



COMPLIANCE MONITORING REPORT

IFC Investment in Togo LCT

Project #29197

Complaint 01

Monitoring of IFC's Response to: CAO Investigation of IFC's Investment in Togo LCT

March 28, 2018

Office of the Compliance Advisor Ombudsman (CAO)

About CAO

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

CAO (Office of the Compliance Advisor Ombudsman) is an independent post that reports directly to the President of the World Bank Group. CAO reviews complaints from communities affected by development projects undertaken by the two private sector arms of the World Bank Group, the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA).

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

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Introduction

CAO's compliance function oversees investigations of IFC/MIGA's environmental and social (E&S) performance with a view to adhering compliance with relevant requirements and improving the E&S performance of the institutions.

Following a CAO compliance investigation, CAO monitors actions taken by IFC/MIGA until such actions demonstrate to CAO that its compliance findings are being addressed.

CAO's monitoring considers IFC/MIGA's response to a compliance investigation at two levels:

- Firstly, CAO considers actions taken or proposed by IFC/MIGA that respond to CAO findings at the project level.
- Secondly, CAO considers actions taken or proposed by IFC/MIGA that respond to CAO findings at the level of IFC/MIGA policies, procedures, practice or knowledge.

The first level of analysis is designed to address project level concerns identified by CAO. The second level is designed to document progress in the IFC/MIGA's approach to the identification and management of E&S risk.

This is CAO's first monitoring report documenting CAO's assessment of IFC's response to its investigation of IFC's investment in Togo LCT ("the compliance investigation").¹ This report documents IFC's response to the compliance investigation in the period October 2016 – February 2018.

Background

The compliance investigation relates to IFC's investment in Lomé Container Terminal (LCT) in Togo. LCT was awarded a concession by the Government of Togo to develop, construct and operate a greenfield transshipment container terminal within the Port of Lomé in Togo. Construction works started in 2012 and the terminal has been operational since October 2014. IFC approved an investment in LCT in January 2011. IFC initially invested € 82.5 million for its own account, and mobilized an additional € 142.5 million from other lenders. A follow-on investment of € 10 million was approved in August 2015.

The compliance process was triggered by a complaint received in March 2015 from the "Collectif des personnes victimes d'érosion côtière" (Collective of victims of coastal erosion), representing a group of settlers living to the east of the port who claim to be negatively impacted by the project. The complainants allege that the project is contributing to an acceleration of coastal erosion impacting their communities. Issues related to the project's Environmental and Social Impact Assessment (ESIA) are also raised. The complainants also stated that they were not satisfied with the outcomes of meetings they had with the World Bank office in Lomé in 2014.

The compliance investigation was released in October 2016, and made a number of non-compliance findings in relation to IFC's due diligence and supervision of the project. A summary of findings as presented in the October 2016 report is set out in Annex 1.

¹ The CAO investigation, IFC's response to the investigation and related materials are available on the CAO website. See <https://goo.gl/q2pkTf>.

IFC's Management Response to the Investigation

A management response from IFC was released together with the investigation report in October 2016.²

Among actions envisaged in response to the findings, IFC committed to:

- Together with its client, participate in a multi-stakeholder dialogue and coordination of efforts among relevant parties to find solutions to the problem of coastal erosion, although IFC considers that LCT is not the right actor to be leading such discussions.
- Continue to work with LCT on its engagement with academic institutions to support further research, with a focus on developing design proposals for identification of locations where dredging material might best be deposited to help mitigate the loss of sand from beaches, including those east of the port, which are of concern to the complainants. IFC further noted that, given that deposition of dredging materials could have local impacts on fishermen and other coastal inhabitants, IFC would expect that appropriate consultation with these stakeholders would take place as part of this research, with the results disclosed publicly in way that will ensure accessibility to the communities to the east of the port.
- Include a new section on coastal erosion in the forthcoming revision of the 2007 Environmental, Health and Safety (EHS) Guidelines for Ports, Harbors and Terminals, reflecting learning from Togo and other projects.
- Identify expert consultants to advise IFC on coastal process modeling and management, acknowledging that these are highly specialized fields and that IFC needs to be better equipped to carry out detailed reviews of modeling studies when needed.

In addition, IFC's response summarizes the conclusions of an independent third party technical report, commissioned by IFC in July 2016 in response to the complaint and the project's potential impact on coastal erosion.³ On the basis of this report, IFC stated that no link had been established between the project and coastal erosion, by either the Environmental and Social Impact Assessment (ESIA) developed for the Project, or by the subsequent independent technical reports commissioned respectively by IFC or CAO. For this reason, IFC noted that it took a different view from CAO as to any obligations of the Project under Performance Standard 1 with respect to erosion impacts.

