted the 2013 Lonmin report on the R25 000 paid per day in basic salary to Lonmin's Mr Mohamed Seedat after Marikana and the R11 400 per day in basic salary from the end of 2013. In short: ECC has the task to reflect upon if the difference between the remuneration of Mr Seedat and the income of a RDO is disproportionately large or not and give a recommendation to the minister.

That Section 27 on wage differentials was given a particular role in employment equity legislation is underlined by the fact that it is the Employment Condition Commission (ECC) itemised in the Basic Conditions of Employment Act that watches over this particular section of the EEA. All other parts of the EEA are the responsibility of the Commission for Employment Equity, which is itemised in the EEA.

In contravention of Section 27of the EEA, DOL only monitors the employer's record in relation to wage disparities *within* occupational groups, with a bias towards specialists, managers, supervisors and employees in bands D, E and F, which are the three highest "Paterson Groups".

The Paterson grading system was introduced in 1975 for all Black ("African") workers in South Africa by Anglo American in all of its mines "and the rest of the industry followed suit."[150] The Paterson scale divides a workforce into six occupational levels based on the degree of decision making required in the job. It is used in the EEA2 and EEA4 forms (even if Paterson is not mentioned in the EEA itself). This discriminates against working class roles and professions. However, it allows for an analysis of vertical inequality or "class", because of its biased starting point. This grading system when demanding an income disparity report from employers would illustrate the equity issues very clearly.

However, the issue of blue collar worker average or median remuneration compared to white collar specialists, managers and executives is not itemised as a problem by the DOL for companies to report on, including Lonmin. Remuneration of category A and B at Lonmin, which is the overwhelming majority of its work force, is homogenous. The issue of discrimination *within* the category does not therefore arise. Not visible from this perspective however is that the majority are black in the lowest paid Paterson Group where at Lonmin "A" employees constituted 18 063 "African" employees, 9 "Coloured" and 28 "White" employees in 2011 and in Group B 5 551 were "African", 102 "White" and 6 "Coloured.

5.4 Filling in the EEA4 report form

The EEA prescribes in its Section 21 that the CEO of the reporting company shall sign the forms. The persons signing the EEA forms 2003-2013 were A.G. Ross, M.I. Seedat and from 2009 Barnard Mokwena (Executive Vice President Human Capital & External Affairs). They were not CEOs of Lonmin Plc. The CEO of Lonmin Plc was Mr Ian Farmer for the later part of the 2000s.[151]

It would be logical that filling in EEA forms and answering queries from DOL would be a part of the management and secretariat services of LMS which was being paid over 2% of WPL sales revenue in management fees. It would also fit with a notion that the head office company had the overarching responsibility for employment equity in the four SA subsidiaries. But strangely the reporter to DOL was not LMS.

150 James, Wilmot, Godfrey (1992) *Our Precious Metal: African Labour in South Africa's Gold Industry, 1970-1990* (Cape Town: New Africa), page 130.

151 Lonmin, Annual Report 2001, page 49.

The company formally reporting to DOL is "Lonmin Platinum Ltd", which is the trading name for EPL and WPL together. The company registration number for EPL is used. The question "Is your company a part of a group/holding company? If yes, provide the name" is however answered with "No" 2006-2013, but EPL and WPL are subsidiaries in the Lonmin Group (Annexure J).

Page 4 of the EEA4 form demands an explanation that cannot be answered on the basis of the tables in EEA4, because the reporter is not requested to calculate income disparities. Leading away from the main purpose of a Section 27 equity audit, the instruction reads: "Please provide reasons for the disparities in remuneration *within* the various occupational levels" (italics added), nothing more.

Lonmin answered that the wages were differentiated on the basis of "experience, qualifications and/or performance" only. On the last page of the EEA4 form, Lonmin assured DOL each year that it did not "differentiate on the basis of race, gender, nationality, disability status or any other criteria".[152]

No space is provided on the form for submitting the average earnings among the designated groups "African, Indian, Coloured, White, Woman and Men, Foreign Nationals" and "Total". Even when disregarding income disparities *between* occupational levels, the official would need to make an easy comparison between the average wages of designated groups (like the four apartheid categories) *in the same* "occupational" level. It would be easy to include a row in the tables of the EEA4 form where the respondent divides the wage sums by the number of employees for each wage category and each designated group. It is also from huge jumps up and down in the average wage levels that errors and anomalies would be revealed.

Averages would however point to comparisons between collectives. DOL doesn't do that. We take however the opportunity to sketch a collective approach.

Disregarding "Indians" and "Coloured", Table 5 from Lonmin's EEA4 report in the period 2010 – 2013 has been constructed.[153] Looking at it, it is important to know that for Paterson Group A in 2010 there were 11 992 "African" but only 17 "Whites". In category D, however, "Whites" were the majority. For FY 2011 and 2012, we only note the differences in average earnings to simplify the table.

Table 9:

	2010	Males		2011	2012	2013	Males	
	"African"	"White"	Differences	Differences	Differences	"African"	"White"	Differences
A	R 68 667	R 47 605	**R+21 062**	R-5	R-688	R101 099	R102 687	R-1 588
B	R115 619	R157 380	R- 41 761	R-46 573	R-57 138	R127 244	R182 254	R-55 010
C	R264 960	R344 682	R-79 723	R-88 573	R-93 096	R348 485	R446 035	R -97 551
D	R560 869	R649 507	R-88 638	R-65 020	R-70 553	R781 651	R864 723	R-83 072
E	R892 236	R1 085 955	R-193 719	R-97 053	R-37 242	R1 393 614	R1 769 406	R-375 792
F	R2 200 000	R2 132 400	**R +67 600**	R-198 442	R-56 315	R2 566 529	R2 779 504	R-212 975

Table 9: *Average male earnings per Paterson Category; "White" and "African" compared. Two 'plus' differences are printed in bold (Source: Lonmin EEA4 reports forms 2010-2013 provided to the Marikana Commission by DOL).*

The six Paterson categories have grades within them. Lonmin also distinguishes between higher paid underground and lower paid surface work in the same grade, as do other mining companies.

152 Lonmin (2006-2013), Employment Equity Act report form number 4: Copies of filled in forms provided by DOL.
153 The EEA4 reports for 2006-2009 give an impression of having important errors.

At any rate, a widening income gap over time between "African" and "White" seems to occur at Lonmin for males *within* the six categories in Table 9, or starting from "B". The company may argue that more white than black staff was found in higher grades in each Paterson Grade due to "education" or "experience" and that it is the reward for *such* things that have increased. It is however fair to say that Section 27 (6) simply obliges the employer to act against growing wage disparities. The obvious reason is that SA already has an apartheid heritage of extreme inequality. To further increase inequality is not legitimate. Thus it would be disingenuous for the company to argue in such a manner.

A table like Table 9 looks for structural inequality between whole groups. In contrast, DOL made a meticulous critique of the September 2011 pay roll register from the point of view of individual cases. First, wage disparities within band A ("unskilled and defined decision making"), B ("semi-skilled and discretionary decision making") and F ("Top Management") were found "justifiable".[154] Second, DOL enumerated 82 individuals within Paterson bands C, D and E and asked Lonmin to "provide explanations for race and gender disparities per position identified", i.e. for each of the 41 pairs.[155]

"Lonmin Platinum Ltd" gave a detailed answer, starting with an expose' concerning promotions and recruitments (in relation to the EEA2 report form). As for income disparities, the answer is made case by case in 29 cases of 41, citing reasons for disparities such as experience, skills, and effort to retain the employee.[156] For 12 of the 41 cases Lonmin answers, "No justification".

The wages of A and B category workers in general and RDO wages in particular are of no concern to DOL. The burning problem of income inequality, as this is generally understood in South African political debates and wage negotiations, is completely absent from the interaction between DOL and Lonmin Plc.

This despite the obligation of the employer to take this factor into account (1998 EEA Section 27:6) and DOL's obligation to monitor income disparities and even to employ a commission to advise and make recommendations to the Minster of Labour on income disparities (1998 EEA Section 27:4) that would be proportionate and reasonable; and in view of Marikana 2012 also politically sustainable.

5.5 Lonmin income distribution measured by means of percentiles

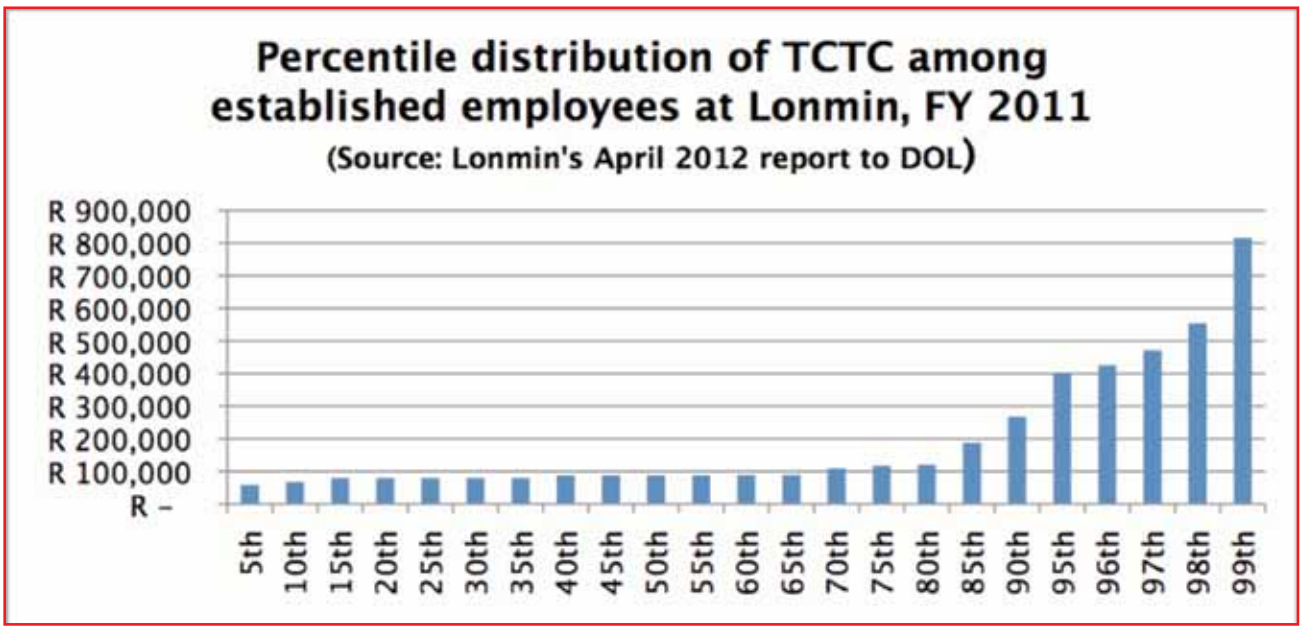
In Table 9 above, we used the average wage. This is the only option we have to study wage inequality if our only two data are the total sum of all wages for a given number of employees. We divide the wage sum by the number of individuals and we get the average wage.

But if there is a group, however small, that has extremely high or extremely low incomes, the average wage gives a false impression of generally high or generally low incomes in a population. For this reason Statistics SA's publication "Monthly earnings of South Africans" only presents median and percentile wages when displaying wage data collected in the "Quarterly Labour Force Survey".[157] This is an established method when investigating income distribution among employees.

Diagram 2 is a representation of Lonmin's established work force in September 2011. It was reported on excel sheets to the DOL in April 2012. It is divided into percentiles on the basis of the reported total cost to company (TCTC) for each individual.

154 Lonmin Platinum Limited (3 July 2012), "Department of Labour: Director General Review Report 2011"; 42 paged report provided by DOL to the Marikana Commission; in our possession, page 19.
155 Department of Labour (11 June 2012), Letter to "B. Mokwena, The Chief Executive Officer, Lonmin Platinum", page 6; in our possession.
156 Lonmin Platinum Limited (3 July 2012), "Department of Labour: Director General Review Report 2011"; 42 page report provided by DOL to the Marikana Commission. The reporter comments that Lonmin has submitted EEA report forms to DOL since 2003. (Asked by the Commission to provide all the EEA4 reports from Lonmin Plc, DOL produced forms submitted from FY2006).
157 Statistics SA (2012), "Monthly Earnings of South Africans 2010", Statistical Release P0211.2.

