



November 10, 2015

Office of the Compliance Advisor Ombudsman (CAO)

COMPLIANCE APPRAISAL REPORT

IFC Investment in Lomé Container Terminal (Project #29197), Togo

Complaint 01

Summary

Lomé Container Terminal SA (LCT), a locally incorporated company, holds a concession from the Government of Togo to develop, construct and operate a greenfield transshipment container terminal within the Port of Lomé, Togo. Upon completion, the terminal is expected to have a handling capacity of up to 2.2 million twenty foot equivalent unit moves per annum. Further expansion of the terminal, south of the newly constructed port basin, is envisaged in the longer term.

The project is estimated to cost €353 million. In 2011, IFC approved an investment of €255 million for the project which included €85.5 million senior debt financing from IFC's own account, and €170 million in additional loans mobilized from other lenders. The project was classified Category A, indicating that it has significant potential E&S risks and impacts. A follow on investment of €10 million was approved in August 2015 to fund additional equipment.

In March 2015, a complaint was lodged with CAO by the "Collectif des personnes victimes d'érosion côtière" (Collective of victims of coastal erosion), 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 erosion impacting their communities. Issues related to the project's Environmental and Social Impact Assessment (ESIA) are also raised. The CAO assessment report in relation to the complaint further describes the alleged impacts, including loss of land and destruction of houses leading to physical displacement; loss of farms and plantations; loss of religious sites and other places of cultural importance; loss of infrastructure; and lack of consultation as part of the preparation of an ESIA. CAO's assessment report also documents LCT's view that there is no indication that the container terminal project is the cause of the erosion, or of the acceleration of the erosion that is presented by the complainants.

The purpose of a CAO compliance appraisal is to ensure that compliance investigations are initiated only for those projects that raise substantial concerns regarding environmental or social outcomes or issues of systemic importance to IFC/MIGA. In deciding whether to initiate an investigation, CAO weighs factors including the magnitude of the environmental and social (E&S) concerns raised in a complaint, the results of a preliminary review of IFC's E&S performance in relation to these issues, and a more general assessment of whether a compliance investigation is the appropriate response in the circumstances.

In this case, the complainants raise concerns regarding the impacts of coastal erosion on their livelihoods. They assert that the construction of the container terminal has contributed to an acceleration of these impacts. IFC's pre-investment E&S due diligence included a review of a comprehensive ESIA for the project. The ESIA considered the issue of coastal erosion, noting that this was a problem in the area to the east of the port. The ESIA concluded that the project

would not have a negative long term impact in terms of erosion, while noting that limited negative impacts during construction could not be excluded. In relation to this issue, CAO finds no reason to conclude that IFC's pre-investment E&S review was other than commensurate to risk.

However, CAO has questions as to the consultation process that was carried out as part of the preparation of the ESIA. In particular, CAO is unclear whether IFC assured itself that communities represented by the complainants, which are located within the area of influence of the project as defined in the ESIA, were adequately consulted.

Further, CAO has identified questions as to the adequacy of IFC's E&S supervision of the project, particularly as relates to the complaints regarding the impacts of the project on coastal erosion.

On the balance of considerations, CAO has decided to conduct a compliance investigation of IFC's E&S performance in relation to this project. The investigation will focus on the adequacy of:

- IFC's review of community consultation around the ESIA process, particularly as relates to the communities represented by the complainants;
- IFC's supervision of the client's monitoring of the coastal erosion risk during and post construction, in particular after becoming aware of the complainants' concerns.

Terms of Reference for this compliance investigation will be issued in accordance with CAO's Operational Guidelines.