IFC further pointed to several ongoing initiatives to address the broader issue of coastal erosion, including a World Bank coastal resilience program; and a project commissioned by the African Development Bank, aimed at strengthening climate resilience of infrastructure along coastal areas in Togo. IFC noted that it would seek to use the World Bank Group's convening role to try to bring the relevant parties together on this important issue for Togo.

² IFC's Response to CAO Compliance Investigation Report of IFC's investment in Togo LCT – <https://goo.gl/GzFoDS>.

³ See Artelia, Lome Container Terminal and Coastal Erosion, July 2016, available at <https://goo.gl/H2hUuG>

Observations from CAO Monitoring (Oct. 2016 – Feb. 2018)

This section summarizes IFC's update to CAO on actions undertaken to address CAO's investigation findings, at project level and at the level of policies, procedures, practices and knowledge. It also compiles views from the complainants regarding IFC's engagement to address the investigation findings.

Project level actions

IFC reported to CAO steps that are being taken to address the investigation findings at the project level. These include findings in relation to:

- IFC and the client's approach to the **assessment of project impacts on coastal erosion**.
- IFC and the client's approach to **stakeholder engagement and disclosure of information**, particularly as relates to coastal communities living to the east of the port.

Assessment of project impacts on coastal erosion

CAO Investigation Findings

CAO's investigation found that IFC's pre-investment review did not consider historical impacts associated with the project, and did not work with the client to determine possible remediation measures. In particular, CAO noted that additional assessment of the erosion risk posed by the project was required. PS1 requirements in relation to cumulative impact assessment were applicable and should have been addressed, therefore CAO concluded that IFC did not assure itself that the ESIA represented an "adequate, accurate and objective presentation of the issues", as required by PS1.

CAO further found that, once concerns related to coastal erosion were raised, actions agreed between IFC and the client did not provide assurance that analysis of the project's impact on erosion would meet PS1 requirements for environmental assessment by the client. In this context, CAO concluded that IFC had not provided advice which would bring the client back into compliance as per the Sustainability Policy.

IFC's Actions in Response to the Findings

IFC reported to CAO that an environmental audit was expected to be conducted by the National Environmental Management Agency (ANGE) during the first semester of 2017, including consultation with local communities affected by coastal erosion. This audit had to be completed in order to renew LCT's environmental certificate.

The terms of reference (ToR) for the audit mention the IFC Performance Standards as part of the international norms applicable to the project. The objectives of the audit, as described in the ToR, are to:

- a) identify non-compliances related to the existence and the exploitation of LCT's facilities;
- b) determine negative impacts and risks associated with these non-compliances;
- c) propose corrective measures to address the non-compliances, with the objective to avoid, mitigate, or compensate observed negative impacts, prevent and manage risks; and
- d) note positive aspects and propose measures to build on those and enhance the company's performance.

Among the tasks described in the ToR, the auditor is expected to verify the relationship between LCT's activities and the acceleration of coastal erosion. The ToR further note that consultation with communities living in the area of influence of the project will be conducted, specifically with community members of villages affected by coastal erosion.

IFC reported to CAO that in June 2017, as the audit had not yet been carried out, IFC's management sent a letter to LCT requesting an update on overall progress on the audit and other ESAP items. In December 2017, IFC further reported that the audit was delayed due to budget reasons and changes in top management on the client's side. However, the client confirmed to IFC that the environmental audit would be conducted during the first quarter of 2018. CAO notes that, at the time of writing this monitoring report, the audit had not been carried out.

IFC further reported to CAO that it was monitoring the client's engagement with an academic institution, the "Centre de Gestion Intégrée du Littoral" (CGILE), to better assess the contribution of the project to coastal erosion. Following a Memorandum of Understanding (MOU) drafted in May 2016, a study proposal drafted by the consultant was received and commented by the lenders in December 2016. Within the scope of work to be undertaken, the consultant is expected to estimate the contribution, if any, to coastal erosion of different pieces of infrastructure on the Togolese coast. CAO notes that, while the assignment is expected to be carried out with the support of local NGOs, it does not specify that consultation with communities affected by coastal erosion is required. IFC has undertaken, however, that communities will be consulted during the implementation phase of the study. IFC reported that for reasons similar to the delay in conducting the environmental audit, the study was also delayed. Following a supervision visit in December 2017, IFC noted that it expects the client to send a new study proposal.