Diagram 2: *Lonmin Group inequality/equality displayed as percentile income distribution.*

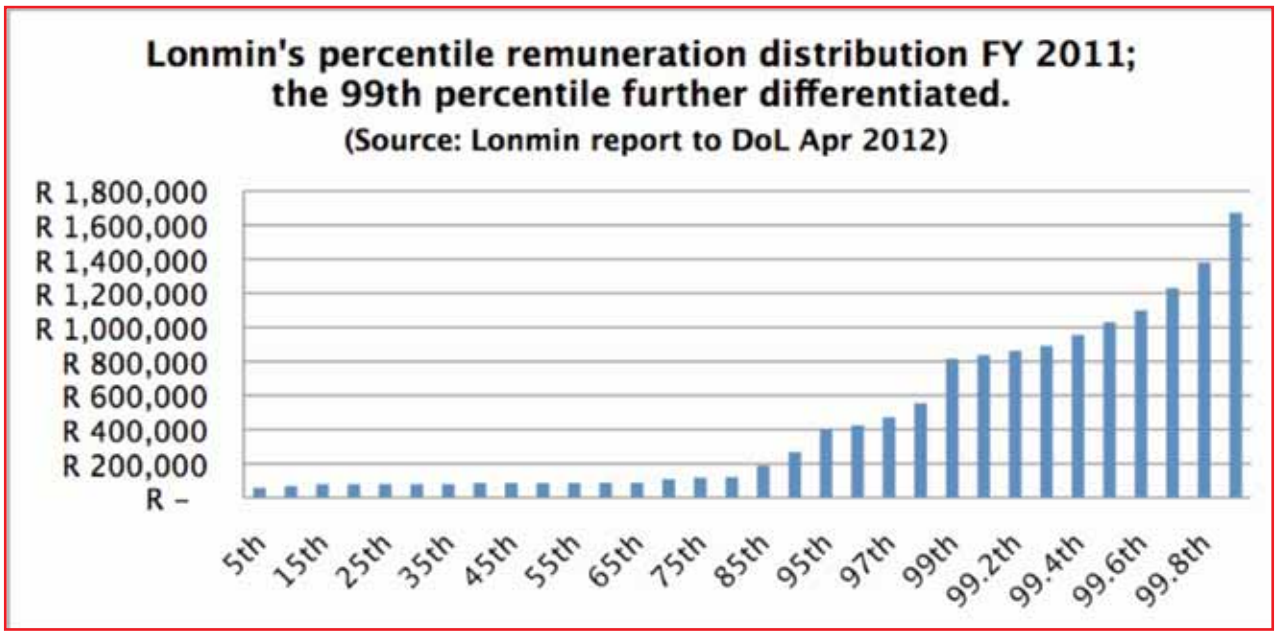


One percent of the established workforce is about 277 employees while 5% is about 1 382 employees. The 99th percentile staple marks that 277 employees earn R815, 907 per annum or more.

The median is the 50th percentile, also called the typical wage. This is the employee in the middle of the income distribution. Lonmin reports that this person earns **R87, 614** per annum (TCTC). The average earning among all 27 751 employees is **R136, 969**. The R50, 000 higher mean or average wage indicates that there exist very high salaries at the top.

Diagram 2 supports this conclusion. The remuneration at Lonmin is characterised by a fairly even distribution of income up to the 85th or even to the 95th percentile, depending on one's political opinion. Even if we differentiate per tenth of one percentile at the top, as in Diagram 3 below, this does not capture the highest wages among the 15 top managers in Paterson category "F".

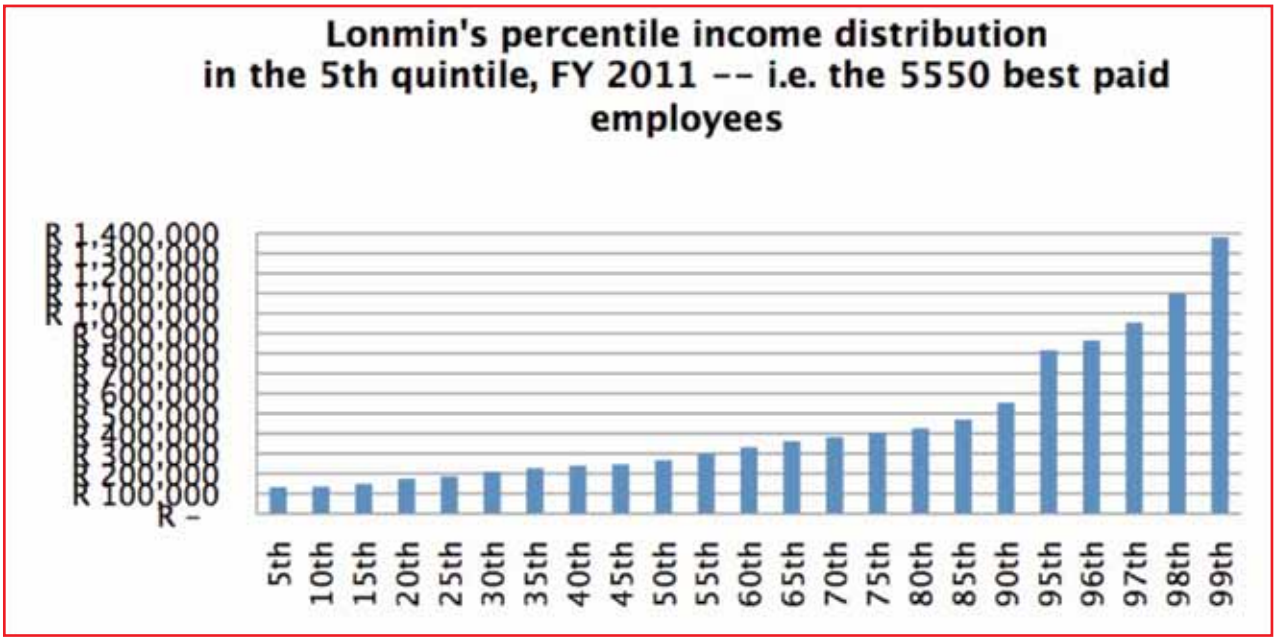
Diagram 3: *Inequality/equality at Lonmin Plc displayed as percentile income distribution; the top 99th percentile (277 individuals) divided into five equally large parts.*



Another way of showing the top-heavy feature of Lonmin's distribution of income is to divide the top 20% of employees, the fifth quintile, into percentiles. The top quintile comprises about 5 550 individuals. This is enough to cut into the best paid in grade B. About 900 of them therefore become included in Diagram 4.

In Diagram 4 every percentile instead represents about 55 individuals and the 5th and the 95th percentile includes the first and the last 275 employees among the top 20% of the whole workforce. The 95th percentile in Diagram 4 is therefore equal to the 99th percentile in Diagram 2 and 3 above: they have above them an equal number of employees.

Diagram 4. *Further differentiation of income distribution at Lonmin; examining the top income quintile (Source: Lonmin Group Employment Equity Act reporting to DOL).*



There is a visible break at the 99% point, where the really high incomes start. The difference between the highest paid individual in group F and the 30 lowest paid established employees at Lonmin is 84 times (R4.5 million divided by R54 000 in TCTC). We saw above that "40 times" has been regarded as a sign of an "apartheid wage gap".

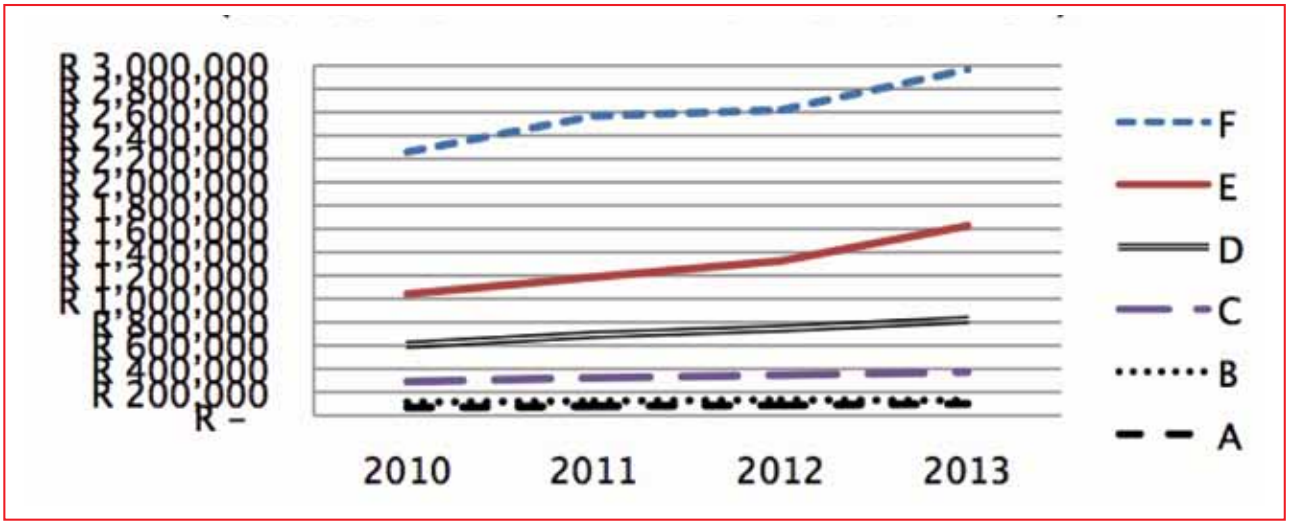
In Diagram 2 on the other hand, the ratio between the 10th percentile (R67 713) and the 90th percentile (R268 157) is only 4 times. The 90th percentile reaches to employee number 24 975 (out of 27 751 established employees). At the 90th percentile the really high incomes in the hierarchy have not yet begun.

Besides annual income reported as "TCTC" and a note if the individual has got a Living Out Allowance (LOA) or not (R1 770 per month in 2011), the Lonmin data to DOL gives the role, time in the company, the gender and the apartheid identity of the employee. Of the 150 individuals who earn more than R1 000 000, 116 are white. As we saw above, the A and B categories of over 23 500 employees in 2011, are overwhelmingly "African".

5.6 Measuring income disparity in Rands

If using rands when comparing average earnings in Lonmin's different Paterson Groups we see growing wage disparities (Diagram 5).

Diagram 5: *Growing gap in average rand earnings between ABC and DEF employees at Lonmin (Source: Lonmin's EEA4 reports to DOL).*



In 2010, the difference between the average earnings in the A category and the F category was R2 189 000. In 2013 is had grown by R675 000 to R2 685 000. The difference between the sum of A+B averages compared to the sum of E+F averages grew by R 245 000.

From DOL, the Marikana Commission received Lonmin reports on the form EEA4, covering the years 2006-2013. The EEA4 from 2006-2009 however did not make sense as the numbers of employees deviated from the numbers reported in the SDRs by up to five thousand. Average wages in the six categories fell and doubled by half from one year to the next year. The reporting seems to be more trustworthy from 2010 onwards.

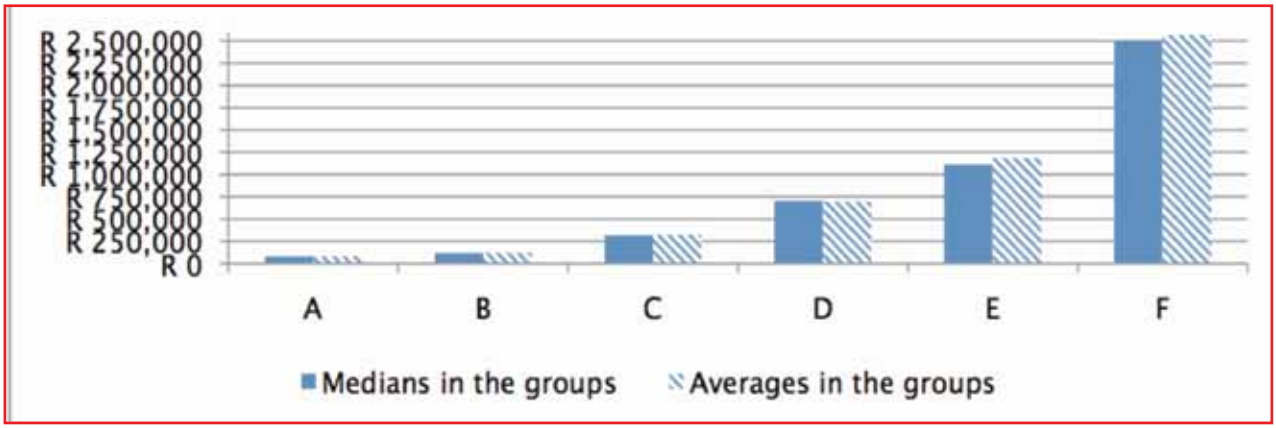
The obvious anomalies in Lonmin's employment equity reporting from 2006-2009 are not immediately detectable as the EEA4 report form for income disparities does not have a row where the average wage in each Paterson category could be filled in. When averages are calculated, the reports reveal too odd a record of wage sums and numbers of employees. We have decided not to use them.

