



January 8, 2016
Office of the Compliance Advisor Ombudsman (CAO)

TERMS OF REFERENCE

CAO Compliance Investigation of IFC's Investment in Lomé Container Terminal, Togo

Project #29197

Complaint 01

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).

If CAO concludes that the parties are not willing or able to reach a facilitated solution, the case is transferred to the compliance function of CAO, to appraise whether the concerns raised in the complaint merit a compliance investigation of IFC/MIGA.

The focus of the CAO compliance process is on IFC/MIGA's appraisal and supervision of an investment, and whether or not IFC/MIGA complied with its own policy provisions to assure itself of the environmental and social performance of its investments. CAO does not undertake a compliance investigation of IFC/MIGA's client.

CAO discloses the findings of its compliance investigation in an investigation report to inform the President and Board of the World Bank Group, senior management of IFC/MIGA, and the public about its decisions and reasoning.

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

Background to the investment

Lomé Container Terminal SA (LCT, or "the client"), 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.

The client 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. 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 as Category A, indicating that it has significant potential E&S risks and impacts. IFC approved a follow on investment of €10 million in August 2015 to fund the purchase of additional equipment.

The complaint

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.¹ The complainants allege that the project is contributing to an acceleration of erosion affecting their communities. Issues related to the adequacy of the project's Environmental and Social Impact Assessment (ESIA) are also raised.

The CAO assessment report in relation to the complaint,² 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.

CAO's assessment report also documents the client'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.

Scope of the compliance investigation

As set out in CAO's November 2015 compliance appraisal, CAO will conduct a compliance investigation of IFC's investment in the client in relation to the issues raised in the complaint.

Given CAO's mandate, the focus of the CAO compliance investigation is on IFC, and how IFC assured itself of the environmental and social performance of its investment at appraisal and during supervision.

¹ Complaint lodged with CAO by the “Collectif des personnes victimes d'érosion côtière”, March 2015 - <http://goo.gl/A4rBX4>

² CAO Assessment Report, Togo LCT-01, August 2015 - <http://goo.gl/QfIIBZ>

The approach to the compliance investigation is described in the CAO Operational Guidelines (March 2013), and states that the working definition of compliance investigations adopted by CAO is as follows:

An investigation is a systematic, documented verification process of objectively obtaining and evaluating evidence to determine whether environmental and social activities, conditions, management systems, or related information are in conformance with the compliance investigation criteria.

The compliance investigation will consider whether IFC's investment in the client was appraised, structured and supervised in accordance with applicable IFC policies, procedures and standards. It will also consider whether IFC's Policy and Performance Standards on Environmental and Social Sustainability and Policy on Disclosure of Information as applied to this project provide an adequate level of protection.

In the context of IFC's E&S policies, Performance Standards and procedures, specific questions in relation to the investment include:

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

The scope of the compliance investigation also includes developing an understanding of the immediate and underlying causes for any non-compliance identified by the CAO.

Compliance Investigation Process and Preliminary Timeline

The preliminary time schedule is for CAO to have a draft compliance investigation report ready by the end of April 2016.

A draft investigation report will be circulated to IFC senior management and all relevant IFC departments for factual review and comments. IFC's comments should be submitted in writing to CAO within 20 working days of receipt by IFC.

Upon receiving comments from IFC on the consultation draft, CAO will finalize the report. The final report will be submitted to IFC senior management for official response. A notification will be posted on CAO's website. IFC has 20 working days to submit a written response to CAO. CAO will forward the investigation report and the IFC response to the President of the World Bank Group. The President has no editorial input as to the content of the compliance investigation report, but may take the opportunity to discuss the investigation findings with CAO.

Once the President is satisfied with the response by IFC's senior management, the President will provide clearance for the investigation report and the response. The President retains discretion over clearance. After clearance, CAO will disclose the investigation report and the IFC response to the Board. CAO will also alert relevant stakeholders of the disclosure of both documents on CAO's website, and share the documents with the complainants.

External Panelists

As per its established practice, CAO will engage one or more external experts to work with it on this task. For this compliance investigation, CAO considers the following as necessary for the compliance investigation panel:

- Significant expertise in relation to issues of environmental and social risks and impacts in the context of private sector development, in particular in relation to infrastructure projects.
- Knowledge of IFC's E&S policies, standards and procedures.
- Experience and knowledge of compliance auditing, legal practices, and the complexity of development institutions.
- Demonstrated ability to analyze policies and practices and develop proposals for reform in complex institutional contexts.
- Expertise in relation to the development of Environmental and Social Impact Assessments (ESIA), stakeholder engagement and consultation.
- Expertise in relation to issues around coastal erosion in West Africa.