Stakeholder engagement and disclosure of information

CAO Investigation Findings

CAO's investigation found that pre-investment consultation did not include all communities that may be subject to risks or adverse impacts from the project, despite communities in the erosion zone having been identified in the ESIA. In turn, CAO found that IFC did not assure itself that the client disclosed the Action Plan to affected communities or that it included a structure for reporting to affected communities.

After concerns were raised to IFC and the World Bank by the complainants, CAO found that actions agreed between IFC and the client did not specify the need for consultation and disclosure with communities in the erosion zone, and that IFC had not sought assurance that the revised Action Plan had been developed following consultation with, or disclosed to affected communities.

Finally, CAO noted that IFC's decision to rely on the Government and the Port Autonome de Lomé (PAL) to handle the concerns raised by the complainants was not supported by an appropriate assessment of their commitment or capacity to address the issues. It also lacked a framework for monitoring or follow up that would provide feedback on whether concerns regarding project related impacts were being addressed.

IFC's Actions in Response to the Findings

IFC reported to CAO that a number of actions were taken to address the investigation's findings related to stakeholder engagement and disclosure of information.

Firstly, IFC noted that multi-stakeholder meetings were held in Lomé in December 2016, in the context of discussions around the World Bank's West Africa Coastal Areas Resilience program (WACA).⁴ Participants included IFC, the World Bank, LCT, the Ministry of Environment, the Port Authority of Lomé (PAL), the African Development Bank (AfDB), and the Ministry of Transport. The purpose of the WACA Program is to become a convening platform for coastal countries and partners, where they share knowledge, expertise, and access finance. It is a multi-country regional project intended as part of a programmatic and regional initiative to support the strengthening of resilience of coastal communities and assets in West Africa countries, through

⁴ See World Bank, West Africa Coastal Areas Management Program (WACA) – <https://goo.gl/uhq2fE>

technical and financial partnerships.⁵ IFC further noted that it has ongoing discussion with the World Bank on this program.

Secondly, IFC reported that, following a letter from the complainants in December 2016, a meeting was organized in Lomé in February 2017. The meeting was attended by IFC, LCT, the Ministry of Environment, and representatives of the complainants. As noted in a summary report of this meeting, IFC reiterated its response to the CAO investigation and actions expected to be undertaken to address the findings. IFC also encouraged the complainants to be involved in public consultations planned to be held as part of the upcoming environmental audit.

Thirdly, IFC noted that the client developed a Stakeholder Engagement Plan (SEP), which includes a mechanism for external reporting to communities. At the moment of writing this report, some of the mechanisms for disclosure of information envisaged in the SEP have not been put in place, such as the creation of a website on which all relevant E&S documents would be made available; or the publication of an annual sustainability report containing a summary of the company's environmental, social and safety performance.

Complainants Perspective

In discussions with CAO, the complainants reported that, following the February 2017 meeting with IFC, no concrete action was proposed, and IFC urged the communities to be involved in the World Bank's WACA program. They further noted that IFC took 23 days before sending a summary report of the meeting, which according to the complainants shows a lack of interest in these issues on IFC's part. The complainants confirmed that they were contacted by the World Bank in the context of the WACA program but they expressed that they do not want WACA to be a replacement for IFC's actions in response to the CAO investigation. Therefore, the complainants sent a letter to the World Bank asking for WACA not to be associated with the CAO report.

Actions at the level of IFC policies, procedures, practice or knowledge

IFC reported to CAO steps that are being taken to address the investigation findings at the level of policy, procedures, practice or knowledge. In particular, these include findings in relation to IFC's approach to the **guidance and review of E&S impact assessments** for port development projects.

CAO Investigation Findings

CAO's investigation noted that IFC's E&S review did not identify coastal erosion as an E&S risk of the project, although the ESIA: (a) acknowledged a potential impact of the project on erosion during construction, and (b) described the history of coastal erosion since the port was constructed in the 1960s. Acknowledging that erosion has been a long-standing issue in the region, CAO found that IFC did not consider "significant historical social or environmental impacts associated with the project," and did not "work with [the client] to determine possible remediation measures" as required by the 2006 Sustainability Policy (para. 13).

Further, CAO found that PS1 requirements in relation to cumulative impact assessment were applicable and should have been addressed expressly in IFC's E&S review. During the process of identifying environmental and social risks and impacts, a cumulative impact assessment would have (a) recognized that the project may contribute to cumulative impacts on valued environmental and social components on which other existing or future developments may also have detrimental effects; and (b) avoided and/or minimized these impacts to the greatest extent possible.