If we use the Paterson grading system and divide Lonmin employees as it is done in the reports to the DOL, we get the following table, also partly translated into Diagram 5 below.

Table 10. *Median and mean annual wage per Paterson wage category, Lonmin Plc Sept 2011*

Lonmin Sept 2011	ESTABLISHED WORK FORCE					
Paterson category	**A**	**B**	**C**	**D**	**E**	**F**
Medians in the group	R 79 803	R 117 854	R 316 223	R 702 611	R 1 113 000	R 2 500 000
Averages in the group	R 80 020	R 123 057	R 323 164	R 691 871	R 1 186 070	R 2 567 297
No of individuals	18092	5550	3502	409	183	15

Diagram 6: *Median and mean annual wage per Paterson Group at Lonmin, Sept 2011* (Source: Lonmin's April 2012 pay roll report to DOL).



The median and the mean are very close to each other within each Paterson category, as would be expected. It is this horizontal equity within each group in relation to gender and apartheid category that Lonmin is made accountable for by the DOL, but only in terms of individual cases.

Below follows a discussion of two gaps in the data under analysis. Firstly, this data lacks an account of the highest paid officials at Lonmin. Secondly, there is no account for the 9 564 contract workers (2011).[158]

5.7 The missing top and bottom

5.7.1 The missing top: The directors

The 2011 remuneration of the 15 top managers in category "F" (Table 10) are not the highest paid at Lonmin Plc. The managers in F are called the "Purview Group executives" in the annual reports.[159] They are positioned below nine non-executive and three executive directors in the 2011 hierarchy (the number of executive directors was cut by one to 2 in 2012).

The 12 directors are not included in the April 2012 wage statistics report to DOL studied above. Neither are they a part of the reports on the Employment Equity Act form number 4 (EEA4). They rise above the A-F grading scale and the report on employment equity.[160] In Lonmin Plc's annual reports, on the other hand, the remuneration of the dozen or so directors is an important issue covering many pages.

The TCTC for the 15 individuals in Paterson category F is R38.5 million in 2011. The remuneration of the 12 directors, reported in British pounds, amounted to R48 million, or R4 million per person on the average that year.[161] The 3 executive directors were paid an average of R12.7 million; the 9 non-executives average basic pay was R1.1 million.

The highest paid Purview Manager earned R4.5 million in 2011. The other 14 top managers in category "F" are reported for a TCTC between R2 120 000 and R3 130 000.[162] There is a qualitative

158 Lonmin Plc, 2011 Sustainable Development Report.
159 Lonmin Plc, 2011, page 92. As well as in the 2012 annual report, same page.
160 In the beginning of this Part 4, we concluded that this also must be the case for 45 individuals (2011) in the Head Office company LMS, whose remuneration are disclosed very summarily from 2010 in the Company Accounts of Lonmin Plc (discussed in Part 2) in the form of a yearly TCTC sum for them all.
161 The total amount was 4 306 802 British Pounds (Lonmin Plc, 2011 Annual Report, page 91 and 2012 Annual Report, page 92 – where the total remuneration of 2011 non-executives has been revised upwards). The exchange rate in the 2011 annual report is 1 Br Pound for R11.1498; 2012: 1 Br Pound for R12.6897.
162 Their number increases from 15 to 19 in 2012.

jump in the hierarchy at about the 95thpercentile and a second jump at the 99thpercentile and a third "jump" at the small strata above these 15 top managers. The non-executive directors' average of R1.1 million cannot be compared to the management salaries on the F level. A non-executive director doesn't have a full time occupation.

Print Screen 10: *Lonmin's basic remuneration of nine Non-executive Directors 2012* (Source: Lonmin Plc's 2012 Annual Report, page 91).

REMUNERATION IN FY2012

Directors' remuneration

The total cash remuneration paid to all Directors in FY2012 was £2,395,153 (2011 – £4,278,470).

Non-executive Directors

No options or awards of any kind have been granted to Non-executive Directors. Non-executive fees were last reviewed in July 2011 in the light of an independent market review, and no increases were made. Non-executive Directors' fees in respect of FY2012 are set out below.

Non-executive Directors	Directorship £	Remuneration Committee £	Audit and Risk Committee £	Nomination Committee £	Safety and Sustainability Committee £	Transformation Committee £	Other Qualifying Services[2] £	Total for year to 30.09.12 £	Total for year to 30.09.11 £
Karen de Segundo	M 50,000	M 10,000	M 10,000	M 7,500	M 7,500	–	–	85,000	76,974
Michael Hartnall[1]	M 16,154 S 4,846	M 3,231	M 3,231	M 2,423	–	–	–	29,885	98,503
Len Konar	M 50,000	–	C 17,500	M 7,500	–	M 7,500	–	82,500	75,647
Jonathan Leslie	M 50,000	M 10,000	–	M 7,500	C 12,500	–	–	80,000	80,000
David Munro	M 50,000	–	–	M 7,500	M 7,500	M 7,500	–	72,500	66,481
Roger Phillimore	M 50,000 C 200,000	–	–	C 12,500	–	–	–	262,500	262,500
Cyril Ramaphosa	M 50,000	–	–	–	–	C 12,500	–	62,500	61,154
Mahomed Seedat[3]	M 50,000	–	–	–	M 7,500	M 7,500	69,070	134,070	77,082[5]
Jim Sutcliffe[4]	M 50,000 S 10,230	C 17,500	M 10,000	M 7,500	–	M 7,500	–	102,730	91,692
Total	631,230	40,731	40,731	52,423	35,000	42,500	69,070	911,685	890,033

This table and the associated footnotes have been subject to audit by KPMG Audit Plc.

Key: C = Chairman, S = Senior Independent Director, M = Member

Above a certain (high) level, basic economic theory asserts that the additional "utility" of an extra R100 000 or R1 million diminishes at an increasing rate. This theory also works in a reverse direction. On the level above high Income, cuts in basic remuneration can occur. Lonmin Plc s CEO Ian Farmer had his basic remuneration halved over three years, from £1 834 335 in 2010 to £1 220 629 in 2011 and again to £933 605 in 2012. This appears draconian; yet his 2012 basic remuneration amounted to the equivalent of R11 840 632.

If differences between earning R12 million, R15 million or R22 million have a touch of meaninglessness, it has to do with *saturation level.* The vessel overflows. From a standard micro economic point of view and its "law" of diminishing utility on the margin, excessive remuneration of corporate leaders is also an economic loss to society. Over a certain temperature, the further heating of the chimney does not make the room warmer, but is lost energy to the roof top: no additional advantage to society is gained from the extra payments. In everyday language the remuneration is out of joint with the widespread consensus on fairness, justice and reasonableness.

The reported salary of Farmer's executive partner Simon Scott was £6 369 in 2010, when he started. This is equivalent to about R70 000 for the four days he worked from 27-30 September.[163] Still, according to annual reports Lonmin is not a mining leader when it comes to remuneration of its CEOs and other directors.[164]

Awards, share options and long term incentive schemes for executives have not been included in this discussion, only "basic schemes" are engaged with. "Share based payment expense" is reported

163 Lonmin Plc, 2011 Annual Report, Page 91. The exchange rate ZAR/GBP used in FY2010 was £10.87.

164 See discussion in: Bench Marks Foundation (Oct 2013). That Lonmin directors are not among the highest paid in mining industry is also highlighted in an opinion piece from Labour Research Centre, Cape Town: Taal M, S Patel and T Elsley (2012) "The only argument against the R12 500 is greed", *Amandla!* No 28.

to be US$10,067,000 in 2012 (2011: US$14,096,000) for WPL and its two Messina subsidiaries alone.[165] This expense amounted to R494 million 2006-2012 as shown in section 4.7. We have also disregarded the possible benefits to individuals from the transfer pricing arrangements described in Chapter 4. In the final analysis of distribution, however, it all boils down to individual consumption.

5..7.2. The missing bottom: Contract workers

The use of contract labour is another complication, not present in the Lonmin data to DOL. 9567 contract workers laboured at Lonmin in the 2011 financial year. They comprised 25.6% of the work force.[166] The 2012 SDR reports 8293 contract workers or 22.6% of the total work force.[167]

Lonmin reports the sum total earnings and number of contract workers divided in women and men to the DMR, but not at all to Department of Labour (DOL). Contract workers are outside the moral Equal Pay for Equal Work outlined in the Employment Equity Act.[168] The Marikana Commission accessed the 2013 twelve month period report, compiled on one worksheet by DMR, which gives a comprehensive view as well as a second worksheet with Lonmin data reported to DMR for the period 1999-2012. The latter work sheet gives a scattered and complicated assessment, but some important features can be highlighted.[169]

The labour data reports from the companies collected by DMR are reported for all the separate branches of mining industry on work sheets called "Public Labour" and then used by Statistics SA.[170] The data is summarised under "Mining and Quarrying" in the Quarterly Employment Survey (QES) which in its turn informs the GDP reports and the SA Reserve Bank's measurements of labour productivity and unit labour costs. QES contains the total number of employees and earnings in the mining industry (499 303 in December 2013 of which 30.2% were contract workers). This means that the average earnings reported is a weighted average of the two very different average earnings of established and contracted workers. The QES report also lumps together two different gross earnings wage bills into one gross earnings wage bill.[171] In consequence an estimate of the value added of mining contract firms must of course also be added to the GDP contribution of mining. We discuss the strikingly low wage share in platinum mining reported by StatsSA in Annexure K.

Severance, Termination and Retirement payments are reported separately by DMR, but excluded in the QES reports. Bonuses and overtime are included in the earnings, both in DMR's work sheets and in the QES.[172]

The earnings (2013) of about 24 000 permanent blue collar employees and 6 100 blue collar contract workers at Lonmin are reported to DMR under one headline: "*Lonmin Platinum Marikana Mining*". The earnings of contract workers reported under this headline averaged 59% of the established worker average in 2013, overtime and bonuses included.

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165 WPL, 2012 Financial Statement, page 35, note on operating profit or loss.

166 Lonmin Plc, AR 2011, page 58. The number given in the 2011 SDR is 9567 contract workers.

167 The share is based on the SDR data, which also publishes the number of contract workers hired.

168 Neither of the DOL's two EEA report forms asks for data about contract workers! StatsSA lumps contract work and labour brokers into the category "Finance, Real Estate, Business Services and other" and has failed to make labour broking firms report on how many they employ (interview with Sagaren Pillay at Stats SA, May 2012). Contract workers are "outside the area of truth" in the words of Foucault (*The Order of the Discourse)* – That is: it is not important for the Power to know what is true or false about contract work.

169 DMR (4 April 2014), "Lonmin 2013" and "Lonmin 1999 - 2012", Excel documents with data reported by Lonmin to DMR. Those covering 1999-2012 are scattered over many reporting sites, with stops and start-ups in different months. Data for WPL's two sites and EPL ends in 2006:4. After this month the data appears under the headline Lonmin Platinum Marikana (as an example).

