

# **INDEPENDENT COMPLAINTS MECHANISM (ICM)**

## **Compliance Review Report**

August 31, 2022

### **FMO and DEG Complaint 18-001 LCT Lomé Container Terminal SA Togo**

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## ABBREVIATIONS

AfDB	African Development Bank
CAO	Compliance Advisor Ombudsman (for IFC)
DEG	Deutsche Entwicklungsgesellschaft
DFI	Development Finance Institutions
ESIA	Environmental and Social Impact Assessment
E&S	Environmental and Social Standards
EHG	Environmental Health and Safety Guidelines
FMO	Netherlands Entrepreneurial Development Bank
IFC	International Finance Cooperation
ICM	Independent Complaint Mechanism
ICM Panel	ICM Independent Expert Panel
LCT	Lomé Container Terminal
OFID	Opec Fund for International Development
PROPARCO	Groupe Agence Française de Développement
PS	IFC Performance Standard
TOR	Terms of References

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## Executive Summary

**The Complaint.** A complaint was filed with the FMO and DEG complaint offices on 28 August 2018. Complainants are a civil society organisation called „Collectif des personnes victimes d'érosion côtière“, who represent members of communities who live to the east of the port of Lomé. Complainants state that they have been negatively impacted by the Lomé Container Terminal Project as a result of coastal erosion, which led to loss of land and destruction of houses, loss of farms, plantation and places of tourism, difficulties with fishing activities, loss of religious sites and loss of infrastructure. The same complaint had been filed earlier with the CAO which issued an investigation report on the complaint in August 2016. The ICM Panel admitted the complaint and in a preliminary assessment referred the complaint to a compliance review process. However, as the same complaint had already been investigated by the CAO, the ICM decided to limit the investigation to the period after the issuance of the CAO report. This is in accordance with para. 3.1.7 of the ICM policy which provides that duplication should be avoided of identical complaints which have been or are being handled by another experienced independent mechanism. This compliance review thus takes the findings of the CAO Investigation Report of 2016 as point of departure and only assesses whether adequate remedial actions have been carried out to correct the noncompliances laid out in this report.

**The Project.** The Lomé Container Terminal (LCT) project is funded by a group of DFIs (IFC, DEG, FMO, PROPARCO, OFID) under a financing agreement of Euro 225 million arranged by IFC. FMO and DEG participated each with Euro 25 million under loan agreements signed in 2012. FMO provided an additional Euro 10 million loan in 2015. The Lomé Container Terminal is located in the Port of Lomé which was built in the 1960s. Project works for the LCT project included (i) construction of a 1050 m quay, (ii) dredging along the quays, access channel, and turning basin to 16.6 meter depths (from a previous depth of 14 meters), (iii) developing 53 hectares of terminal area and container yard; (iv) construction of a 300 meter breakwater extension (or spur groin). The terminal is operational since 2014.

**The CAO Compliance Investigation.** The CAO compliance investigation report concluded several noncompliances with IFC Performance Standards (2006):

- IFC's preinvestment review did not consider significant historical erosion-related impacts associated with the project and IFC did not work with the client to determine possible remediation measures.
- IFC did not assure itself that the Environmental and Social Impact Assessment (ESIA) in relation to erosion issues met Performance Standard 1. Additional assessments of erosion risks posed by the project were required.
- IFC did not ensure that the ESIA considered potential cumulative impacts of the project.
- IFC did not adequately disclose the ESIA and consult with project affected people.

IFC issued a Management Response to the CAO investigation report in September 2016. IFC did not agree with CAO's assumption that there is a causal link between the LCT project and coastal erosion.<sup>1</sup>

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<sup>1</sup> The IFC Management Response to the CAO Compliance Investigation Report on IFC's Investment in Lomé Container Terminal, Togo, dated September 26, 2016 states: „IFC does not agree with CAO's assumption that there is a causal link between the Project and erosion. No such link has been established 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, we take a different view from CAO as to any obligations of the Project under Performance Standard 1 with respect to erosion impacts at this time“. <https://www.cao-ombudsman.org/sites/default/files/downloads/IFCMgmtResponsetoCAOInvReportonLCTTogo.pdf>

However, in its Management Response IFC stated that:

- IFC and its client are committed to being part of a multi-stakeholder process to find solutions to the problem of coastal erosion.
- IFC will work with LCT on its engagement with academic institutions to support further research on coastal erosion 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 beaches. IFC also noted that appropriate consultations with stakeholders would take place as part of this research.
- IFC intends to include a new section on coastal erosion in the revision of the 2007 Environmental, Health and Safety Guidelines for Ports, Harbors and Terminals reflecting learning from Togo and other projects.

In case of a compliance investigation with noncompliance findings, CAO monitors actions taken by IFC/MIGA until such actions demonstrate to CAO that its compliance findings are being addressed. CAO has so far issued three monitoring reports on this complaint (2018, 2019, and 2021). In the first two monitoring reports, CAO noted that IFC has adjusted guidelines for ports, harbors and terminals and noted efforts made by IFC to support a multistakeholder process, which was not successful. The third monitoring report finds that the project continues to be in noncompliance status as remedial actions have not been taken to address project impacts on coastal erosion east of the port. The CAO monitoring report also notes noncompliances on consultation and disclosure as neither a draft nor a final version of a Coastal Erosion study commissioned by LCT have been disclosed and consulted with project affected people. CAO will continue to monitor the program.

**Actions taken to address non-compliance findings.** LCT conducted two studies relevant for the assessment of impacts of the LCT project on coastal erosion: (1) an environmental and social audit, and (2) a study on coastal erosion.

**The Environmental and Social Audit.** An environmental and social audit was finalized in 2020. LCT conducted this study to renew their environmental license. The audit report states that the erosion east of the port is the result of cumulative impacts of natural and human factors. It states that the port is a significant contributor to coastal erosion and that the LCT project also contributes to this. The report requires some remedial actions but does not take a firm position on causality between coastal erosion and the LCT project.

**The Coastal Erosion Study.** The consultants engaged to conduct the study, finalized it in April 2020. Key findings were:

- The construction of the Port of Lomé significantly impacted the coastline, leading to sand accumulation to the west of the port, and a zone of erosion to the east over subsequent decades.
- In the period 2010-2019, the period during which the LCT extension was constructed, the study notes a decrease of the mean rates of erosion in some areas east of the port but notes an increase in erosion in two hotspots (Agbodrafo and Baguida).
- The construction of the LCT project has had additional impacts on coastal erosion east of the port. The construction of the new container terminal required dredging of the port's access channel and construction of a new breakwater extension. This led to sand accumulation to the west of the port and increased diffraction of waves. The cause for coastal erosion east of the port is that the port disrupts the flow of sediment along the coast as the main breakwater accumulates and diverts the west to east litoral drift towards the shipping channel.<sup>2</sup>

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<sup>2</sup> The Findings of IFC's Technical Review conducted in 2016 confirms the finding that the main breakwater acts as a sink that traps virtually all of the sediment transport from west to east. See Annex 1 to IFC