⁵ *Ibid.*

CAO's investigation concluded that IFC did not review the methodology used to assess the project's potential impacts on coastal erosion. Rather, IFC relied on the international presence and past experience with the Port of Lomé of the consultancy which prepared the ESIA. On this basis, and considering the results of the technical review of the ESIA commissioned by CAO as part of this investigation, CAO found that IFC did not assure itself that the ESIA represented an "adequate, accurate and objective presentation of the issues, prepared by qualified and experienced persons," as required by PS1 (para. 7).

IFC's Actions in Response to the Finding

- **Guidance in relation to coastal erosion assessment**

IFC reported to CAO that it developed new EHS Guidelines for Ports, Harbors and Terminals including learning from the Togo LCT case and other projects. Published in February 2017, the new EHS guidelines include a section on "Coastal Processes and Seabed and Coastal Geomorphology."⁶ This is an important action by IFC in its efforts to enhance its practices. Relevant to the issues identified in the LCT investigation, this new section notes the following:

The construction and operation of port and terminal facilities such as piers and breakwaters can lead to changes in coastal processes resulting in alterations to seabed and coastal geomorphology due to the effects of these structures on water currents, wave patterns, and water levels. Resultant impacts could include adverse changes to land erosion, sediment transport and deposition, and coastal inundation profiles

...

As part of the design and siting of port facilities, surveys, assessment and modeling of metocean, hydrological, sedimentological and coastal geomorphological conditions should be carried out together with an identification of potential adverse impacts on coastal processes such as erosion and accretion, from the placement of new physical structures. Design, siting considerations and coastal protection measures (e.g., beach nourishment, sand bypassing, groynes, seawalls, coastal revegetation, etc.) should be considered to minimize adverse impacts from these structures. As part of a coastal processes monitoring and management plan, projects should conduct a risk assessment of littoral sediment transport, shoreline morphology and erosion patterns and trends, and coastal inundation profiles; define monitoring requirements (e.g., beach profiling, satellite imagery/remote sensing); and identify action triggers.

- **Approach to the Review of E&S Impact Assessments**

IFC's official response to the investigation noted that a "lesson learned from CAO's findings is that coastal process modeling and management are highly specialized fields and that IFC needs to be better equipped to carry out detailed reviews of modeling studies when needed."⁷ It further noted that IFC was in the process of identifying expert consultants to advise IFC in this regard.

Ensuring appropriate review of technical aspects of environmental and social impact assessments (ESIA) against the requirements of the Performance Standards is an important aspect of IFC's E&S due diligence process. This is particularly relevant when considering large infrastructure projects, which may involve a range of complex E&S issues. In such circumstances, the requirement of review commensurate to risk⁸ may require the involvement of subject matter experts in addition to IFC E&S staff. In this context, CAO notes that IFC has contracted a consultancy firm to provide expert support for environmental reviews of IFC projects with potential impacts on coastal erosion. IFC reports that so far, this consultancy firm has reviewed the coastal process modeling proposal of a port in India; the modeling outputs for a proposed investment in

⁶ IFC, Environmental, Health, and Safety (EHS) Guidelines for Ports, Harbours and Terminals, February 2017 – <https://goo.gl/doP7kr>

⁷ IFC's Response to CAO Compliance Investigation Report of IFC's investment in Togo LCT – <https://goo.gl/GzFoDS>

⁸ See IFC Sustainability Policy, para. 26

Ghana and relevant mitigation strategy; and drafted the report on the LCT project referenced above.

Conclusion

IFC has reported a number of initiatives in response to CAO's investigation of its investment in Lomé Container Terminal (LCT), both at project level and at the level of policies, practice, procedures and knowledge. At project level, CAO recognizes IFC's efforts to engage with the complainants and respond to their inquiries following the publication of CAO's investigation in October 2016. These actions are welcomed and CAO is encouraged by the progress made in this regard. Nonetheless, continuation of these efforts and implementation of further actions are needed in order to address the compliance gaps identified in the CAO investigation.

Firstly, while the environmental audit to be commissioned by the ANGE should represent a valuable contribution to the assessment of project impacts on coastal erosion, CAO notes that the audit has not yet been commissioned. CAO has similar concerns regarding delays in the client's collaboration with CGILE, which is designed to support a better understanding of any contribution of the project to coastal erosion. In monitoring IFC's ongoing supervision of the project, CAO will consider the results of these studies as well as their consistency with the requirements of PS1 on environmental assessment, consultation and disclosure.