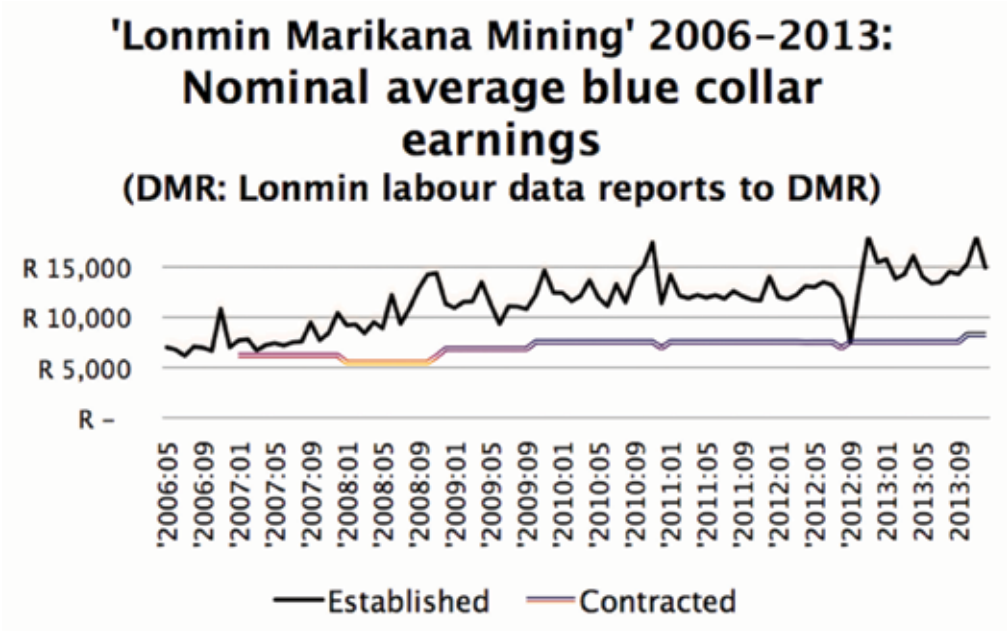
170 Platinum mining is one category, Gold is one, Coal is one, Iron is one, e t c.

171 Stats SA, QES, statistics release P0277, any year (but in the 2011 publications, 'Gross Earnings' was erroneously defined (email to author from StatsSA's Sagaren Pillay in 2014)).

172 The standard definition of 'Gross Earnings' in the QES definition list is: "This includes salaries and wages; commission if a retainer, wage or salary was also paid, employer's contribution to pension, provident, medical aid, sick pay and other funds." This is also the TCTC asked for by DOL on the EEA report forms, overtime and bonuses included.

The average earning of a contract worker stayed the same for long periods in Lonmin's reports to DMR. The earnings average is *exactly* R7 535 per month all the way from October 2009 to September 2013, save for a one month blip below R7000 in December and 4 months from April-August 2012 (at R7499 in April, 3 months of R7500 and August at R6948). The reports may have been fabricated from what the reporter thought was a likely average.[173]

Diagram 7: ***Lonmin reporting the average earnings of the established and contracted blue collar work force month by month*** (Source: DMR).



That a plethora of contractors repeated the same wage year after year to the reporter at Lonmin is a very remote possibility. Whatever the case, the reported average wage of Lonmin's blue collar contract workers did not change. From 2009 to 2013, the CPI Head Line index increased from 86 to 105, or by 22%.[174] This means that the buying power of R7 535 in remuneration (before tax) declined by one fifth over that period. Lonmin reports to DMR that blue collar contract worker earnings were nominally stagnant and fell in real terms 2009-2013.

The two other main headlines in the worksheets to DMR are: *Lonmin Platinum Process Division* with 1 200-1 500 contract workers and about 2 000 established employees (25% women), and *Lonmin Platinum - Shared Business Services* with 300-450 contract workers and about 800 established employees (45% women). These categories covered specialists, management and white collar workers across the board in all Lonmin sites in categories D, E and F. The average established wage was R10 to 15 thousand rand higher and the contracted employee earnings average was double that of R7 535, but also absolutely fixed at R16 016 and R15 400 respectively for 3 to 4 years in a row! Here as elsewhere, we have divided the sum of earnings each month by the number of employee each month.

The existence in the Group companies of some 1 200 white collar staff in business service roles underlines the questions asked in Chapter 4 concerning the R200-300 hundred million annual transfers from the Lonmin Group to LMS allegedly as payments for "managerial, technical, administrative and secretariat services".

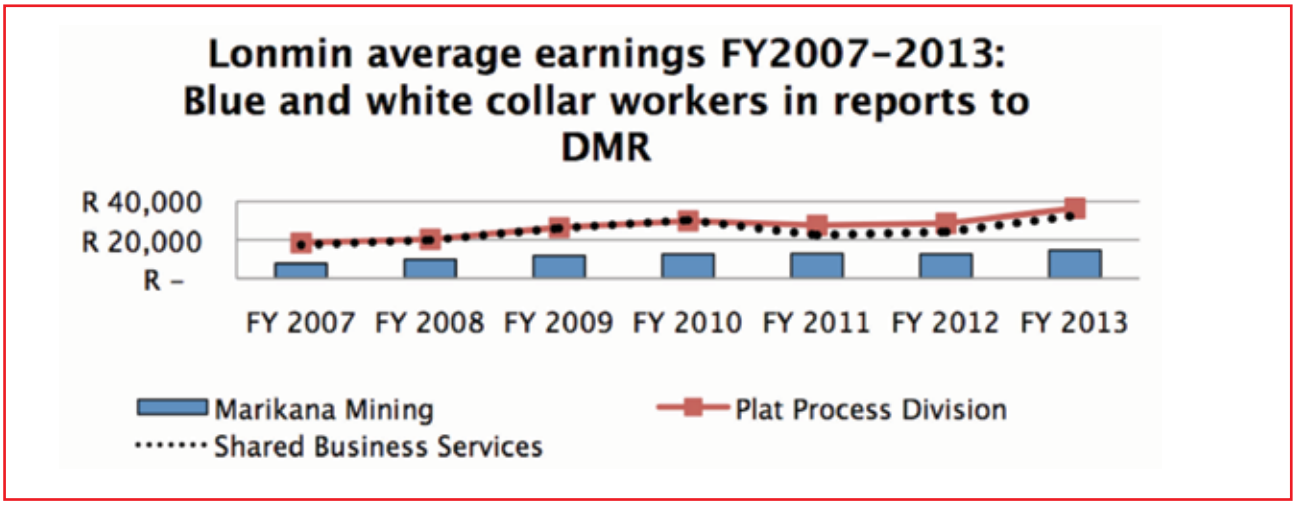
173 Deputy Head of DMR Statistics Martin Kohler says (Telephone interviews in May 2013 and April 2014) that the large mining companies had been warned that they shouldn't report what they believe the DMR will accept. They should comply with the law and report their contract worker situation monthly after investigating it. They must not report what they pay to the contract worker employer. From 2006 there was a DMR initiated ramp up of the reporting, but problems persisted.

174 StatsSA, Consumer Price Index September 2013, Statistical Release P0141, Figure 1.

Interestingly, the average earnings of the established employees of "Lonmin Marikana Mining" (Diagram 7 above) also appear as stagnant between 2009-2012 (the upward blips mark November or December bonus payments), and only rises after the events in 2012. Lonmin's reports to DMR on established employees display constant variation every month and should be more accurate.

If taking the 12 month averages for the financial years 2007 to 2103, the following diagram for the three main reporting headlines to DMR emerged (Marikana Mining is noted as employing over 20 000 blue collar workers).

Diagram 8: ***For the Financial Year Oct 2011 to Sep 2012, the 10 month average until July has been used. August and September has been disregarded when calculating the average wage for "Marikana Mining", because of the strike among the blue collar workers.***



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Sagaren Pillay, Statistics SA, May 2013.

John Theron, Impala Platinum, June 2014.

David van Wyk, Bench Marks Foundation, August 2014.

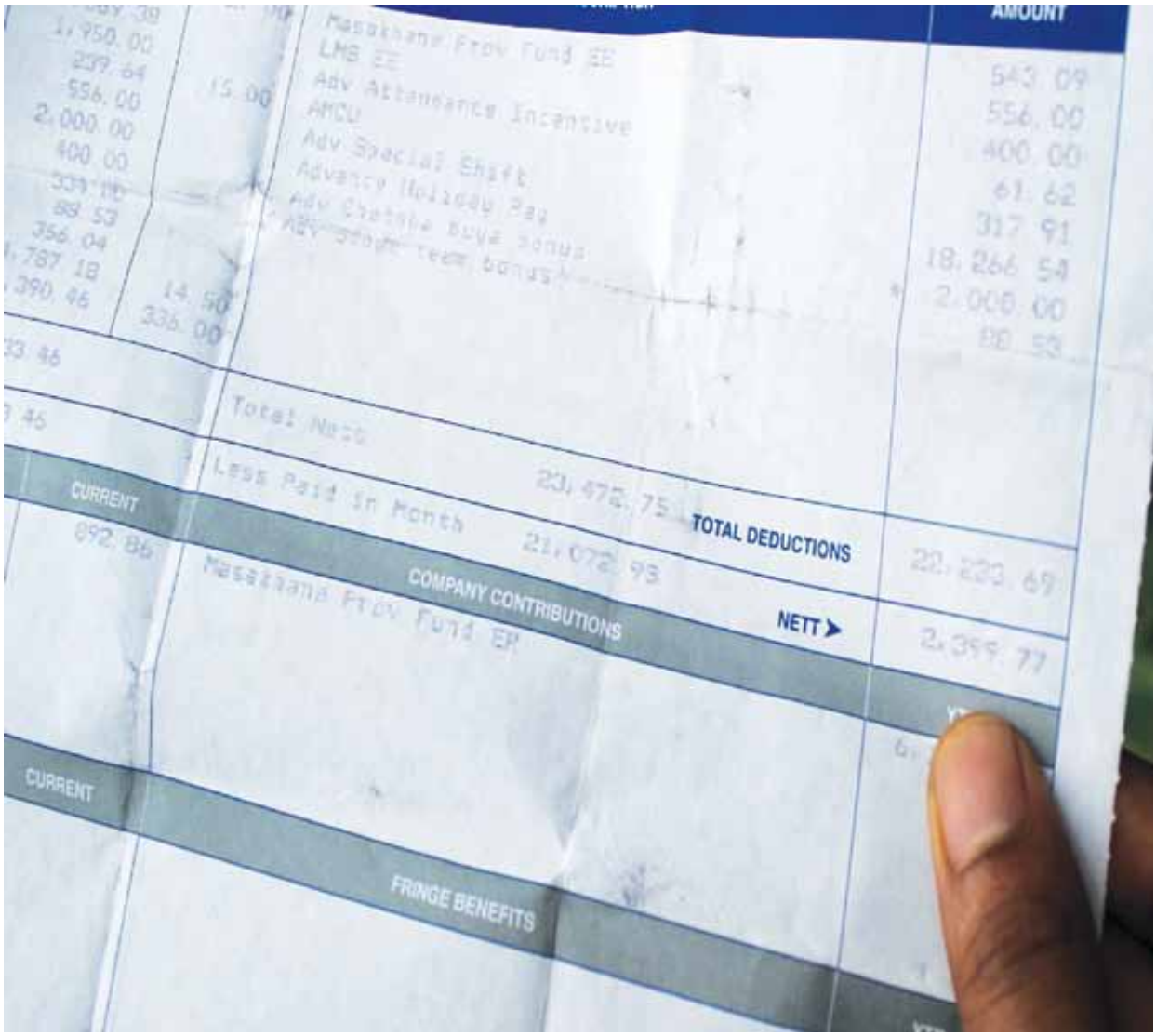
ANNEXURES

ANNEXURE A: Confusion on legal status of Lonmin Management Systems (LMS)

Marikana Commission of Inquiry, Real Time Transcription, 16 September 2014, Pages 38240-38241

MR CHASKALSON SC: (…) The first point that I want
to clarify is that Lonmin PLC is really the holding company
of the two South African operating subsidiaries. It holds
82% of Western Platinum Limited and Eastern Platinum
Limited. Lonmin PLC is the English company, Western
Platinum Limited and Eastern Platinum Limited are the South
African operating companies.
MR SEEDAT: That's correct.
MR CHASKALSON SC: Now in your evidence
in relation to those sales commission payments you
mentioned Lonmin Management Services and I got the sense
from your evidence that you were suggesting, well it may
have been misunderstood, that Lonmin Management Services
are actually a separate entity from Lonmin PLC. It's the
same entity.
MR SEEDAT: Well Lonmin PLC owns Lonmin
Management Services.
MR CHASKALSON SC: No I think you'll find
it's actually the same entity. Lonmin Management Services
is the South African branch company of Lonmin PLC. It's
Lonmin PLC and it's South African guys.
MR SEEDAT: That's right.
MR CHASKALSON SC: You couldn't do a
transaction between LMS and Lonmin PLC, they are the same
entity.
MR SEEDAT: South African - to Lonmin
PLC, correct.
CHAIRPERSON: Is it registered as a
foreign company in terms of the Companies Act?
MR CHASKALSON SC: It is registered as a
South African company, as an external company.
CHAIRPERSON: As a foreign company –
MR CHASKALSON SC: Yes, so it's Lonmin
PLC's guise in South Africa, registered presence in South
Africa.
CHAIRPERSON: Not a separate legal
persona in other words.
MR SEEDAT: Well it's a separate legal
persona in South Africa representing Lonmin PLC.
CHAIRPERSON: Yes so it's not a separate
legal persona from Lonmin PLC.
MR SEEDAT: Well I'm not sure if that is
correct because it has separate set of directors and it
operates separately from the Lonmin PLC UK listed company.
I think we can check that –
MR CHASKALSON SC: Maybe we could clarify
that, I thought that we'd sorted that out between us and
Lonmin, but we'll hold that. If it becomes relevant it
will become relevant later.