IFC (supported by DEG and FMO) engaged the same consultant who was involved in previous reviews of coastal impacts of LCT to review the draft study. The consultant questioned the finding that the LCT extension was contributing to increased erosion around Agbodrafo and Baguida and argued that erosion was likely to be caused by other factors, such as sand mining, changes in beach rock, heavy storms, and construction of a fishing harbor. The consultant also disagreed with the finding that diffraction of waves contributed to coastal erosion east of the port stating that no diffraction studies had been conducted. However, the consultant agreed with the finding that the Port of Lomé was and remains a contributor of coastal erosion. In February 2021, LCT (with the support of IFC, DEG and FMO) engaged an international consultant to review the study. Specific objectives were (i) to review the study to analyze the strengths and weaknesses, and, (ii) to develop, together with the Togolese consultants, a technically mutually agreed methodology to ensure quality control of the results of the study. A consultant was hired in May 2021, who completed the revised coastal study in February 2022. This ICM investigation report does not incorporate the findings of this revised study as it was issued at a time when the draft investigation report was already completed and DEG and FMO operations departments had already completed fact checking as is provided for under the ICM policy. The ICM had reviewed comments of DEG and FMO and revised the draft reports to be sent to the client and complainants for their factual review. The ICM considers its investigations and assessments of evidence completed once these draft reports are issued.

**Stakeholder Engagement and Disclosure.** Affected communities (including complainants) were consulted for the preparation of the audit report and on the audit report as is required under Togolese environmental regulations. Affected communities, including the complainants, were also consulted in the early phase of the preparation of the Coastal Erosion study. However, neither the draft study nor the final version of the Coastal Erosion study which was issued in April 2020, have been disclosed. LCT informed the ICM that LCT did not wish to disclose the study issued in April 2020 as, in their view, the study had significant shortcomings which first need to be corrected. FMO informed the ICM that LCT conducted a meeting with communities affected by erosion in March 2021 (including the group of complainants). Furthermore, LCT informed the ICM that meetings were held with people living in the coastal areas as part of the LCT grievance process.

**Compliance Status.** The project remains in non-compliance status as:

- (i) The CAO investigation report found that IFC did not assure itself that the Environmental and Social Impact Assessment (ESIA) in relation to erosion issues met Performance Standard 1. A Coastal Study has now been completed but remedial measures to address impacts identified under the coastal study need to be taken to mitigate harm identified in the revised study.
- (ii) The CAO investigation report found that the ESIA was not adequately disclosed and consulted with affected groups. The environmental audit, which has since been completed, has been disclosed and consulted with affected people (as is required under Togolese environmental regulations) but the audit has not been designed to assess the impact of the LCT project on coastal erosion and to conduct the cumulative impact assessment. This was the objective of the Coastal Erosion study which has now been completed. At least a non-technical summary of this Coastal Erosion Study needs to be disclosed and consulted with affected people.

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Management Response, September 26, 2016. Lenders are of the view, that the construction of the „groin“ does not influence erosion east of the port as all sediments are collected in the shipping channel of the harbour (see Annex 1 of IFC Management Response dated September 26, 2016).

The ICM is concerned about the very long delays required for the completion of the coastal impact study and the consequent delays in designing and implementing remedial action measures. The revised Coastal Erosion study was only completed in February 2022, i.e. more than five years after the CAO Compliance Investigation Report has been issued (and 10 years after the financing of the project has been approved). The serious delays are particularly disconcerting as all financing agreements will close in December 2023 which leaves limited time to support LCT in the design and implementation of remedial actions. In their meetings with the ICM Panel, FMO and DEG staff stressed that it is the client and not the lender who is responsible to conduct these studies and therefore lenders cannot be held accountable for such delays. The ICM Panel is aware that it is the client's responsibility to implement environmental impact assessments. But it is the responsibility of FMO and DEG to assure that these studies are conducted on a timely basis and in adequate quality and DEG and FMO need to use their leverage and supervision responsibility to assure that the client remains within their commitments. Borrowers are required to adhere to DEG and FMO Environmental and Social Safeguard standards and assuring adherence to agreed Environmental and Social Standards is part of the supervision responsibility of lenders.

Studies agree on significant impacts of the port on coastal erosion east of the port. It is unclear to the ICM to what extent LCT, so far, has played a role in helping to design a sustainable solution to the underlying issue of sand accumulation to the west of the breakwater and the channel and the consequent depletion of sand to the east.<sup>3</sup> The ICM Panel is of the view, that LCT should participate in the design and implementation of a sustainable solution and contribute to the implementation of remedial measures to mitigate harm incurred to communities affected by coastal erosion east of the port. LCT is the largest operator within the Port of Lomé and depends on the port's infrastructure. At the time, when the LCT project was designed, no cumulative impact assessment was conducted for the LCT project. A cumulative impact assessment would have identified the negative impacts on coastal erosion resulting from the port, would have reflected on the additional impacts which the LCT project causes and would have posed the question how these cumulative impacts should be addressed.

**The Role of FMO and DEG.** FMO and DEG participate with IFC in the Lomé Container Project under an agreement where IFC was designated as the lead arranger. After project contracts had been signed, IFC assumed a functional lead role among lenders. The ICM Panel, however, was informed by DEG and FMO, that they regularly participate in consultation calls and in supervision missions and remained informed and engaged in the process. In addition, DEG and FMO cooperate under an agreement where FMO has been assigned the role of „Lead Manager“, while DEG is the „Following Partner“. Thus, FMO has a more prominent position in the relationship with IFC and participating in supervision missions and assuring that E&S obligations are complied with.

The ICM Panel appreciates that such divisions of labor can be effective. However, the ICM Panel is of the view that increased engagement is required by FMO and DEG, if there is evidence of substantial noncompliances with DEG and FMO policies. A Compliance Review of a DFI which presents E&S noncompliance and related harm findings would require such an increased

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<sup>3</sup> The ICM Panel is not aware of an action plan on how to substantively mitigate impacts of the port of Lomé on coastal erosion. The Independent Technical Review summarized in Annex 1 of the IFC Management Response issued in September 16, 2016. There it is stated: „... solving the erosion issue could lie with the transfer of material from one system to another, primarily through by-passing the accumulated sand at the west side, but also possibly by depositing the dredged material from the maintenance of the shipping channel. Both options can be enhanced by construction of short groins along the beaches to the east of the port.“ ([https://www.cao-ombudsman.org/sites/default/files/downloads/French\\_IFCMgmtResponsetoCAOInvReportonLCTTogo.pdf](https://www.cao-ombudsman.org/sites/default/files/downloads/French_IFCMgmtResponsetoCAOInvReportonLCTTogo.pdf)).

engagement. The CAO Investigation Report of August 2016 noted several substantive noncompliances. While the complaint at the time was filed with CAO (and at the time not with DEG and FMO), the CAO Compliance Investigation Report brought into the public domain the position that IFC has committed due diligence failures in assuring that the ESIA impact assessment had been properly done and that it did not assure appropriate consultations with project affected people. In the view of the ICM Panel, DEG and FMO relied too much on IFC supervision efforts and did not become sufficiently engaged after the CAO Investigation report was issued in 2016. FMO informed the ICM Panel that they agree – in principle - with the view that such events should trigger increased independent supervision engagement, but argue that they acted in close alignment with IFC in this case, as they substantively agreed with IFC’s dissenting position expressed in IFC’s Management Response. FMO/DEG informed the ICM that after the complaint with CAO had been filed, they substantially increased their monitoring efforts. The ICM agrees with the view that DEG and FMO have increased their engagement in supervision efforts since the complaint with the ICM has been filed and recognizes they significantly stepped up involvement especially over the last 15 months. However, the ICM is of the view that such increased engagement was already needed at the time when the CAO investigation report had been issued in 2016.