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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Acronyms

Acronym	Definition
BCS	Broad Community Support
CAO	Office of the Compliance Advisor Ombudsman (IFC and MIGA)
E&S	Environmental and Social
ESIA	Environmental and Social Impact Assessment
ESMP	Environmental and Social Management Plan
ESMS	Environmental and Social Management System
ESRS	Environmental and Social Review Summary
ESRP	Environmental and Social Review Procedures
FPIC	Free, Prior, and Informed Consultation
IFC	International Finance Corporation
LCT	Lomé Container Terminal
PS	Performance Standards
SEP	Stakeholder Engagement Plan
SESAP	Supplemental Environmental and Social Action Plan
SPI	Summary of Proposed Investment
SSV	Supervision Site Visit
TOR	Terms of Reference

I. Overview of the Compliance Appraisal Process

When CAO receives a complaint about an IFC or MIGA project, the complaint is referred for assessment. If CAO concludes that the parties are not willing or able to reach a facilitated solution, the case is transferred to the CAO compliance function for appraisal and potential investigation.

A compliance appraisal also can be triggered by the CAO vice president, IFC/MIGA management, or the president of the World Bank Group.

The focus of the CAO compliance function is on IFC and MIGA, not their client. This applies to all IFC's business activities, including the real sector, financial markets and advisory. CAO assesses how IFC/MIGA assured itself/themselves of the performance of its business activity or advice, as well as whether the outcomes of the business activity or advice are consistent with the intent of the relevant policy provisions. In many cases, however, in assessing the performance of the project and IFC's/MIGA's implementation of measures to meet the relevant requirements, it will be necessary for CAO to review the actions of the client and verify outcomes in the field.

In order to decide whether a compliance investigation is warranted, CAO first conducts a compliance appraisal. The purpose of the compliance appraisal process is to ensure that compliance investigations are initiated only for those projects that raise substantial concerns regarding environmental and/or social outcomes, and/or issues of systemic importance to IFC/MIGA.

To guide the compliance appraisal process, CAO applies several basic criteria. These criteria test the value of undertaking a compliance investigation, as CAO seeks to determine whether:

- There is evidence of potentially significant adverse environmental and/or social outcome(s) now, or in the future.
- There are indications that a policy or other appraisal criteria may not have been adhered to or properly applied by IFC/MIGA.
- There is evidence that indicates that IFC's/MIGA's provisions, whether or not complied with, have failed to provide an adequate level of protection.

In conducting the appraisal, CAO will engage with the IFC/MIGA team working with the specific project and other stakeholders to understand which criteria IFC/MIGA used to assure itself/themselves of the performance of the project, how IFC/MIGA assured itself/themselves of compliance with these criteria, how IFC/MIGA assured itself/themselves that these provisions provided an adequate level of protection, and, generally, whether a compliance investigation is the appropriate response. After a compliance appraisal has been completed, CAO can close the case or initiate a compliance investigation of IFC or MIGA.

Once CAO concludes a compliance appraisal, it will advise IFC/MIGA, the World Bank Group President, and the Board in writing. If a compliance appraisal results from a case transferred from CAO's dispute resolution, the complainant will also be advised in writing. A summary of all appraisal results will be made public. If CAO decides to initiate a compliance investigation as a result of the compliance appraisal, CAO will draw up terms of reference for the compliance investigation in accordance with CAO's Operational Guidelines.

II. Background

Investment

According to IFC's Summary of Proposed Investment¹ (SPI), Lomé Container Terminal SA (LCT), a locally incorporated company, was awarded a 35 year concession by the Government of Togo, with an optional 10 year extension, to develop, construct and operate a greenfield transshipment container terminal within the Port of Lomé in Togo. Upon completion, the terminal is expected to have a handling capacity of up to 2.2 million twenty foot equivalent unit moves per annum. Further expansion of the terminal, south of the newly constructed port basin, is envisaged in the longer term.

LCT is indirectly wholly owned by Thesar Maritime Limited, which is a joint venture between Global Terminal Limited (GTL) and Oasis King International Limited (OKI). GTL is wholly owned by Terminal Investment Limited (TIL). OKI is 70% indirectly owned by China Merchants Holding International (CMHI) and 30% owned by the China Africa Development fund, a wholly owned company of the China Development Bank. The terminal is jointly operated by TIL and CMHI.

The project is estimated to cost €353 million. IFC approved an investment of €255 million for the project which included €85.5 million senior debt financing from IFC's own account, and €170 million additional loans mobilized from other lenders. The project was classified as Category A.² A follow on investment of €10 million was approved in August 2015 to fund additional equipment.