ANNEXURE B: The 2012 R2000 Back-to-work allowance and mine worker indebtedness



Picture 1: *Photo of a Lonmin employee pay slip taken in December 2012. The date of the pay slip is not shown on the photo because it is printed adjacent to the name of the employee and his or her identity is protected. (Source: Bench Marks Foundation and the photographer* ***Chris Molebatsi****).*

Two salient features in the picture of the pay slip merit clarifications.

First, the R2000 Go Back to Work once-off allowance, agreed at the end of the wild cat strike in September 2012, has been deducted as if it was a loan.[175]

A critical article on the September 2012 agreement can be found on *TheConMag* website. [176] We cannot find any document that presents the erroneous argument referred to in that article that the

175 For journalistic accounts of the September 2012 deal in *The Sowetan* and *Mail and Guardian*, see: URL http://www.sowetanlive.co.za/news/2012/09/19/lonmin-miners-accept-pay-rise-to-end-strike and URL: http://mg.co.za/article/2012-09-21-00-lonmin-wage-deal-will-have-inevitable-impact-on-jobs .

176 The article can be found at URL: http://www.theconmag.co.za/2013/08/23/the-missing-22-and-the-return-of-r12500/ (2015-03-09)

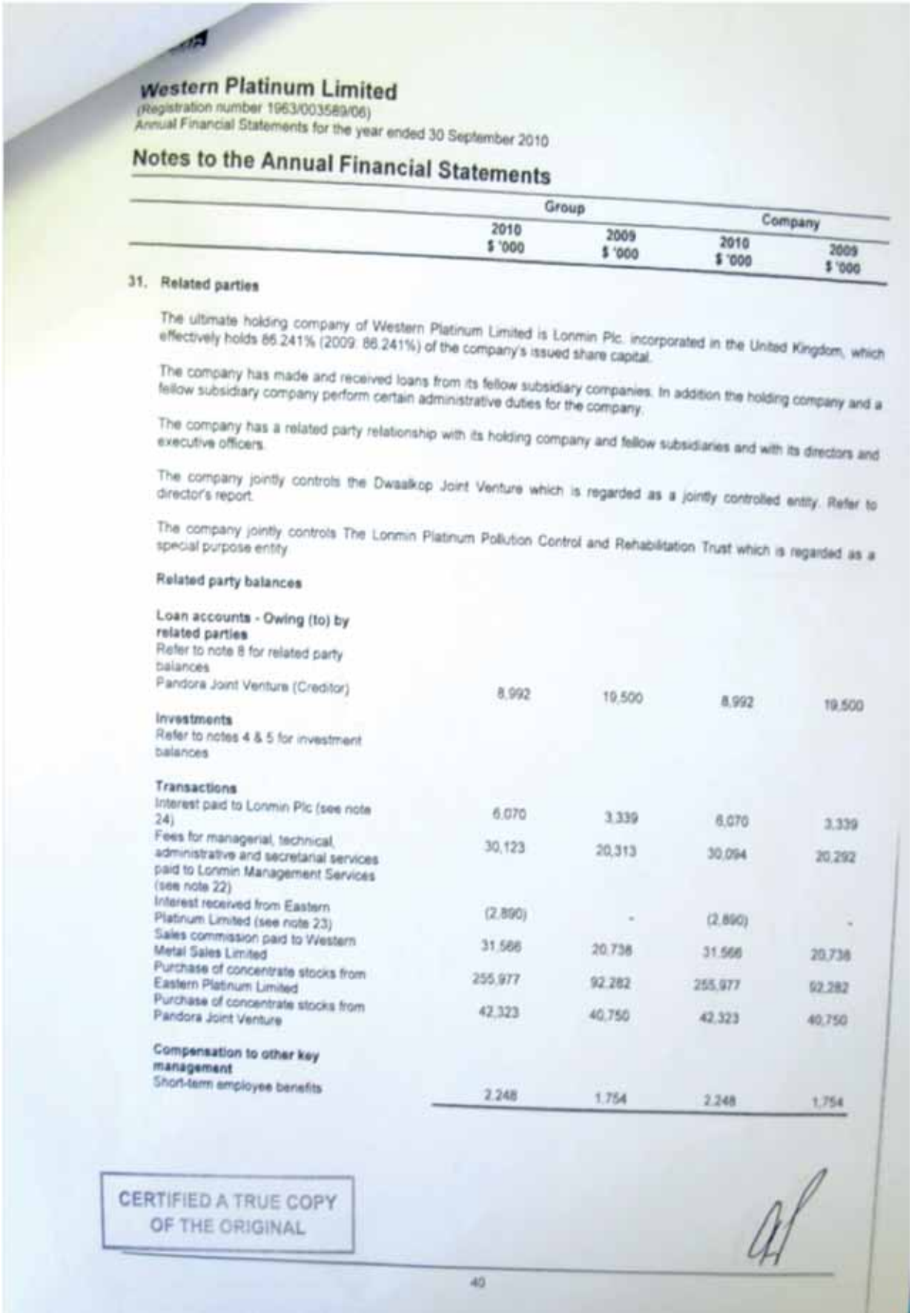
R2000 deduction is a mere effect of accounting principles and that it hasn't really been deducted. The R2000 can only be deducted if it previously was booked and regarded as a loan to the employee. It cannot end up being deducted if it is regarded as a once-off allowance. According to David van Wyk (email 2014-08-04), the question regarding the R2000 deduction was raised again with Lonmin by a delegation from the Bench Marks Foundation at a meeting February 2013. To his recollection it "did not get a comprehensible answer".

Second, this employee is heavily indebted to his/her employer. Close to R19000 has been deducted in advanced payments (the R2000 aside). It is likely that some of these deductions are financed by new advance payments not shown in the picture

Of the 28 employees who have their monthly payslips (from September 2012 and earlier in 2012) recorded on the Marikana Commission work sheet Deceased Miners, seven have Advances paid to them, seemingly only nullifying huge deductions (between R11.483 and R28344 in advance Holiday Allowance alone) of previously advance payments, so that the net monthly payment will not be negative. Twelve of the 28 have deductions made due to previous advance payments based on different kinds of bonuses (special shift, stope team, drilling and "attendance incentive"). There is also one case of minus R2973.83 (gross remuneration of R12481.22 minus15455.05 in total deductions) for the month of August.

Only four of the 28 workers have so called 'garnishee orders' registered on them, from R150 to R600 in deductions per month. The deductions that were made because of previous advance payments were much higher.

ANNEXURE C: (Picture 2): Detail of WPL's AFS 2010 with payments to Bermuda specified (CIPC archives).



Western Platinum Limited
(Registration number 1963/003589/06)
Annual Financial Statements for the year ended 30 September 2010

Notes to the Annual Financial Statements

	Group		Company	
	2010 $ '000	2009 $ '000	2010 $ '000	2009 $ '000
31. Related parties				
The ultimate holding company of Western Platinum Limited is Lonmin Plc, incorporated in the United Kingdom, which effectively holds 86.241% (2009: 86.241%) of the company's issued share capital.				
The company has made and received loans from its fellow subsidiary companies. In addition the holding company and a fellow subsidiary company perform certain administrative duties for the company.				
The company has a related party relationship with its holding company and fellow subsidiaries and with its directors and executive officers.				
The company jointly controls the Dwaalkop Joint Venture which is regarded as a jointly controlled entity. Refer to director's report.				
The company jointly controls The Lonmin Platinum Pollution Control and Rehabilitation Trust which is regarded as a special purpose entity.				
Related party balances				
Loan accounts - Owing (to) by related parties				
Refer to note 8 for related party balances				
Pandora Joint Venture (Creditor)	8,992	19,500	8,992	19,500
Investments				
Refer to notes 4 & 5 for investment balances				
Transactions				
Interest paid to Lonmin Plc (see note 24)	6,070	3,339	6,070	3,339
Fees for managerial, technical, administrative and secretarial services paid to Lonmin Management Services (see note 22)	30,123	20,313	30,094	20,292
Interest received from Eastern Platinum Limited (see note 23)	(2,890)	-	(2,890)	-
Sales commission paid to Western Metal Sales Limited	31,566	20,738	31,566	20,738
Purchase of concentrate stocks from Eastern Platinum Limited	255,977	92,282	255,977	92,282
Purchase of concentrate stocks from Pandora Joint Venture	42,323	40,750	42,323	40,750
Compensation to other key management				
Short-term employee benefits	2,248	1,754	2,248	1,754

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40

ANNEXURE D: Search for Western Metal Sales Ltd address in the Bermuda company registry.

SEARCH REPORT

REQUESTED BY: [redacted]

File No to Charge: 348932

CONDUCTED BY: Mark Ouetrbridge

COMPANY: **Western Metal Sales Limited**

Registration No: 12714

DATE: August 8, 2014

CD&P Company: No

TIME: Registrar of Companies: 11:00 a.m.
Supreme Court: 10:50 a.m.

SEARCH OF COMPANY'S FILE AT COMPANIES REGISTRY

Memorandum of Association (MoA):	11/02/87- scanned copy attached
Initial Subscribers:	Ian Hilton, Ruby L. Rawlins, Marcia De Couto, Sheila Moran
Consent granted:	24/02/87
Certificate of Deposit of MoA:	23/02/87
Unrestricted Objects:	No -if No, see scanned copy MoA for Objects
Restrictions on Powers and/or additional Powers:	Yes -if Yes, see scanned copy MoA for Powers
Exempted Company:	Yes
Limited Liability Company:	Yes
Limited Duration Company:	No
Unlimited Liability Company:	No
Segregated Accounts Companies Act Company:	No
Private Act:	No
Certificate of Incorporation:	24/02/87
Registered Office:	
Date filed (& by whom):	01/10/03
Address:	Canon's Court 22 Victoria Street Hamilton HM 12 Bermuda
Alt. Address of Register of Members:	N/A
Branch Register of Members:	N/A

Share Capital:

Minimum Share Capital (if applicable)	US$	12,000.00		
Initial Authorised Share Capital	US$	12,000.00	**Resol**	**Filed**
Increase	US$			
Present Capital	US$	12,000.00		

Print Screen 1: Page 1 of search report at Registrar of Companies, Bermuda, showing the 2003 address of Western Metal Sales Limited being the address of Appleby Services; the name of the person that requested the search is hidden (Source: Marikana Commission of Inquiry).

ANNEXURE E: Picture 3): EPL sales outside the group 2009 and 2010 to Xstrata (CIPC archives).

Eastern Platinum Limited

(Registration number 1987/070294/06)
Annual Financial Statements for the year ended 30 September 2010

Notes to the Annual Financial Statements

	Group		Company	
	2010 $ '000	2009 $ '000	2010 $ '000	2009 $ '000
26. Related parties (continued)				
Trade & other receivables				
Xstrata	3,228	217	3,228	217
Trade & other payables				
Xstrata	1,471	-	1,471	-
Related party transactions				
Interest paid to (received from) related parties				
Interest received from Western Platinum Limited (see note 19)	-	(358)	-	(358)
Interest paid to Western Platinum Limited (see note 20)	2,890	-	2,890	-
Sales of concentrate to Western Platinum Limited (see note 16)	(255,977)	(92,282)	(255,977)	(92,282)
Sales of chrome to Xstrata	(4,871)	(1,155)	(4,871)	(1,155)
Purchases from related parties				
Purchase of property, plant & equipment from Xstrata	1,783	-	1,783	-
Administration fees paid to related parties				
Fees for managerial, technical, administrative and secretarial services paid to Lonmin Management Services (see note 18)	65	23	65	23

Compensation of key management personnel

Key management is employed and paid by either Western Platinum Limited, a sister company, or Lonmin Public Limited Company South African branch, trading as Lonmin management Services.