### **Recommendations**

- (i) DEG and FMO should work with LCT to design and implement remedial actions to mitigate impacts identified in the revised Coastal Erosion Study completed in February 2022.
- (ii) DEG and FMO should support LCT to assure that remedial actions specified in the Environmental Audit will be implemented.
- (iii) DEG and FMO should ask LCT to disclose a nontechnical summary of the revised Coastal Erosion Study and to conduct consultations on this nontechnical summary with people residing in the area of influence of the project, including the complainants.
- (iv) FMO and DEG should work with LCT and relevant Togolese authorities and relevant stakeholders to design and implement measures which would reduce coastal erosion impacts on the coast east of the port. As the DFIs financially support LCT – which is the biggest operator in the port – DFIs should also help to address the underlying structural causes of impacts of the port. By utilizing the infrastructure of the port, LCT has become part of the erosion which the port causes. This calls for a contribution to the mitigation of erosion impacts which the port (and not only the LCT investment) causes.<sup>4</sup>
- (v) DEG and FMO should issue a Management Action Plan which would lay out detailed time-bound measures to address noncompliance findings and related harm laid out in this Compliance Review Report.
- (vi) FMO and DEG should assume an intensified engagement in project supervision in cases where there is credible evidence of significant noncompliances. Intensified involvement is especially needed in cases when a complaint has been registered with a complaint mechanism of a DFI and a compliance review report made findings on noncompliances and related harms. These reports are issued in the public domain and pose a reputational risk for FMO and DEG if they are a financial partner in such a project. The ICM Panel recognizes that supervision actions need to be coordinated with other lenders.

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<sup>4</sup> FMO informed the ICM Panel that LCT is already participating, together with other stakeholders, in the design and implementation of sustainable solutions to reduce impacts of the port, as well as in the implementation of remedial measures to implement harm incurred to communities affected by coastal erosion east of the port.



## A. The ICM Compliance Process

The Independent Complaints Mechanism (ICM) provides people the opportunity to file complaints who are of the view that they are negatively impacted or will be negatively impacted by projects financed by DEG/FMO/PROPARCO. If the complaint is admitted by the ICM Panel, the complaint enters the ICM process which is laid out in the ICM policies.<sup>5</sup> In a Preliminary Review phase, complaints are reviewed and either enter a process of dispute resolution or a further assessment to determine whether there is sufficient prima facie evidence for noncompliances and related harm to proceed to a compliance review. If there is sufficient prima facie evidence for noncompliances with DEG/FMO/PROPARCO policies and related harm, the complaint proceeds to a compliance investigation. This report is a Compliance Review Report (see para. 3.2.12 ICM Policy). A compliance review assesses whether there has been harm which is related to non-compliances with DEG/FMO/PROPARCO policies and whether DFI staff and management have conducted appropriate due diligence to assure that clients adhere to required standards. A Compliance Review Report may present recommendations for the specific case and/or recommendation for DEG/FMO/PROPARCO on how to improve existing policies and/or procedures (see para.3.2.14).

The ICM Panel conducted the compliance review based on document reviews and interviews conducted with DEG, FMO, IFC, LCT staff and managers and complainants. The Panel also participated in discussions with technical consultants who assessed the coastal erosion study conducted for LCT. Due to travel restrictions imposed due to the COVID19 situation, the ICM Panel was not able to visit the complainants and did not visit the Lomé Port and LCT project and the site of coastal erosion in Togo. The ICM Panel thus was only able to interview complainants via telecommunication means. The ICM Panel had hoped to be able to visit the site and interact directly with complainants and thus waited for several months to complete the review. As travel restrictions continued to be imposed, the ICM Panel decided to issue this compliance review report without a site visit.

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<sup>5</sup> See [https://www.deginvest.de/DEG-Documents-in-English/About-us/Responsibility/170101\\_Independent-Complaints-Mechanism\\_DEG.pdf](https://www.deginvest.de/DEG-Documents-in-English/About-us/Responsibility/170101_Independent-Complaints-Mechanism_DEG.pdf); <https://www.fmo.nl/independent-complaints-mechanism>;  
<https://www.fmo.nl/independent-complaints-mechanism>

## B. The Complaint Filed with DEG and FMO

A complaint dated 11 July 2018 was received by the Complaints Offices of FMO and DEG on 28 August 2018 (See Annex 1 for complaint). No complaint was filed with PROPARCO which also finances this project and which is a participating DFI in the ICM. The complainants are a civil society organisation called „Collectif des personnes victimes d'érosion côtière“ (Collective of victims of coastal erosion) who represent members of communities who live to the east of the port of Lomé. They claim that the project has accelerated coastal erosion, impacting their homes and livelihoods. Specifically, the complainants allege:

- Loss of land and destruction of houses
- Loss of farms, coconut plantations, and places for tourism activities;
- Difficulties with fishing activities;
- Loss of religious site like divinity houses or other places of cultural importance to the communities;
- Loss of local infrastructure, including royal palaces, community halls, marketplaces, schools, wells and roads.

The ICM Panel decided the complaint to be admissible on 8 October 2018. The admissibility decision was posted on the DEG and the FMO ICM websites.<sup>6</sup> In a Preliminary Review Report, issued on 23 January 2020, the ICM Panel concluded that the complaint should proceed to a compliance review.<sup>7</sup> However, as an investigation report had already been issued by CAO for an identical complaint filed with CAO by the same complainants (see section E below), the ICM Panel decided that the compliance review should only focus on the time period after the issuance of the CAO investigation report, i.e. after August 2016. This is in accordance with para.3.1.7 of the ICM policy which provides that „*The ICM will assess on a case-by-case approach the admissibility of identical Complaints that already are being handled or which have been settled by another high standard administrative mechanisms ....., in order not to duplicate work already done or hinder ongoing procedures.*“ In this case, CAO had already conducted a comprehensive investigation and issued an investigation report on August 8, 2016.<sup>8</sup> As IFC applies the same environmental and social standards as DEG and FMO, a complete reassessment of noncompliances and related harm would be redundant. As the complaints with the ICM had been filed only in August 2018 (more than three years after the complaint has been filed with CAO and two years after the CAO report has been issued) and at a time when CAO was in a monitoring phase to assess whether stated noncompliances and related harm have been remedied, the ICM Panel decided to focus its compliance review on the period after August 2016, taking the findings of the CAO Compliance Investigation report as its departure point.