Complaint and CAO assessment

In March 2015, a complaint was lodged with CAO by the "Collectif des personnes victimes d'érosion côtière" (Collective of victims of coastal erosion), a group of settlers who claim to be negatively impacted by the project.³ The complainants allege that the project is contributing to an acceleration of erosion impacting their communities. Issues related to the project's Environmental and Social Impact Assessment (ESIA) are also raised.

The CAO assessment report in relation to the complaint⁴, completed in August 2015, further describes the alleged impacts of the project according to the complainants:

- Loss of land and destruction of their houses, which has effectively left them physically displaced;
- Loss of farms, coconut plantations, and places for tourism activities, which formed the basis of their livelihoods and has left them with very few alternatives;
- The sea levels have changed the coastline, making previous fishing activities very difficult;
- Loss of religious sites like divinity houses or other places of cultural importance to the communities;
- Loss of local infrastructure, including royal palaces, community halls, market places, schools, wells and roads;
- Further, the complainants state that they were never identified as affected communities in the ESIA of the project, they were not consulted and information was not disclosed to them.

¹ IFC, Summary of Proposed Investment, Togo LCT, November 2010 - <http://goo.gl/q66sDI>

² According to IFC's Sustainability Framework, Category A projects are those with potential significant adverse social or environmental risks and/or impacts that are diverse, irreversible or unprecedented.

³ Complaint lodged with CAO by the "Collectif des personnes victimes d'érosion côtière", March 2015 - <http://goo.gl/A4rBX4>

⁴ CAO Assessment Report, Togo LCT-01, August 2015 - <http://goo.gl/QfIIBZ>

CAO's assessment report also documents LCT's view that there is no indication that the container terminal project is the cause of the erosion, or of the acceleration of the erosion that is presented by the complainants.

III. Analysis

This section outlines the IFC E&S policies and procedures as they apply to the project. It then analyses IFC's performance against these standards during preparation and implementation of the project and in the context of the issues raised by the complainants.

IFC Policies and Procedures

IFC's investment in the company was made in the context of its 2006 Policy on Social and Environmental Sustainability ("the Sustainability Policy") and Performance Standards (PS), together referred to as the Sustainability Framework. Through the Sustainability Policy, IFC commits to "ensure that the projects it finances are operated in a manner consistent with the requirements of the Performance Standards" (para. 5).

IFC implements the commitments set out in the Sustainability Policy through its Environmental and Social Review Procedures (ESRP), which are updated periodically. The LCT investment was approved under ESRP version 4.0⁵ and supervised under the subsequent updated versions of the ESRP.

When financing a project, IFC first conducts an appraisal aimed at assessing the full business potential, risks, and opportunities associated with the investment. Once the project is approved and IFC has invested in a client, the investment is monitored throughout the project cycle to ensure compliance with the conditions in the loan agreement and IFC's applicable policies and standards. This CAO compliance appraisal considers IFC's performance at these two stages in the project cycle as relevant to the issues raised by the complainants.

Pre-investment Environmental and Social Review

At the pre-investment stage, IFC reviews the E&S risks and impacts of a proposed investment and agrees with the client on measures to mitigate these risks in accordance with the Performance Standards. For the purposes of this compliance appraisal, a key question is whether IFC conducted an adequate pre-investment review of the risks associated with its investment in the company.

Requirements

As required by the Sustainability Policy, IFC's E&S review should be "appropriate to the nature and scale of the project" and commensurate to risk (para. 13). In conducting the E&S review IFC considers the E&S risks as assessed by the client and the "the commitment and capacity of the client" to manage these risks (para. 15). IFC also considers the client's "track record" in relation to E&S issues.⁶ A central principle of the Sustainability Policy is that "IFC does not finance new

⁵ IFC Environmental and Social Review Procedures, version 4.0, August 2009

⁶ ESRP 3, para.3.2.1, version 4.0, August 2009

business activity that cannot be expected to meet the Performance Standards over a reasonable period of time” (para. 17).

For projects with potential significant E&S impacts, PS1 requires the client to commission a comprehensive social and environmental assessment (para. 9). The assessment should present an “adequate, accurate and objective evaluation and presentation of the issues, prepared by qualified and experienced persons” (para. 7).