27. Financial risk management

Liquidity risk

Liquidity risk is the risk that the group will be unable to meet a financial commitment in any location or currency. The risk is minimised through holding of cash balances and sufficient available borrowing facilities through group companies. In addition detailed cash flow forecasts are regularly prepared and reviewed by treasury. The cash needs of the company is managed according to its requirements. The following are the contractual maturities of financial liabilities, including interest payments and excluding netting arrangements. The cash flows include both principal and interest payments.

The table below analyses the group's financial liabilities and net-settled derivative financial liabilities into relevant maturity groupings based on the remaining period at the balance sheet date to the contractual maturity date. The amounts disclosed in the table are the contractual undiscounted cash flows. Balances due within 12 months equal their carrying balances as the impact of discounting is not significant.

31

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ANNEXURE F: Example of documents pointing to double booking of EPL revenues.

Prints screens 2 _ 4 below: EPL's 2010 AFS; WPL 2010 AFS; Lonmin Plc AR 2012: Income statement with the item "Revenue" (CIPC Archives for EPL and WPL Income Statements).

Eastern Platinum Limited

(Registration number 1987/070294/06)
Annual Financial Statements for the year ended 30 September 2010

Statements of Comprehensive Income

	Note(s)	Group 2010 $ '000	Group 2009 $ '000	Company 2010 $ '000	Company 2009 $ '000
Revenue	16	259,372	93,437	259,372	93,437
Cost of sales	17	(227,573)	(154,885)	(227,573)	(154,885)
Gross profit (loss)		**31,799**	**(61,448)**	**31,799**	**(61,448)**
Other income		2,494	13,335	2,494	13,335
Operating expenses		(8,244)	(6,800)	(8,244)	(6,800)
Operating profit (loss)	18	**26,049**	**(54,913)**	**26,049**	**(54,913)**
Finance income	19	176	839	3	504
Income from equity accounted investments	3	11,164	13,737	11,164	13,737
Finance costs	20	(926)	(1,244)	(926)	(1,244)
Profit (loss) before taxation		**36,463**	**(41,581)**	**36,290**	**(41,916)**
Taxation	21	(1,798)	(9,714)	(1,798)	(9,714)
Total comprehensive income (loss) for the year		**34,665**	**(51,295)**	**34,492**	**(51,630)**

Western Platinum Limited

(Registration number 1963/003589/06)
Annual Financial Statements for the year ended 30 September 2010

Statements of Comprehensive Income

	Note(s)	Group 2010 $ '000	Group 2009 $ '000	Company 2010 $ '000	Company 2009 $ '000
Revenue	20	1,325,683	968,657	1,325,683	968,657
Cost of sales	21	(995,139)	(927,165)	(995,139)	(915,894)
Gross profit		**330,544**	**41,492**	**330,544**	**52,763**
Other income		48,596	30,065	28,817	24,266
Operating expenses		(189,889)	(154,440)	(164,161)	(132,481)
Operating profit (loss)	22	**189,251**	**(82,883)**	**195,180**	**(55,452)**
Finance income	23	4,358	4,540	3,424	2,573
Finance expense	24	(28,156)	(40,288)	(27,697)	(40,021)
Profit (loss) before taxation		**165,453**	**(118,631)**	**170,907**	**(92,900)**
Taxation	25	(91,801)	(60,323)	(91,675)	(59,794)
Profit (loss) for the year		**73,652**	**(178,954)**	**79,232**	**(152,694)**
Other comprehensive income		-	-	-	-
Total comprehensive income (loss)		**73,652**	**(178,954)**	**79,232**	**(152,694)**

Annual Report and Accounts 2012

Consolidated Group Five Year Financial Record

for the year ended 30 September

Continuing operations		2012	2011	2010	2009	2008
Consolidated income statement:						
Revenue	$m	**1,614**	1,992	1,585	1,062	2,231
Operating (loss) / profit [1]	$m	**(702)**	307	203	(142)	764
Underlying operating profit / (loss) [1]	$m	**67**	311	228	(93)	963
(Loss) / profit before taxation	$m	**(698)**	293	240	(272)	779
Underlying profit / (loss) before taxation	$m	**57**	315	237	(111)	997
Attributable (loss) / profit for the year	$m	**(410)**	273	112	(285)	455
Underlying attributable profit / (loss) for the year	$m	**15**	226	138	(103)	550
Basic (loss) / earnings per share	cents	**(202.3)**	134.8	56.9	(163.7)	277.8
Underlying earnings / (loss) per share	cents	**7.4**	111.6	70.2	(59.2)	335.8

Revenue year 2009: WPL + EPL = Lonmin PLC ⟶ 968,657 + 93437 = 1,062,094 [$m 1062]

Revenue year 2010: WPL + EPL = Lonmin PLC ⟶ 1,325,683 + 259,372 = 1,585055 [$m 1585]

As the line item 'Cost of Sales' also appears as double booked FY2006-2010 ('Cost of Sales' not reported from FY2011), Lonmin Plc's reported Gross Profits are not affected.

ANNEXURE G: WPL's acquisition of Messina from its mother company, Lonmin Plc.

Western Platinum Limited
(Reg. No. 1963/003589/06)

Notes to the financial statements
for the year ended 30 September 2006 (continued)

	Recognised on acquisition	Carrying value
	R'million	R'million
35. ACQUISITION OF MESSINA LIMITED		
The company acquired on 28 June 2006 100% of the voting shares of Messina Limited, an unlisted mining company based in South Africa, from Lonmin Plc.		
The fair value of the identifiable assets and liabilities of Messina Limited as at the date of acquisition were:		
Assets		
Property, plant and equipment	3 176	1 212
Unlisted investments	6	6
Inventories	43	43
Trade and other receivables	235	235
Inter-mine loan	1	1
Cash and cash equivalents	150	150
	3 611	1 647
Liabilities		
Deferred tax	569	-
Ultimate shareholders loan-interest bearing	566	566
Interest-bearing borrowings	3	3
Loan from fellow subsidiary	47	47
Provisions	16	16
Trade and other payables	52	52
Inter-mine loan	1 110	1 110
	2 363	1 794
Net assets/(liabilities)	1 248	(147)
Negative goodwill	(340)	
Purchase price	908	

The total cost of the combination was R908 million which was paid in cash.

Cost
Cash outflow on acquisition:

	R' million
Net cash acquired with the subsidiary	150
Cash paid	(908)
Net cash outflow	(758)

From the date of acquisition, Messina Limited has contributed R39m to the net profit of the group. If the combination had taken place at the beginning of the year, the profit for the group would have been decreased by R6m and revenue from continuing operations would have been increased by R763m.

The purchase price used in the acquisition of Messina by Western Platinum Limited was based on the price that the minority shareholders were paid in the scheme of arrangement, namely R45 per share.

39

Print Screen 4: WPL's 2006 AFS, page 39. The "group" at bottom of the page here refers to WPL and its own subsidiaries (CIPC Archives, but the report also appears in the WPL 2007 Special Purpose AFS lodged at the Marikana Commission in September 2014).

ANNEXURE G, (Continued)

REPUBLIC OF SOUTH AFRICA
COMPANIES ACT, 1973

Form CM 34

Lodgment of financial statements / Interim reports

[Sections 302 (4)(a), 302 (4)(b), 306, 329 (2), (3), (5)]

(To be lodged when company sends notice to members)

REGISTRAR OF COMPANIES AND OF CLOSE CORPORATIONS
2008 -08- 27
CUSTOMER INTERFACE UNIT

Registration No. of company: 1963/003589/06

Name of holding company: LSA (UK) LIMITED

Names of subsidiaries (if any)	MESSINA LIMITED	Registration Nos.	1950/035912/06
Names of subsidiaries (if any)	MESSINA PLATINUM MINES LIMITED	Registration Nos.	1968/000958/06
Names of subsidiaries (if any)		Registration Nos.	
Names of subsidiaries (if any)		Registration Nos.	
Names of subsidiaries (if any)		Registration Nos.	

Print Screen 5: Detail of report form attached to WPL's 2007 financial statement, showing WPL's subsidiaries. The small asset Vlakfontein Nickel (Pty) Ltd is omitted from the list, but mentioned under "Investments in Subsidiaries" in one of the Notes (Source: CIPC).

LONMIN PLATINUM		IMPALA PLATINUM		ANGLO AMERICAN PLATINUM	
MINIMUM RATES CAT 4-9		Level/Grade; min basic rates		MINIMUM RATES	
A4 (Surface)	R 4 921	A4 (Surface)	R 4 937	A4 (Surface)	R 4 500
A4 (Underground)	R 5 713	A4 (Underground)	R 5 500	A4 (Underground)	R 5 400
A4 (Panel/Winch/Loco Operator)	R 5 934	A4 (Panel/Winch/Loco Operator)	R 5 950	A4 (Panel/Winch/Loco Operator)	R 5 400
B1 (Surface)	R 5 382	B1 (Surface)	R 6 000	B1 (Surface)	R 4 950
B1 (Underground)	R 6 296	B1 (Underground)	R 6 300	B1 (Underground)	R 5 940
B1 RDO	R 6 296	B1 RDO	R 7 050	B1 RDO	R 6 400
B2 (SF)	R 6 295	B2	R 6 700	B2 (SF)	R 5 445
B2 (UG)	R 7 310	B3	R 7 300	B2 (UG)	R 6 534
B3 (SF)	R 7 486	B3 (Admin and Clerks)	R 7 000	B3 (SF)	R 5 990
B3 (UG)	R 8 483	B3 (Drivers)	R 8 350	B3 (UG)	R 7 187
B4 (SF)	R 9 178	B4	R 8 000	B4 (SF)	R 6 589
B4 (UG)	R 10 243	B5	R 8 800	B4 (UG)	R 7 907
B5 (SF)	R 10 244	B6	R 9 700	B5 (SF)	R 7 248
B5 (UG)	R 10 536	B6 (Admin and Clerks)	R 8 000	B5 (UG)	R 8 697
C1	R 16 738	B7	R 10 500	B6 (SF)	R 7 973
C2	R 22 205	C1	R 11 500	B6 (UG)	R 9 567
C3	R 25 636	C2	R 12 600	B7 (SF)	R 8 770
C4	R 28 931	C3	R 13 800	B7 (UG)	R 10 524
C5	R 31 518	C4	R 15 300	C1 (SF)	R 10 609
				C1 (UG)	R 11 670
				C2 (SF)	R 11 920
				C2 (UG)	R 13 111
				C3 (SF)	R 13 112
				C3 (UG)	R 14 423
				C4 (SF)	R 15 039
				C4 (UG)	R 16 544
				C5 (SF)	R 16 980
				C5 (UG)	R 18 678

Print Screen 1: Basic wages compared during the 2014 wage negotiations; SF = "Surface" and UG= Under Ground. RDOs was moved to B1 after 1 Oct 2012. (Source: Amcu's Head Office).

ANNEXURE H: Wage spreads within blue collar established workers compared

Pri
ne

labour
Department:
Labour
REPUBLIC OF SOUTH AFRICA

PAGE 1 OF 5 EEA4

PLEASE READ THIS FIRST	SECTION A: EMPLOYER DETAILS & INSTRUCTIONS	
PURPOSE OF THIS FORM This form enables employers to comply with Section 27 (1) of the Employment Equity Act 55 of 1998 as amended. This form contains the format for Income Differential Statement to be completed by designated employers to the Employment Conditions Commission. **WHO COMPLETES THIS FORM?** All designated employers who are required to submit a report in terms of Section 27(1) of the Employment Equity Act, 55 of 1998 as amended. Employers who wish to voluntarily comply with the reporting requirements of the Act are also required to complete this form. **WHEN SHOULD EMPLOYERS REPORT?** Designated employers must submit the Income Differential Statement annually on the first working day of October or by 15 January of the following year in the case of electronic reporting. Employers who become designated on or after the first working day of April but before the first working day of October must submit their Income Differential Statement on the first working day of October of the following year. **SEND TO:** **Employment Equity Registry** **The Department of Labour** **Private Bag X117** **Pretoria 0001** **Online reporting:** **www.labour.gov.za** **Helpline: 0860101018** **NO FAXED OR E-MAILED REPORTS WIIL BE ACCEPTED**	Trade name	
	DTI registration name	
	DTI registration number	
	PAYE/SARS number	
	UIF reference number	
	EE reference number	
	Seta classification	
	Industry/Sector	
	Telephone number	
	Postal address	
	Postal code	
	City/Town	
	Province	
	Physical address	
	Postal code	
	City/Town	
	Province	
	Details of CEO/Accounting Officer at the time of submitting this report	
	Name and surname	
	Telephone number	
	Fax number	
	Email address	
	Details of Employment Equity Senior Manager at the time of submitting this report	
	Name and Surname	
	Telephone number	
	Fax number	
	Email address	
	Business type	
	ÿ Private Sector ÿ National Government ÿ Local Government ÿ Non-profit Organisation	ÿ State-Owned Enterprise ÿ Provincial Government ÿ Educational Institution
	Information about the organisation at the time of submitting this report	
	Number of employees in the organisation	ÿ 0 to 49 ÿ 50 to 149 ÿ 150 or more
	Is your organisation an organ of State?	ÿ Yes ÿ No
	Is your organisation part of a group / holding company?	ÿ Yes ÿ No
	If yes, please provide the name.	_____
	Year for which this report is submitted	_____

ANNEXURE I: The Employment Equity Act, report form no 4 (EEA4)

SECTION B: THE FOLLOWING MUST BE TAKEN INTO CONSIDERATION WHEN COMPLETING THE EEA4 FORMS

1. All employees (including Foreign Nationals) must be included when completing the EEA4 form in the appropriate space provided in the table below. Temporary employees are employees employed to work for less than three months.