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<sup>6</sup> [https://www.deginvest.de/DEG-Documents-in-English/About-us/Responsibility/20181010\\_Notice-of-Admissibility-Case-18-001\\_FR\\_final.pdf](https://www.deginvest.de/DEG-Documents-in-English/About-us/Responsibility/20181010_Notice-of-Admissibility-Case-18-001_FR_final.pdf); [https://www.fmo.nl/l/library/download/urn:uuid:c102ab1f-ed5b-4d17-a0a2-73d61ce8bc16/notice++of+admissibility+case\\_english.pdf?format=save\\_to\\_disk](https://www.fmo.nl/l/library/download/urn:uuid:c102ab1f-ed5b-4d17-a0a2-73d61ce8bc16/notice++of+admissibility+case_english.pdf?format=save_to_disk)  
[https://www.fmo.nl/l/library/download/urn:uuid:3348d9e6-316d-49b3-be15-94e4d491cc19/18-001+lrc+preliminary+review+report\\_french.pdf?format=save\\_to\\_disk](https://www.fmo.nl/l/library/download/urn:uuid:3348d9e6-316d-49b3-be15-94e4d491cc19/18-001+lrc+preliminary+review+report_french.pdf?format=save_to_disk)

<sup>7</sup> [https://www.deginvest.de/DEG-Documents-in-English/About-us/Responsibility/18-001-LTC-Preliminary-Review-Report\\_final.pdf](https://www.deginvest.de/DEG-Documents-in-English/About-us/Responsibility/18-001-LTC-Preliminary-Review-Report_final.pdf); <https://www.fmo.nl/independent-complaints-mechanism>

<sup>8</sup> [www.cao-ombudsman.org/cases/document-links/documents/CAO\\_Compliance\\_InvestigationReport\\_Togo\\_LCT-01\\_08082016.pdf](http://www.cao-ombudsman.org/cases/document-links/documents/CAO_Compliance_InvestigationReport_Togo_LCT-01_08082016.pdf).

## C. The Lomé Container Terminal Project and Financing Agreements

The Lomé Container Terminal SA („LCT“ or „the Project“), 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. Construction work of the project included:<sup>9</sup>

- Construction of a 1,050-meter quay;
- Dredging along the quays, access channel, and turning basin to 16.6 meters depth (from the current depth of 14 meters);
- Developing 53 hectares of terminal area and container yard;  
Constructing a 300-meter breakwater extension (or spur groin).

A map of the project’s key features is presented in Annex 3. Construction work started in 2012 and the terminal has been operational since October 2014. LCT is held by a joint venture between Global Terminal Limited and China Merchants Holding International. Global Terminal Limited is wholly owned by Terminal Investment Limited. The terminal is jointly operated by Terminal Investment Limited and China Merchants Holding International.

The original project costs amounted to Euro 324 million. IFC was the sole arranger of a Euro 225 million 12 year secured loan for LCT which was funded by several Development Finance Institutions, including IFC, DEG, FMO, PROPARCO, African Development Bank and OFID. FMO and DEG participated each with a Euro 25 million loan and signed the loan agreements in 2012. IFC initially invested Euro 82.5 million for its own account. In 2015, FMO signed an additional of Euro 10 million – as part of a Euro 30 million debt package – to fund additional equipment to further increase capacity. DEG did not provide additional financing under this follow-up arrangement. Separate loan agreements are signed by FMO and DEG for the 2012 financing and by FMO for the supplemental financing in 2015. These individual loan agreements are complemented by a Common Terms Agreement which lay out the details of obligations of parties. The Common Terms Agreement was dated November 2012 and was amended and restated in 2014 and 2015. All FMO and DEG loans will be fully repaid by 15 December 2023.

DEG and FMO cooperate in this financing with IFC under an agreement which assigns IFC the lead role in the preparation of the loan. Since signing of the agreements, IFC performed a functional lead among lenders in the supervision process. In addition, DEG and FMO operate under agreement which assigns respective responsibilities between DEG, FMO and PROPARCO in jointly financed programs. Parties operate in accordance with the principle of „follow the lead“, i.e., one party assumes the lead while the other party(ies) follow the lead. During interviews conducted by the ICM Panel with FMO and DEG staff, both institutions confirmed that in this financing, FMO assumes the „lead function“, while DEG follows FMO. In the tripartite relationship between IFC, FMO and DEG, IFC thus has a key role to play as the sole arranger of the financing package, FMO is the key partner to IFC assuming on behalf of DEG important supervision obligations. DEG, however, stated that while FMO is in the lead role, DEG does remain involved and informed and participates in briefing meetings and periodically in supervision efforts.

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<sup>9</sup> IFC, Summary of Proposed Investment, Togo LCT, November 2010 – <https://goo.gl/q66sDI>; see also CAO Investigation report, page 9.

## D. Background on Port and Coastal Erosion

Togo has had a coastal erosion issue for several decades and experienced a significant receding of its coastline. Major infrastructure developments, such as the construction of the Port of Lomé, have led to changes to the sedimentary dynamics in the Gulf of Guinea. Due to the current from west to east prevailing along the Togolese coast, to which the port poses an obstacle and interrupts the current, two opposite morphodynamic behaviours arise. To the west of the Port of Lomé, an area of sedimentary accumulation is formed, while considerable coastal erosion appears to the east of the port.

As part of the construction of the new Port of Lomé, which took place between 1964 and 1967, a 1.7 km breakwater was constructed in the ocean (see figure 1 in Annex 2). This breakwater affected sedimentary transport along the coast, forming a sand accumulation zone to the west of the port, and leading to coastal erosion to the east.<sup>10</sup> When the Port of Lomé was designed, serious impacts on coastal erosion were expected, and the decision to move forward with the construction of the port was taken in knowledge of this.<sup>11</sup> The port is administered by the Port Authority of Lomé, a state-owned enterprise.

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<sup>10</sup> See Lomé Container Terminal, ESIA, September 29, 2010, <https://disclosures.ifc.org/project-detail/ESRS/29197/togo-lct>.

<sup>11</sup> Ibid

## E. The CAO Investigation Report, IFC Management Response and CAO Monitoring

### 1. The CAO Investigation Report

In March 2015 a complaint was received by the Compliance Advisor Ombudsman (CAO), the complaint mechanism of IFC, by the „Collectif des personnes victimes d'érosion côtière". The CAO issued a compliance investigation in response to the complaint in August 2016.<sup>12</sup> The investigation made several noncompliance findings in relation to IFC's due diligence and supervision of the project and found noncompliances with IFC PS 1 regarding (a) the assessment of erosion impacts of the project and (b) stakeholder engagement and disclosure of information relevant to erosion issues. Annex 2 presents a summary of findings of the CAO investigation report. The CAO Compliance Investigation Report lays out the following key findings:<sup>13</sup>

- IFC's pre-investment review did not consider significant historical erosion-related impacts associated with the project and IFC did not work with the client to determine possible remediation measures.
- IFC did not assure itself that the Environmental and Social Impact Assessment (ESIA) in relation to erosion issues met Performance Standard 1 (PS1) and did not recognize that additional assessments of the erosion risk posed by the project were required.
- IFC did not ensure that the ESIA considered potential cumulative impacts of the project.
- IFC did not adequately disclose the ESIA and consult with project-affected people.