Relevant to the issues raised in the complaint, PS1 requires that “risks and impacts will be analyzed in the context of the project’s area of influence. This area of influence encompasses, as appropriate: (i) the primary project site(s) and related facilities that the client (including its contractors) develops or controls, ... (iii) areas potentially impacted by cumulative impacts from further planned development of the project, any existing project or condition, and other project-related developments that are realistically defined at the time the Social and Environmental Assessment is undertaken” (para. 5).

PS1 requires that IFC clients consult with affected communities who “may be subject to risks or adverse impacts from a project ... Effective consultation should be: (i) should be based on the prior disclosure of relevant and adequate information, including draft documents and plans; (ii) should begin early in the Social and Environmental Assessment process; (iii) will focus on the social and environmental risks and adverse impacts, and the proposed measures and actions to address these; and (iv) will be carried out on an ongoing basis as risks and impacts arise” (para. 21). For projects with “significant adverse impacts on communities, the consultation process will ensure their free, prior, and informed consultation and facilitate their informed participation.” PS1 further states that this process involves “organized and iterative consultation, leading to the client’s incorporating into their decision-making process the views of the affected communities on matters that affect them directly, such as proposed mitigation measures, the sharing of development benefits and opportunities, and implementation issues” (para. 22).

When clients are required to engage in a process of free, prior, and informed consultation, IFC has an additional pre-board obligation to assure itself that the process has: (a) met the requirements of PS1 (as set out above) and (b) resulted in Broad Community Support (BCS) for the project. BCS is defined as “a collective expression by the affected communities, through individuals and/or their recognized representatives, in support of the project” (para. 20).

The ESRP define affected communities as “those within the project’s area of influence, who will most likely feel the direct impacts of the project. ... The affected communities are a subset of a broader group of project stakeholders located within the project’s area of influence, in the region, host country, or elsewhere. IFC’s judgment on BCS involves the views of this subset of project stakeholders. ... IFC will review the client’s assessment document and available data”.⁷

IFC’s pre-investment review of the project

IFC’s early review of the project in January 2010 identified risks in relation to waste management, hazardous materials, occupational health and safety, noise, dust and air emissions, land acquisition and potential economic and physical displacement. Subsequent IFC documentation in May and September 2010 underscores that market gardeners and sand miners operating in the area of the project would be displaced, and noted that the client was preparing resettlement action plans (RAP) in this regard. IFC’s early review documentation did not mention the issue of coastal erosion.

IFC carried out a first E&S appraisal visit to the project site in October 2010. The purpose of the visit was to meet with project-affected communities as part of the determination of BCS for the

⁷ ESRP, Annex 3.5.1, version 4.0, August 2009

project. IFC met with a range of stakeholders including government officials and other relevant public and private entities, but did not meet with communities other than market gardeners. IFC's documentation shows that the IFC team was able to meet with market gardeners but not with sand miners, and that a follow-up visit would be necessary to determine BCS. Though no follow up site visit is documented, IFC concluded that the project met its FPIC and BCS requirements. The risk of increased coastal erosion is not discussed in IFC's documentation of the site visit.

An Environmental and Social Impact Assessment (ESIA) was submitted by the company to the Government of Togo and approved in October 2010, leading to the delivery of a "Certificat de Conformité Environnementale" (Certificate of Environmental Compliance). In addition to the construction of the container facility within the existing port, the project as described in the ESIA includes the construction of a 300m spur groin, the filling of an area of coastline adjacent to the port, and the dredging of the port basin and access channel.

The ESIA provides a detailed historical description of coastal erosion since the initial port of Lomé was built in the 1960s, and analyzes the potential impacts of the LCT project on the evolution of coastal erosion in the area located to the east of the project site (where the complainants are located). In particular, the ESIA notes that:

- Initial studies made before the construction of the Port of Lomé in the 1960s showed that it would have an important impact on erosion.
- The selection of an alternative site for the project would cause more erosion than the chosen site.
- Consultations with communities living permanently or temporarily in the project's area of influence were conducted, in particular with market gardeners and sand miners.
- Project activities could have potential impacts on coastal erosion during the construction phase.
- Impacts on coastal erosion during the operation phase were not expected.
- As part of the Environmental and Social Management Plan (ESMP), some construction activities, such as the dumping of materials in the erosion area and the sedimentary dynamics induced by construction activities, were identified as measures which could limit erosion.
- It was recommended that the efficacy of these measures be monitored.