2. Calculation of remuneration must include twelve months, which must be in line with the period covered by the EEA2 reporting form. In the case of employees who have not worked a full twelve month period an amount equivalent to the annual salary should be furnished, e.g. if a person worked for three months and earned R30 000, the annual equivalent will be (R30 000 / 3) * 12, which means the annual equivalent for this person will be R120 000.All payment amounts to be reflected in the table below must be rounded to the nearest Rand (R) and included as total remuneration for each group in terms of race and gender.

3. No blank spaces, commas (,), full stops or decimal points (.) or any other separator should be included when capturing the payment amounts in each of the cells in the table below – for example R7 345 567.22 must be captured as 7345567 with no separators.

4. The payments below indicate what must be included and what must be excluded in an employee's remuneration for the purposes of calculating pay in order to complete the EEA4 form.

4.1. Included

(a) Housing or accommodation allowance or subsidy or housing or accommodation received as a benefit in kind;
(b) Car allowance or provision of a car, except to the extent that the car is provided to enable the employee to work;
(c) Any cash payments made to an employee, except those listed as exclusions in terms of this schedule;
(d) Any other payment in kind received by an employee, except those listed as exclusions in terms of this schedule;
(e) Employer's contributions to medical aid, pension, provident fund or similar schemes; and
(f) Employer's contributions to funeral or death benefit schemes.

4.2. Excluded

(a) Any cash payment or payment in kind provided to enable the employee to work (for example, an equipment, tool or similar allowance or the provision of transport or the payment of a transport allowance to enable the employee to travel to and from work);
(b) A relocation allowance;
(c) Gratuities (for example, tips received from customers) and gifts from the employer;
(d) Share incentive schemes;
(e) Discretionary payments not related to an employee's hours of work or performance (for example, a discretionary profit-sharing scheme);
(f) An entertainment allowance; and
(g) An education or schooling allowance.

5. The value of payments in kind must be determined as follows –
(a) a value agreed to in either a contract of employment or collective agreement, provided that the agreed value may not be less than the cost to the employer of providing the payment in kind; or
(b) the cost to the employer of providing the payment in kind.

6. An employee is not entitled to a payment or the cash value of a payment in kind as part of remuneration if-
(a) the employee received the payment or enjoyed, or was entitled to enjoy, the payment in kind during the relevant period; or
(b) in the case of a contribution to a fund or scheme that forms part of remuneration, the employer paid the contribution in respect of the relevant period.

7. If an employee's remuneration or wage fluctuates significantly from period to period, any payment to that employee in terms of the BCEA must be calculated by reference to the employee's remuneration or wage during-
(a) the preceding 13 weeks; or
(b) if the employee has been in employment for a shorter period, that period.

THE FOLLOWING MUST BE TAKEN INTO CONSIDERATION WHEN COMPLETING THE EEA4 FORMS

1. Foreign nationals should be included when completing the EEA4 form in the appropriate space provided in the table below.
2. Temporary employees mean workers who are employed to work for three consecutive months or less;
3. The calculation of remuneration must include twelve months of a financial year that is in line with the period covered by the EEA2 reporting form. Where a person has not worked for a full twelve month period, the total remuneration worked should be included.
4. All payment amounts to be reflected in the table below must be rounded to the nearest Rand (R) and included as total remuneration for each group in terms of race and gender. No blank spaces, commas (,), full stops or decimal points (.) or any other separator should be included when capturing the payment amounts in each of the cells in the table below – for example R7 345 567.22 must be captured as 7345567 with no separators.
5. The payments below indicate what must be included and what must be excluded in an employee's remuneration for the purposes of calculating pay in order to complete the EEA4 form.
   5.1 Included
      a) Housing or accommodation allowance or subsidy or housing or accommodation received as a benefit in kind;
      b) Car allowance or provision of a car, except to the extent that the car is provided to enable the employee to work;
      c) Any cash payments made to an employee, except those listed as exclusions in terms of this schedule;
      d) Any other payment in kind received by an employee, except those listed as exclusions in terms of this schedule;
      e) Employer's contributions to medical aid, pension, provident fund or similar schemes;
      f) Employer's contributions to funeral or death benefit schemes.
   5.2 Excluded
      a) Any cash payment or payment in kind provided to enable the employee to work (for example, an equipment, tool or similar allowance or the provision of transport or the payment of a transport allowance to enable the employee to travel to and from work);
      b) A relocation allowance;
      c) Gratuities (for example, tips received from customers) and gifts from the employer;
      d) Share incentive schemes;
      e) Discretionary payments not related to an employee's hours of work or performance (for example, a discretionary profit-sharing scheme);
      f) An entertainment allowance;
      g) An education or schooling allowance.
6. The value of payments in kind must be determined as follows –
      a) a value agreed to in either a contract of employment or collective agreement, provided that the agreed value may not be less than the cost to the employer of providing the payment in kind; or
      b) the cost to the employer of providing the payment in kind.

7. An employee is not entitled to a payment or the cash value of a payment in kind as part of remuneration if-
      a) the employee received the payment or enjoyed, or was entitled to enjoy, the payment in kind during the relevant period; or
      b) in the case of a contribution to a fund or scheme that forms part of remuneration, the employer paid the contribution in respect of the relevant period.
8. If a payment fluctuates over a period of 13 weeks or if an employee has been in employment for a shorter period, the actual amount for that period should be calculated.

SECTION C: INCOME DIFFERENTIALS STATEMENT

Please use the table below to indicate the number of employees, including people with disabilities, and their remuneration in each **occupational level** in terms of race and gender.

Occupational levels		MALE				FEMALE				FOREIGN NATIONALS		Total
		A	C	I	W	A	C	I	W	M	F	
Top Management	Number of workers											
	Remuneration											
Senior Management	Number of workers											
	Remuneration											
Professionally qualified and experienced specialists and mid-management	Number of workers											
	Remuneration											
Skilled technical and academically qualified workers, junior management, supervisors, foremen and superintendents	Number of workers											
	Remuneration											
Semi-skilled and discretionary decision making	Number of workers											
	Remuneration											
Unskilled and defined decision making	Number of workers											
	Remuneration											
TOTAL PERMANENT	Number of workers											
	Remuneration											
Temporary employees	Number of workers											
	Remuneration											
TOTAL	Number of workers											
	Remuneration											

INCOME DIFFERENTIALS STATEMENT

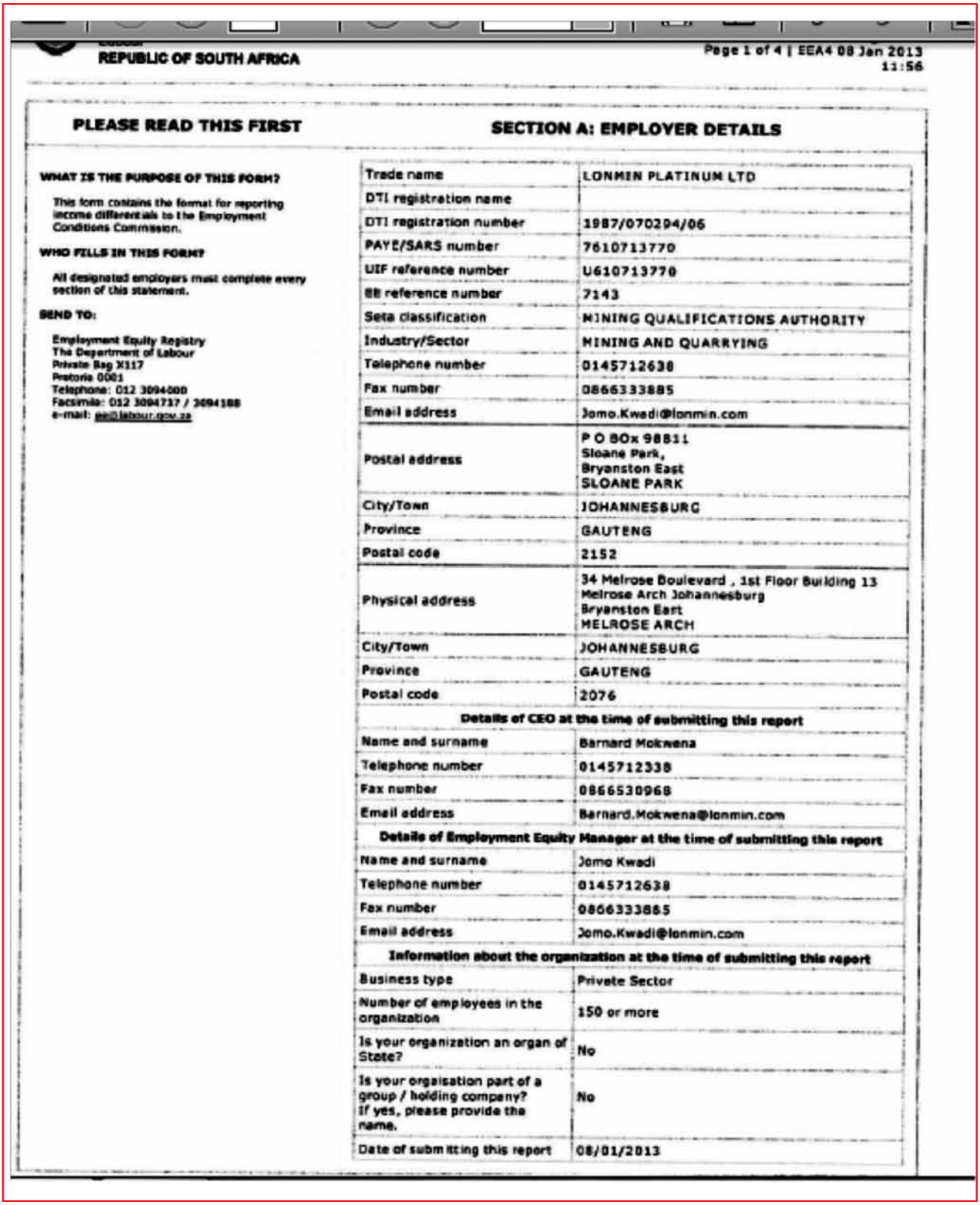
Please use the table below to indicate the number of employees, including people with disabilities, and their remuneration in each **occupational level** in terms of race and gender.

SECTION D: Please indicate the key reason(s) for differentiation in income in each occupational level that apply to your organisation. Please use **(X)** to mark the applicable key reason(s).

OCCUPATIONAL LEVELS	REASONS FOR INCOME DIFFERENTIALS						
	Seniority or length of service	Qualifications, ability, competence or potential	Performance, quantity or quality of work	Demotion	Experiential training	Shortage of relevant skills	Other relevant factor
Top Management							
Senior Management							
Professionally qualified and experienced specialists and mid-management							
Skilled technical and academically qualified workers, junior management, supervisors, foremen and superintendents							
Semi-skilled and discretionary decision making							
Unskilled and defined decision making							
Temporary employees							

Please provide reasons for the disparities in remuneration within the various occupational levels

ANNEXURE J: "Lonmin Platinum Ltd" filling in first page of EEA4 form, 2013



REPUBLIC OF SOUTH AFRICA

PLEASE READ THIS FIRST

WHAT IS THE PURPOSE OF THIS FORM?