#### Summary of CAO's Analysis and Findings in respect to IFC's E&S Appraisal of the Project (pages 5 and 6 of CAO Compliance Investigation Report, August 8, 2016)

##### **IFC's E&S Appraisal of the Project**

*„CAO notes that IFC's E&S review did not identify coastal erosion as an E&S risk of the project, although the ESIA: (a) acknowledges a potential impact of the project during construction, and (b) describes 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 finds 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 ....*

*Further, CAO finds 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. This process would have been taken in consultation with affected communities and stakeholders.... "*

##### **Disclosure and Consultation**

*„CAO notes that IFC's review of the client's disclosure and consultation focused on the two groups that were economically and/or physically displaced by the project (sand miners and market gardeners). IFC did not assure itself that information was disseminated by the client to other potentially affected communities in a manner that met the requirements of PS1. Although the ESIA identified potential impacts during the construction phase, IFC did not ensure that the client's consultation activities covered potentially affected*

<sup>12</sup> [www.cao-ombudsman.org/cases/document-links/documents/CAO\\_Compliance\\_InvestigationReport\\_Togo\\_LCT-01\\_08082016.pdf](http://www.cao-ombudsman.org/cases/document-links/documents/CAO_Compliance_InvestigationReport_Togo_LCT-01_08082016.pdf).

<sup>13</sup> IFC's investment was made in the context of its 2006 Policy on Social and Environmental Sustainability and Performance Standards.

*communities living in the erosion zone to the east of the port. This even though these groups were located within the direct area of influence of the project (1.5 km to the east of the port), and the broader area of influence, as per definition provided in the ESIA. While IFC's documentation reports that availability of project documentation was advertised in a local newspaper, CAO finds this insufficient to provide assurance of compliance with PS1 requirements for disclosure to and consultation with affected communities. In particular, it does not meet the requirement for consultation to be undertaken in a manner that is inclusive and culturally appropriate.... "*

## **2. The IFC Management Response to the CAO Investigation Report**

IFC issued a Management Response to the CAO Investigation report in September 2016.<sup>14</sup> IFC did not agree with CAO's position that there is a causal link between the Lomé Container Terminal Project and coastal erosion. IFC argued that no such link between the LCT investment and the coastal erosion east of the Port has been established. IFC's Management Response did not contain an action plan to address CAO's noncompliance findings. However, IFC committed itself 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 beaches 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 results disclosed publicly in a way that would ensure accessibility to the communities to the east of the port.
- Include a new section on coastal erosion in the revision of the 2007 Environmental, Health and Safety Guidelines for Ports, Harbors and Terminals, reflecting learning from Togo and other projects.

In addition, IFC's response summarizes the conclusions of a consultant engaged by IFC in July 2016 on the findings of the CAO report on the relationship between the LCT project and coastal erosion east of the port.<sup>15</sup>

## **3. CAO's Monitoring of its Investigation Noncompliance Findings**

Following a CAO compliance investigation with findings of noncompliances, CAO monitors actions taken by IFC/MIGA until such actions demonstrate to CAO that its compliance findings are being addressed. CAO so far issued three monitoring reports, one in March 2018, one in April 2019 and one in August 2021.<sup>16</sup>

- CAO's March 2018 monitoring report recognized positive actions taken by IFC at the level of policies, procedures, practice and knowledge, and acknowledged several actions initiated by IFC at project level. However, CAO noted that these actions were

<sup>14</sup> The CAO investigation, IFC response to the investigation and related materials are available on the CAO website. See CAO Compliance Investigation Report, Togo LCT-01, October 2016 – <https://not-öy/2uWX2IQ>.

<sup>15</sup> See Artelia, Lomé Container Terminal and Coastal Erosion, July 2016, available at <https://goo.gl/H2HUuG>.

<sup>16</sup> [www.cao-ombudsman.org/cases/document-links/documents/CAOComplianceMonitoringReportTogoLCT-01\\_EN.pdf](http://www.cao-ombudsman.org/cases/document-links/documents/CAOComplianceMonitoringReportTogoLCT-01_EN.pdf) Compliance Monitoring Report, Togo LCT-01, August 2021; [www.cao-ombudsman.org/cases/document-links/documents/CAOCompliance\\_MonitoringReport\\_TogoLCT-01\\_April172019.pdf](http://www.cao-ombudsman.org/cases/document-links/documents/CAOCompliance_MonitoringReport_TogoLCT-01_April172019.pdf).

at the initial stages of implementation and had not substantially addressed the investigation findings at the time of the report.

- CAO's April 2019 monitoring report noted that (a) LCT had commissioned an environmental audit including a component on coastal erosion, and (b) a study on the contribution of different infrastructure projects to coastal erosion. LCT noted that both studies would include consultations with coastal communities. CAO acknowledged that these studies – once satisfactorily completed - represented positive steps towards bringing the project into compliance. However, CAO indicated that it expected to review these two studies together with appropriate corrective actions (depending on the outcome of the studies) prior to closing the monitoring process.
- CAO's August 2021 monitoring report concludes that noncompliance findings in relation to the assessment and mitigation of coastal erosion impacts of the LCT project have not, yet, been addressed in accordance with IFC requirements and raises concerns that noncompliances continue to prevail five years after completion of CAO's compliance investigation report, while the complainants continue to raise concerns regarding the impact of erosion on their communities. The monitoring report states that *„it will be necessary for IFC to work with LCT to determine remediation measures in relation to historical and ongoing erosion impacts associated with the project due to its reliance on the Port of Lomé infrastructure.“* Moreover, it states *„that it will be necessary for IFC to ensure that consultation with the affected communities includes opportunities to comment on any draft assessment reports and plans that LCT and its consultants prepare in relation to the coastal erosion issue.“* And IFC should ensure disclosure of all required E&S documentation, including the final version of the studies. CAO states that it will keep the monitoring process open as there remain outstanding noncompliances and plans to issue a follow-up monitoring report no later than June 2022.

## F. Actions Taken to Correct Noncompliances with IFC PS1 (2006)<sup>17</sup>

This compliance review focuses on remedial actions taken to correct prevailing noncompliances and related harm. The review takes the monitoring reports of CAO as the departure point to determine what areas remain in noncompliance. The following sections assess actions taken to address pending non-compliances.

### 1. On impacts on Coastal Erosion

The CAO's investigation report made the following non-compliance findings relating PS1.

- IFC's pre-investment review did not consider significant historical erosion-related impacts associated with the project and IFC did not work with the client to determine possible remediation measures.
- IFC did not assure itself that the Environmental and Social Impact Assessment (ESIA) met Performance Standard 1 (PS1) requirements in relation to potential erosion impacts, and that additional impact assessments were required.
- IFC did not ensure that the ESIA considered potential cumulative impacts of the project on erosion.