In November 2010, IFC disclosed a Summary of Proposed Investment (SPI) and an Environmental and Social Review Summary (ESRS) for the project. The information disclosed shows that the project was categorized A, meaning that it had potential significant adverse social or environmental risks and/or impacts that are diverse, irreversible or unprecedented.

As relevant to the issues considered in this appraisal, the ESRS states that the draft ESIA, completed in February 2010, is comprehensive, included a consultation process with project-affected people, and proposes steps to mitigate potential environmental and social impacts. The ESRS further notes that there are no known cultural heritage sites in the port area or on the adjoining property, and that PS8 is thus not applicable. Impacts related to coastal erosion are not discussed in the ESRS.

Along with the ESRS, IFC disclosed the project's ESIA, the RAPs for sand miners and market gardeners, and a Supplemental Environmental and Social Action Plan (SESAP). Among the requirements included in the disclosed SESAP,⁸ the company was expected to develop a community engagement and grievance mechanism plan and procedure, prior to first disbursement.

⁸ Supplemental Environmental and Social Action Plan to the ESIA - <http://goo.gl/rPp6iZ>

The project was approved by the IFC Board in January 2011, and the loan agreement between the lenders and the company was signed in June 2011. E&S conditions as agreed between IFC and the company included that the company comply with IFC's E&S requirements and the SESAP; deliver semi-annual E&S monitoring reports prepared by an external consultant; ensure that the consultant verify data in relation to the RAPs, and report any noncompliance identified.

Conclusion

IFC's pre-investment E&S due diligence included a review of a comprehensive ESIA for the project prepared by a consulting firm. The ESIA considered the issue of coastal erosion in the area to the east of the port in some detail, identifying a limited increase in coastal erosion as a risk, particularly during the construction period. At the same time, the ESIA identified measures that could reduce erosion during the construction period. Overall the ESIA concluded that the project should not have a negative impact on coastal erosion. In terms of this technical analysis, CAO finds no reason to conclude that IFC's pre-investment E&S review was other than commensurate to risk.

In terms of consultation requirements, CAO has questions as to IFC's review of the consultation process that was carried out as part of the preparation of the ESIA. In particular, it is unclear whether IFC assured itself that the communities represented by the complainants were consulted, although they were located within the area of influence of the project as defined in the ESIA.

Project Supervision

Requirements

IFC is required to monitor its client's E&S performance throughout the life of the investment. As set out in the ESRP, the purpose of E&S supervision is to develop and retain the information needed to assess "the client's performance against the requirements of the investment agreement, the IFC PS in general and applicable EHS Guidelines; ... the status of the client's community engagement process; ... [and identify] key performance gaps relating to the client's performance, the Action Plan including Supplemental Actions, or ESMS."⁹

Project supervision is based on annual monitoring reports (AMR) submitted by the client and reviewed by IFC, discussions with the client, and site visits as required by IFC's ESRP. If the client fails to comply with its E&S commitments, IFC is required to "work with the client to bring it back to compliance to the extent feasible, and if the client fails to reestablish compliance, IFC will exercise remedies as appropriate" (Sustainability Policy, para. 26).

IFC's approach to supervision is designed to be proactive. In particular, "if changed project circumstances would result in adverse social and environmental impacts, [IFC is required to] work with the client to address them" (Sustainability Policy, para. 26). Similarly, IFC expects its clients to "monitor and measure the effectiveness of [their] management programs ... [and] use dynamic mechanisms, such as inspections and audits, where relevant, to verify compliance and progress toward the desired outcomes. ... Monitoring should be adjusted according to performance experience and feedback" (PS1, para. 24).