This form contains the format for reporting income differentials to the Employment Conditions Commission.

WHO FILLS IN THIS FORM?

All designated employers must complete every section of this statement.

SEND TO:

Employment Equity Registry
The Department of Labour
Private Bag X117
Pretoria 0001
Telephone: 012 3094000
Facsimile: 012 3094737 / 3094188
e-mail: ee@labour.gov.za

SECTION A: EMPLOYER DETAILS

Trade name	LONMIN PLATINUM LTD
DTI registration name	
DTI registration number	1987/070294/06
PAYE/SARS number	7610713770
UIF reference number	U610713770
EE reference number	7143
Seta classification	MINING QUALIFICATIONS AUTHORITY
Industry/Sector	MINING AND QUARRYING
Telephone number	0145712638
Fax number	0866333885
Email address	Jomo.Kwadi@lonmin.com
Postal address	P O BOx 98811 Sloane Park, Bryanston East SLOANE PARK
City/Town	JOHANNESBURG
Province	GAUTENG
Postal code	2152
Physical address	34 Melrose Boulevard , 1st Floor Building 13 Melrose Arch Johannesburg Bryanston East MELROSE ARCH
City/Town	JOHANNESBURG
Province	GAUTENG
Postal code	2076
Details of CEO at the time of submitting this report	
Name and surname	Barnard Mokwena
Telephone number	0145712338
Fax number	0866530968
Email address	Barnard.Mokwena@lonmin.com
Details of Employment Equity Manager at the time of submitting this report	
Name and surname	Jomo Kwadi
Telephone number	0145712638
Fax number	0866333885
Email address	Jomo.Kwadi@lonmin.com
Information about the organization at the time of submitting this report	
Business type	Private Sector
Number of employees in the organization	150 or more
Is your organization an organ of State?	No
Is your orgaisation part of a group / holding company? If yes, please provide the name.	No
Date of submitting this report	08/01/2013

Print Screen 7: . DTI Number is the number of Eastern Platimnum Ltd. "Is your organisation part of a group/holding company? If yes, please provide the name" is answered with "No".

ANNEXURE K: On the wage share of value added in platinum mining

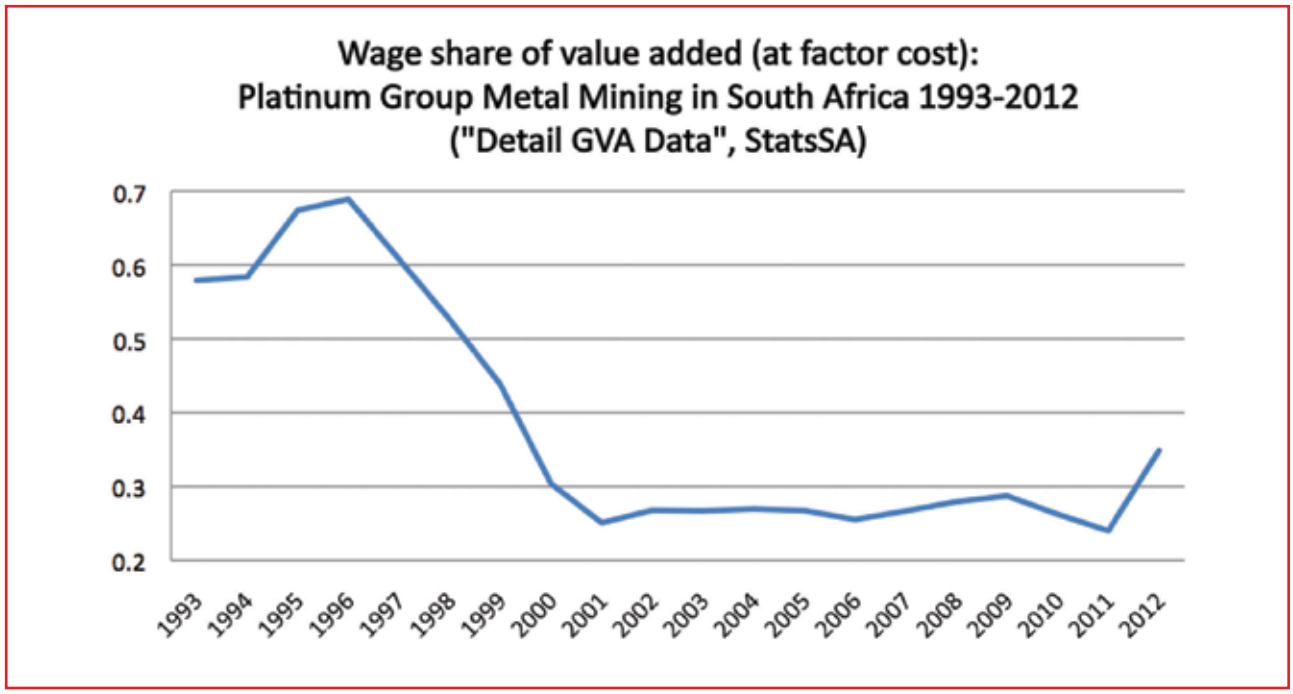


Diagram 1: *Wage share ("Compensation of employees") of what PGM mining adds in value to Gross Domestic Product each year. (Source: Stats SA "Detail GVA Data" 2012; the 2012 data is preliminary).*

Value Added is equal to Gross Operating Surplus (a broad measure of "Profits" before tax and wear and tear of equipment) plus Compensation of Employees ("Wages" including the remuneration of top management). In the national accounts, "GDP at market prices"= Wages + Profits + the net of taxes (like VAT) and subsidies, the latter adding about 10% to the GDP value.

The steap fall in wage share of value added from the end of the 1990's down to below 30 percent, in fact similar to the wage share in SA agriculture, is salient. In part, this of course corresponds with the boom and super profits in PGM mining before 2009. However, the rise of so called Labour Broking from 2000's is probably also very important for keeping the wage share at about 30 percent in the whole PGM industry, especially after 2008 (when StatsSA basically reports that the wage share in PGM mining hasn't increased, contrary to what one would guess and to reports from the big companies).

We saw in Chapter 5 that StatsSA also adds the much lower wages of contract workers to the QES wage statistics. The QES is one of the inputs into the StatsSA GDP statistics, also used by the SARB. It is the basis for the parameter "Compensation of Employees". For the GDP mining statistics not to be distorted by the contract worker wages being a part of the QES, an estimate of the value added contribution of all the contract worker firms to GDP must obviously also be made and factored in.

The extremely low compensation of contract workes and high profits of their employers in PGM mining should then be the explanation for why the wage shares that can be deduced from the three platinum giants annual reports are above 50 percent after 2008, just like in Bowman and Isaacs' account (2014: page 13, Figure 4), but continues to hover around 30 percent in the whole industry according to StatsSA. Based on AAP's, Implats' and Lonmin's annual reports, Bowman and Isaacs register a wage share of 29% for 2000-2008, 38% for the whole period 2000-2013, but 58% for 2009-2013. In StatsSA's account (Diagram 1) the wage share stays below 30% from 2000 all the way to 2012, and sometimes even drops below 25%!

Contract work in gold mining and in PGM mining

As was pointed out in the Policy Gap 7 report from the Bench Marks Foundation, the wage share in **gold mining** lies constantly above 50% also in Stats SA's "Detail GVA Data" work sheets. DMR "Public Labour" statistics shows that 1) the number of contract workers as share of all employees are about 12% in gold mining and not about 30% as in platinum mining, and 2) that the average wage among gold mining contract workers are about the same or almost the same as for established employees, but in PGM mining it is 50-60% of the established employees. We saw in part 4 that this is the case at Lonmin also for the contracted white collar worker. We havent inquired into the reason for the much stronger position of contract workers in gold mining.

The increase in the wage share 2012 depends on both the fall in value production and the increase in wages after the strikes in the platinum sector. We add a Diagram 2 below to make the wage share concept clearer to the reader.

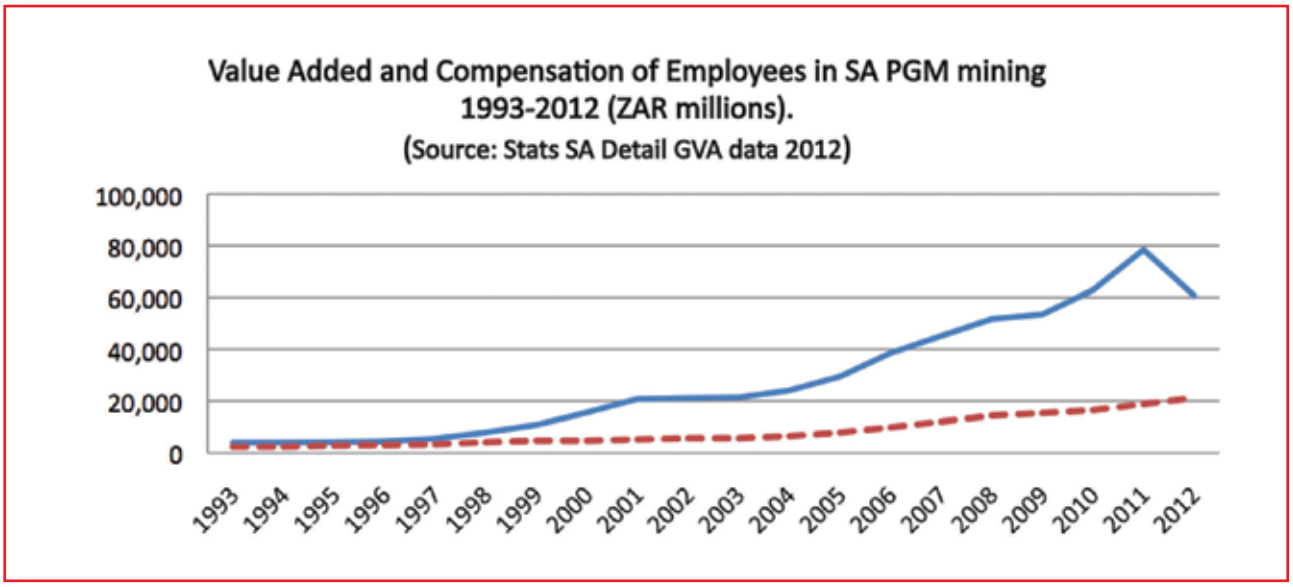


Diagram 2:*The same data as in Diagram 1, but displayed in rand values for the two parameters. The lower dotted line is Compensation to Employees* (Source: Stats SA).

ANNEXURE L: Dividends paid by Western Platinum Ltd to LonminPlc and Incwala Resources

2006: R2 350 000 000

2007: R 800 000 000

2008: R 2 529 540 000

2009: R1 025 000 000

2010: R158 000 000

2011: R80 000 000

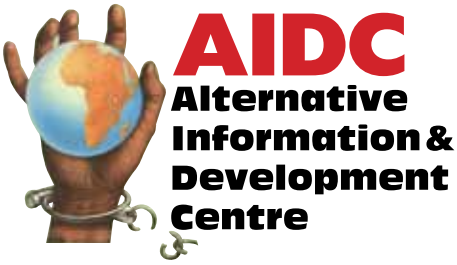
2012: R116 322 500 [2012: US$ 14 450 000]

SUM:R7 058 862 500 (i.e. 7 billion rand 2007-2012)

(Source: WPL's Special Purpose Financial Statements 2007-2011 denominated in ZAR and the regular WPL, 2012 Financial Statement, denominated in US$)

As explained by Evidence Leader Matthew Chaskalson SC 16 September when cross examining Lonmin Director Mr M Seedat (pointing to an error in a table Mr Seedat had presented 11 September): Dividends paid by WPL to Incwala Resources was usually paid out together with dividends paid to the parent company Lonmin Plc. Incwala gets 18% of the dividend payment and Lonmin Plc gets 82%. 16 September, the cost of building a house was estimated to R250,000 by Mr Seedat.[177] One debate during cross examination was whether the legal obligation to build 5500 mine worker houses during five years could have been honoured by Lonmin before deciding on the size of dividends. Lonmin built 3 show houses.

177 Marikana Commission, Real Time Transcriptions, Day 292, 16 September, page38321ff; (URL: www.marikanacommission.gov.za).



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