#### (i) *The Environmental And Social Audit*

LCT initiated the environmental and social audit in January 2019 required to renew their environmental license. The TOR included work to assess the link between the LCT project and coastal erosion. As the TOR for the audit was drafted by the Togolese Ministry of Environment, IFC states that it was unable to influence the scope and methodology of the audit.

The environmental and social audit report provides a historical description of coastal erosion in Togo but does not assess in detail the causal relationship between the LCT project and the erosion east of the port.<sup>18</sup> The report states that the erosion east of the port is the result of cumulative impacts of natural and human factors. The report notes that the LCT project has caused accumulation of sand to the west of the port which accentuates the disruption of flow of sediment along the coast. The report refers to monitoring done by the University of Lomé in 2015 and points to an increase in erosion after the construction of the LCT project. The audit report concludes that erosion east of the port has been caused by multiple factors and actors and states that the erosion east of the port cannot be only attributed to the LCT project. The audit was finalized in May 2020. IFC disclosed the environmental audit on its website.<sup>19</sup>

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<sup>17</sup> IFC Performance Standards 2006 apply as these were in force when the IFC/DEG/FMO financing agreements were concluded.

<sup>18</sup> FMO staff disagree with this statement and are of the view that the audit does assess the impact of LCT and that the report is inconclusive of the impact of the construction of the spur groin on coastal erosion east of the port.

<sup>19</sup> <https://disclosures.ifc.org/project-detail/ESRS/29197/togo-lct>.



(ii) **Study on Coastal Erosion**

LCT initiated in February 2019 a study on coastal erosion. The study was conducted by a Togolese academic institution. The study was finalized in April 2020. Key findings of the study are as follows:

- The construction of the Port of Lomé in 1964-1967 significantly impacted the coastline over the study period, leading to sand accumulation to the west of the port, and a zone of erosion to the east over subsequent decades. Complainants reside to the east of the port.
- During the period 2010-2019, the period during which the LCT extension was constructed, the study notes a decrease of the mean rates of erosion in areas east of the port but notes an increase in erosion in other areas (particularly in Agbodrafo and Baguida).
- The study provides an explanation for the relative decrease of erosion rates in some areas. For example, in Katanga, the reprofiling of the area with sediments from dredging is considered to have stabilized the shore. In Kpeme, Gumukope, and Aneho, installations such as sand-stopping barriers are considered to have been effective at slowing coastal erosion.
- The study notes that there is a yearly decrease in the mean erosion rate between 2010 and 2019 after construction of the groin and LCT Terminal but states that there have been negative impacts on two areas, Baguida and Agbodrafo.
- The study presents recommendations to raise awareness within coastal communities and monitor the evolution of the coastline.

The draft audit study and the final study were reviewed by IFC, FMO and DEG, and the same consulting firm previously engaged by IFC for review of studies provided comments. The consultant questioned the finding that the LCT extension was contributing to increased erosion around Agbodrafo and Baguida and argued that erosion increases around Agbodrafo and Baguida could have been caused by other factors such as sand mining, beach rocks, exceptional storms and construction of a fishing harbor. The consultant questioned the methodology by which the findings were derived in the study. The consultant also disagreed with the observation that diffraction of waves caused by the building of a new spur groin extending the existing breakwater of the port to protect the access channel from refilling with sand, was contributing to coastal erosion. However, the consultant agreed with the finding that the Port of Lomé was and continues to be a major contributing factor to coastal erosion in the area to the east of the port. A key cause for coastal erosion east of the port is that the port disrupts the flow of sediment along the coast as the main breakwater (for the port) accumulates and diverts the west to east littoral drift towards the shipping channel, which acts as sink that traps virtually all of the sediment moving from west to east.<sup>20</sup> The technical review attached to the Management Response of IFC to the CAO investigation report also supports this view. It states: „*In more technical language, the channel works as a trap because the channel is deeper than the closure depth, i.e., the depth at which wave energy which powers the coastal sediment transport, no longer reaches. In short, the wave energy doesn't reach the bottom of the channel and cannot, therefore, pick up the sediment and move it further down the coast.*“<sup>21</sup>

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<sup>20</sup> See Findings of IFC's Independent Technical Review attached to IFC Management Response to the CAO Compliance Investigation Report on IFC's Investment in Lomé Container Terminal, October 2016 – <https://bit.ly/2U4p2OP>

<sup>21</sup> IFCs Response to CAO Compliance Investigation Report of IFC's Investment in Togo LCT, October 2016- <https://bit.ly/2U4p2Op>

Given the disagreement over the study's finding and about the methodologies employed, and the reluctance of the Togolese consultant who prepared the study to make further adjustments, LCT and the financial partners decided that an international qualified consultant should be engaged „pour fournir un soutien technique, examiner et approuver une étude sur l'évolution du trait de cote togolais entre 1955-2019“ with the objective to finalize the study conducted so far by a group of Togolais consultants so that the study findings would meet international standards. This additional review was completed in February 2022. This investigation report does not reflect the findings of this revised study issued in February 2022 as a draft investigation report had already been completed and fact checking by FMO and DEG operations departments, the client and the complainants was ongoing. Fact checking of draft investigation reports is required under the ICM policy prior to issuance of a final report.

## 2. Disclosure and Consultation

The CAO investigation Report found that

- 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.

Affected communities (including the complainants) were consulted on 20 February 2019 during the preparation of the audit by the consultants who conducted the audit. Moreover, in January 2020, complainants report that they were consulted as part of the validation process of the audit. They report that at this time, they visited the LCT project and had a meeting with representatives of LCT and the environmental authority. Complainants also report that they had questions regarding the content and conclusions of the audit which they expressed in letters but that they have not received any responses. The environmental audit has been posted on the IFC project website.

In ICM Panel interviews with complainants they express concerns about the lack of disclosure of the Coastal Erosion Study completed in April 2020. Complainants were visited by the consultants who prepared the study in the early phase of preparation of the study. But the complainants have not seen the study completed in April 2020 and expressed strong disagreement that drafts of the study have not been shared with them. The ICM Panel discussed this lack of disclosure with LCT Management who stated that the Coastal Erosion Study in the version issued in April 2020 should not be disclosed as, in their view, the study has significant shortcomings which first need to be corrected. FMO staff interviewed by ICM also stressed the fact that it is not useful to share such highly technical studies for consultations and that it would not have been useful to disclose this highly technical study which was not accepted by LCT and the lenders. In their comments, DEG staff also pointed out that IFC Performance standards do not require disclosure of draft studies.

## **G. The Role of DEG and FMO in Monitoring of Remedial Actions**

DEG and FMO participated with IFC in the Lomé Container Terminal project where IFC assumed the role of lead arranger. Subsequently, during project supervision, IFC performed a functional lead among the lenders. The ICM Panel was informed by DEG and FMO staff that they regularly participate in supervision missions and attend coordination telephone calls. But they also emphasized that IFC performed the lead role among lenders in the supervision process.