PS1 also requires the client to "establish a grievance mechanism to receive and facilitate resolution of the affected communities' concerns and grievances about the client's environmental and social performance" (para. 23).

⁹ ESRP 6, para. 6.2.7, version 4, August 2009

IFC's supervision of the project

General supervision and disbursements

IFC's supervision of its investment in LCT commenced in 2011 and is documented in annual reviews of the company's monitoring reports, and supervision site visits (SSV).

IFC's first disbursement was made in December 2012. Five subsequent disbursements were made in 2013, 2014, and 2015. A follow on investment was approved in August 2015 to fund additional equipment.

Community consultation and disclosure of information

As per the SESAP, an audit was carried out by an external third party in June 2013, in order to assess the company's performance against the requirements of the Performance Standards. The audit focused on (a) Monitoring and Reporting; (b) Stakeholder Management (including grievance mechanisms and community development plans); (c) Biodiversity Compensation outcomes; and (d) Management Systems. The audit did not consider the coastal erosion issue. The audit results showed that a more robust register of grievances and stakeholder engagement activities was required.

CAO notes that, following a site visit in September 2014, IFC raised concerns regarding the pending development of the company's Stakeholder Engagement Plan (SEP).

Coastal erosion and related grievances

IFC notes that a study on sedimentation, commissioned by the client, was completed in June 2013. The study's objective was to assess the effectiveness of the spur groin and the potential impacts of its extension on the coastline. The study does not directly address the concerns raised by the complainants.

IFC was first made aware of community concerns regarding the project's impacts on coastal erosion in December 2013, and raised the issue with the company.

In November 2014, following receipt of a complaint by the World Bank in Togo from the "Collectif des victimes d'érosion côtière", IFC staff held several meetings with representatives of the World Bank, the Government, the Port Authority of Lomé, Togolese public agencies and other lenders. IFC's documentation in relation to these meetings does not make a judgement on the merits of the complaints, but specifies that it was agreed that any future complaint letters should be sent to the Ministry of Environment and the Port Authority for action, and not to the World Bank or IFC. CAO has questions regarding the complaint handling process followed and/or suggested by the World Bank and IFC in this context.

Following these meetings and a site visit in January 2015, IFC recommended that LCT start looking at different options to better assess the contribution of the 300 meter spur groin on coastal erosion. IFC also noted that future spur groin expansion work should be subject to a formal impact assessment on coastal erosion. The status of these recommended actions was pending at the time of writing.

Conclusion

From the material available to CAO in the course of this compliance appraisal, CAO has questions as to the adequacy of IFC's E&S supervision, particularly as relates to IFC's response to complaints regarding the impacts of the project on coastal erosion.

IV. Decision

The purpose of a CAO compliance appraisal is to ensure that compliance investigations are initiated only for those projects that raise substantial concerns regarding environmental or social outcomes or issues of systemic importance to IFC/MIGA. In deciding whether to initiate an investigation, CAO weighs factors including the magnitude of the environmental and social (E&S) concerns raised in a complaint, the results of a preliminary review of IFC's E&S performance in relation to these issues, and a more general assessment of whether a compliance investigation is the appropriate response in the circumstances.

In this case, the complainants raise concerns regarding the impacts of coastal erosion on their livelihoods. They assert that the construction of the container terminal has contributed to an acceleration of these impacts. IFC's pre-investment E&S due diligence included a review of a comprehensive ESIA for the project. The ESIA considered the issue of coastal erosion, noting that this was a problem in the area to the east of the port. The ESIA concluded that the project would not have a negative long term impact in terms of erosion, while noting that limited negative impacts during construction could not be excluded. In relation to this issue, CAO finds no reason to conclude that IFC's pre-investment E&S review was other than commensurate to risk.

However, CAO has questions as to the consultation process that was carried out as part of the preparation of the ESIA. In particular, CAO is unclear whether IFC assured itself that communities represented by the complainants, which are located within the area of influence of the project as defined in the ESIA, were adequately consulted.

Further, CAO has identified questions as to the adequacy of IFC's E&S supervision of the project, particularly as relates to the complaints regarding the impacts of the project on coastal erosion.

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