Secondly, CAO recognizes the complexity of erosion issues raised in the complaint and identified during the investigation process, the need to involve the public sector in addressing these issues, and the value of the World Bank's WACA program in this context. The WACA is a regional program aimed at providing technical and financial assistance, and as such, its purpose is not to assess project-specific contributions to coastal erosion as identified in the CAO investigation. CAO welcomes efforts of IFC and the World Bank to include the CAO complainants and other communities impacted by coastal erosion in consultations around the WACA program, as they represent an important stakeholder group, however this should not be considered a response to the CAO investigation findings regarding: (a) assessment of the project contribution to coastal erosion, or (b) community consultation and disclosure of information around the project.

Overall, CAO welcomes a number of actions proposed and taken by IFC. Nonetheless, at the moment of this writing, the implemented actions have not substantially addressed the investigation findings at project level. Moving forward, IFC should ensure that the studies agreed with the client are completed within a specified timeframe and in compliance with the requirements of PS1 for E&S assessment including those for stakeholder engagement, and cumulative impact assessment. Should such assessments identify project impacts, CAO expects IFC to work with the client to bring it into compliance with the requirements of the Performance Standards

At the level of policies and procedures, CAO recognizes that the new section added to the revised EHS Guidelines for Ports, Harbors and Terminals provides useful guidance in relation to the assessment of projects impacts on coastal processes and land erosion. Such guidance is relevant to the type of projects considered in the LCT investigation. IFC further indicated that it has contracted a third-party consultant to support IFC with expert reviews of projects with potential impacts on coastal erosion.

CAO will keep the investigation open for monitoring and plans to issue a follow-up monitoring report no later than March 2019.

Annex 1 – Summary of Investigation Findings

CAO FINDINGS

IFC's Environmental and Social Review of the Project

Review of the client's E&S Assessment:

- IFC did not consider “significant historical social or environmental impacts associated with the project,” and did not “work with [the client] to determine possible remediation measures” (2006 Policy, para. 13).
- PS1 requirements in relation to cumulative impact assessment were applicable and should have been addressed expressly in IFC's E&S review (para. 5).
- IFC did not assure itself that the ESIA represented an “adequate, accurate and objective presentation of the issues, prepared by qualified and experienced persons” (PS1, para. 7).
- IFC's review was not appropriate to the nature and scale of the project, and was not commensurate with the level of the E&S risks and impacts (2006 Policy, para. 13). Additional assessment of the erosion risk posed by the project was required (2006 Policy, para. 15).

Disclosure and Consultation:

- IFC did not assure itself that consultation included all communities that “may be subject to risks or adverse impacts from a project” (PS1, para. 21); which would have included communities in the erosion zone identified in the ESIA.
- IFC did not assure itself that information was disseminated by the client to potentially affected communities in a manner that met the requirements of PS1 or that consultation was “undertaken in a manner that is inclusive and culturally appropriate” (paras. 20 & 21).

Action Plan:

- IFC did not ensure that Action Plan agreed with the client “described the actions necessary to implement the various sets of mitigation measures or corrective actions to be undertaken”, including a timeline for their implementation (PS1, para. 16).
- As a consequence of the absence of consultation with potentially affected communities living in the erosion zone, IFC did not ensure that the client developed an Action Plan that “reflect[ed] the outcomes of consultation on social and environmental risks and adverse impacts and the proposed measures and actions to address these” (*Ibid*).
- IFC did not assure itself that the client disclosed the Action Plan to affected communities or that it included a structure for reporting to affected communities (PS1, paras. 16 & 26).

IFC's Supervision of the Project

- Actions agreed between IFC and the client do not provide assurance that analysis of the project's impact on erosion will meet PS1 requirements for environmental assessment by the client (paras 4ff).
- Actions agreed between IFC and the client do not specify the need for consultation and disclosure with communities in the erosion zone (PS1, paras 20ff).
- IFC has not sought assurance that the revised Action Plan has been developed following consultation with, or disclosed to affected communities. Similarly, the revised Action Plan lacks a mechanism for external reporting (PS1, paras. 16 & 26).

- IFC's decision to rely on the Government and PAL to handle the concerns raised by the complainants was not supported by an appropriate assessment of their commitment or capacity to address the issues. It also lacked a framework for monitoring or follow up that would provide feedback on whether concerns regarding project related impacts were being addressed.

- IFC has not assured itself that the client is responding "to community concerns about the project" or engaging in consultation "on an ongoing basis as risks and impacts arise", as per the requirements of PS1 (paras. 21 & 23). Further, IFC has not provided advice which would bring the client back into compliance as per the Sustainability Policy (para. 26).