In addition, DEG and FMO cooperate under an agreement where FMO assumed “the lead” and DEG assumed the role as “following partner”. In this relationship, FMO was expected to be significantly more involved than DEG in supervision efforts. However, despite this division of labour, DEG and FMO maintain the responsibility to assure that the client (here LCT) complies with FMO and DEG standards as laid out in the credit agreement. The supervision of compliance can be delegated to another DFI (or to consultants) which can conduct this task on behalf of DEG and FMO, but the ultimate responsibility rests with DEG and FMO. Delegation does not relieve the parties of their ultimate responsibility. FMO staff in their interviews with the ICM emphasized that they recognize that the ultimate responsibility for assuring that FMO policies are implemented, rests with FMO.

DEG and FMO operated according to the principles laid out in the agreements, with IFC very much in a lead function, with FMO (as the leader among DEG and PROPARCO), being more actively engaged by receiving messages on progress made in the application of E&S standards, reviewing some documents, getting engaged on some noncompliance issues, participating in joint supervision missions. Both DEG and FMO, regularly attended the coordination calls among all funding institutions. Based on interviews conducted by the ICM Panel, DEG and FMO considered the complaint filed with CAO primarily as an issue of concern for IFC. The complaint was, at the time, filed with CAO only, and the ICM was not involved. DEG and FMO staff reported that IFC briefed the partners on the CAO findings as well as IFC’s views on these findings and IFC’s management response. IFC also briefed partners on progress of studies, distributed draft reports (Environmental Audit and Coastal Erosion study), and invited partners to participate in presentations and discussions of the IFC’s technical consultants. The TOR for the Coastal Erosion Study was reviewed by technical experts by IFC. The ICM did not find evidence that FMO insisted on a timely implementation of the Coastal Erosion Study. In contrast, both FMO and DEG seemed to have taken a direct engagement in the preparation of TORs and the selection of the international consultants which have been engaged by LCT to verify the findings of the Coastal Erosion Study for which work is presently underway. The ICM Panel found significantly increased engagement of FMO and DEG staff in monitoring after the complaint had been filed with the ICM and in particular during the last 15 months when the additional review on the Coastal Erosion Study was conducted.

## H. Conclusions

Table 1 reflects the ICM's view on the compliance status of the project. The project remains in noncompliance status due to noncompliances with IFC PS1 (2006) as mitigation measures identified in the revised Coastal Erosion study remain to be designed and implemented. Mitigation measures need to be implemented for impacts resulting from the LCT funded project. Coastal impacts caused by the port should also be addressed. Both IFC and LCT consultants, agree that the Port of Lomé has historically been and continues to be a contributing factor to coastal erosion in the area east of the port. IFC's consultants noted that the Port of Lomé lacks a sustainable solution to the underlying issue of sand accumulation to the west of the breakwater and in the channel and the corresponding depletion of sand to the east. LCT uses the port infrastructure in its operation. The ICM Panel is of the view that LCT – with the support of DFIs – should contribute to help design and implement a sustainable solution to mitigate coastal erosion impacts of the port. As a cumulative impact assessment in respect to coastal erosion impacts on the area east of the port was not adequately conducted at the time when the ESIA was prepared, the detrimental impact of the port, at the time of signature of the financing agreement, was not properly identified and no mitigation measures were considered. As the final revised Coastal Erosion study has not, yet, been disclosed, there remain noncompliances on disclosure until a nontechnical summary of the revised Coastal Erosion Study has been disclosed and discussed with affected people.

The ICM finds it disconcerting that only recently, more than five years after the issuance of the CAO Compliance Investigation Report, the revised Coastal Erosion study has been completed. These delays in the completion of the study result in delays in the design and implementation of mitigation measures. While the ICM Panel recognizes that it is the obligation of LCT to carry out the Coastal Erosion study, it is the responsibility of FMO and DEG to assure that the borrower implements the FMO and DEG Environmental and Social Safeguards. The ICM Panel is of the view that FMO and DEG could have taken more determined actions to press the need for a timely completion of the Coastal Erosion study. The lack of progress is particularly disconcerting as the loans of DEG, FMO and IFC are programmed to be fully repaid by 15 December 2023.<sup>22</sup> Thus, there remains little time to agree and implement remedial actions before the financial relationships between LCT and DEG and FMO end. Financial partners have much less leverage with their clients if their loans have been closed. DEG and FMO should have been aware about the limited time during which they can still effectively address noncompliances and related harm. The ICM recognizes the present very active engagement of DEG and FMO but is concerned about the very limited timeframe until closure of the financial relationships with DEG and FMO during which remedial actions can be implemented.

The ICM Panel also finds that DEG and FMO should have pursued a more independent supervision approach in this project, once the CAO compliance investigation report was issued in August 2016 which found that there were several noncompliance areas for which IFC was held accountable. Even after the issuance of the Compliance Review Report, DEG and FMO largely followed the functional lead which IFC assumed among lenders. In the view of the ICM, a more independent supervision approach was only pursued during the last 15 months. The ICM Panel is of the view, that in such exceptional circumstances – where noncompliances have been stated under a Compliance Review process - “delegated” supervision efforts should be adjusted, so that FMO and DEG can assure themselves that DEG and FMO Environmental and Social standards are applied.

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<sup>22</sup> In fact all loans provided under the Common Terms agreement of 2012 (amended in 2014 and 2015) will be repaid by 15 December 2023. These include two loans from IFC, one loan from AFDB and DEG, two loans from FMO, two loans from OFID, and one loan from PROPARGO.

The ICM panel recognizes that even in such circumstances, more independent supervision efforts of FMO and DEG need to be coordinated with other financing partners.

**Table 1: Noncompliances with DEG/FMO Policies**

<b>Noncompliance Issue</b>	<b>Actions Taken since August 2016</b>	<b>Outstanding Issues</b>	<b>Compliance Status</b>
Assessment of Risks of Lomé Container Terminal on Coastal Area East of the Port	Togolese consultants completed Coastal Erosion Study in April 2020. DEG/FMO/IFC disagree with some findings and methodology of study and LCT engaged an international consultant to conduct additional reviews of methodology and findings. A revised Coastal Erosion Study has been completed in February 2022.	Design and implementation of remedial actions to mitigate harms caused by LCT project and the port which have been identified in the revised Coastal Erosion Study.	Noncompliance
Cumulative Impact Assessment of Lomé Container Terminal on Coastal Erosion	Environmental Audit report and Coastal Erosion Study point to detrimental impact of Lomé Port on coastal erosion east of the Port and find that construction of Lomé Container Terminal had a contributing impact on coastal erosion east of the port.	Audit lays out some measures to mitigate impacts which need to be implemented. Coastal Erosion study points to significant impact of port on coastal erosion east of the port. An adequate mitigation program to mitigate these harms should be designed and implemented.	Noncompliance
Noncompliance with PS1 due to consultation failure on ESIA (2010) with people living in are of influence east of port potentially at risk from impacts.	Environmental audit was disclosed, and comments of affected people were obtained. Consultants of Coastal Erosion study sought input of people living east of port in the early phase of study preparation. As the Coastal Erosion study completed by Togolese consultants was not considered adequate by LCT and lenders, the study completed by consultants was not disclosed.	Disclosure of nontechnical summary of final revised Coastal Erosion Study and consultation of nontechnical summary with affected people (including complainants).	Noncompliance

## **I. Recommendations**

### **1. Regarding Noncompliances of Project**

- (i) DEG and FMO should work with LCT to design and implement remedial actions to mitigate negative impacts identified in the revised Coastal Erosion Study completed in February 2022.
- (ii) DEG and FMO should support LCT to assure that remedial actions specified in the Environmental Audit will be implemented.
- (iii) DEG and FMO should ask LCT to disclose a nontechnical summary of the final revised Coastal Erosion study and to conduct consultations on this nontechnical summary with people residing in influence of the project, including the complainants.
- (iv) FMO and DEG should work with LCT, the port and relevant Togolese authorities to design and implement measures which would reduce erosion impacts caused by the port on the coast east of the port.
- (v) The DEG and FMO Management Board should issue a Management Action Plan within three months after this compliance review report has been issued. This Management Action Plan should lay out detailed time-bound measures which would address noncompliances and related harm found in this Compliance Review Report. Prior to issuing the final Management Action plan, the draft Management Action Plan needs to be consulted with LCT and the complainants. DEG and FMO Management are encouraged to seek the view of the ICM Panel of Experts during the preparation of the Management Action Plan.

### **2. Regarding Policies and Procedures (see para. 3.2.14 of ICM policy)**

FMO and DEG should play an active role in supervision of projects for which significant noncompliance issues have credibly been identified. More active involvement is needed even in arrangements where divisions of labour have been agreed upon between co-financing institutions under partnership agreements. A direct engagement of FMO and DEG is particularly needed if noncompliance issues have been identified in a Compliance Review Report conducted by a complaint mechanism of one of the DFIs with which DEG and FMO pursue joint funding of the project.

## ANNEX 1 Complaint

### Complaint in French :

Association des personnes victimes de l'érosion côtière

BP: 4180

Courriel: [deleted on purpose]

Web site : [erosioncotiere.togo.skyrock.com](http://erosioncotiere.togo.skyrock.com)

Tél : [deleted on purpose] Lomé - Togo Lomé , le 11 Juillet 2018

**OBJET** : Demande d'enquête Sur les textes et suivit de la

Banque Allemande de Développement (DEG) et FMO

Sur le projet Port à container de Lomé (Togo)

Cher Monsieur/Madame,

Nous venons par la présente correspondance porté plainte contre la Banque Allemande de Développement (DEG) et FMO sur les l'impact négatif occasionné par la construction du port à container de Lomé à laquelle elles sont activement partenaires financières de LCT.

En effet la construction du port de Lomé à laquelle a participé de façon financier la Banque Allemande de Développement (DEG) et FMO a provoqué l'accélération de l'avancée de la mer à l'est du port autonome de Lomé ; ceci depuis 2012. Le Togo, pays d'Afrique de l'ouest situé entre le Bénin à l'est, le Ghana à l'ouest, le Burkina-Faso au nord, et à qui la nature a fait le merveilleux don de L'océan Atlantique au sud, commençait déjà à faire face à l'avancée menaçante, quoique modérée, des eaux de la mer à une vitesse de **1 à 7m chaque année** sur la côte Est du port depuis sa construction en 1968 jusqu'en 2012 où nous avons noté une accélération de l'avancée allant jusqu'à une vitesse d'environ **15m chaque mois**.

Alarmée par les dégâts – l'érosion côtière, la destruction des habitations, le ravage des cimetières, exhumation des ossements humains, les cases de fétiches, maisons de culte les plantations de cocotiers, les espaces de tourisme notamment Obama beach et rend la pêche très difficile, la communauté riveraine s'était mobilisée pour créer un collectif ayant pour objectif d'en chercher les causes, et de trouver les voies et moyens pour diminuer la souffrance des populations sinistrées poussées à se déplacer de jour en jour. Aussi, avons-nous mené des démarches d'abord nationales, toutes pacifiques et citoyennes auprès de certains professeurs de l'Université de Lomé spécialisées en la matière, les autorités, sans satisfaction. Nous nous sommes alors dirigés vers les institutions internationales, en l'occurrence, le bureau local de la Banque Mondiale, la représentante régionale de la SFI au Ghana, le Panel d'inspection de la Banque Mondiale aux USA, Compliance Advisor Ombudsman (CAO) aux USA. Cette dernière s'occupant et agissant sous l'autorité directe du président de la Banque Mondiale, est habilité à mener des enquêtes sur l'investissement de la branche privée de la Banque Mondiale dans la construction du port à container de LCT. La conclusion de leurs enquêtes que vous trouverez dans notre annexe et accessibles sur leur site : [WWW.cao-ombudsman.org](http://WWW.cao-ombudsman.org) a relevé beaucoup de non-conformités sur :

- Les textes de la Banque Mondiale
- Les droits des communautés victimes
- L'incompétence des experts du bureau ayant préparé l'étude d'impact environnemental volet social, INROS LACKNER, LCT, SFI et le consortium de Banque (DEG et FMO) qui ont fiancer le projet n'ont pas tenir compte des impactes historiques du premier port dans les années 60.

➤Vu le classement du projet LCT par la Banque Mondiale dans la **catégorie A** (Projet à haut risque pour la communauté riveraine)

➤Vu l'étude de l'U.E.M.O.A. 2007, stipulant que les travaux portuaires amplifient l'érosion côtière.

➤Vu l'interpellation de l'Etat béninois sur les impacts négatifs du port de Lomé et ses brises lames.

➤ Vu la conclusion du rapport de conformité du CAO 2016, relevant que le bureau INROS LACKNER, LCT et SFI n'ont pas pris en compte les impacts historiques du premier port de Lomé construit dans les années 60.

➤ Vu le premier rapport de suivi de l'enquête de conformité CAO de mars 2018, disant que la SFI a déclaré au CAO qu'elle a élaboré une nouvelle directive (ESS) pour les ports, les havres, les terminaux à container, s'appuyant notamment sur les leçons dégagées du cas du Togo, LCT, entre autres projets, publiée en janvier 2017, la nouvelle directive ESS comporte une section sur les processus côtiers et la géomorphologie des fonds marins et littoraux.

Nous voudrions solliciter auprès de votre institution d'investigation une enquête et pour situer la responsabilité, le dédommagement et la position de la DEG et la FMO sur les textes internationaux environnementaux, les textes de la Banque suivit, et les droits des riverains dans les affaires port à container de Lomé, jugées préjudiciables par la communauté victime sur les plans environnement et la violation des droits humains, en vue de promouvoir la démocratie et l'égalité des droits. Comptant sur votre compétence juridique pour interpeler votre investigation afin qu'elle fournisse les explications sur les lacunes à elle reprochées dans les documents d'enquêtes évoqués plus haut.

Nous vous prions de bien vouloir agréer l'expression de nos très distingués sentiments.

**LE PRESIDENT**

**TONOUDO Edo**

Ci-joints : **Documents et CD**

- Programme régional de lutte contre l'érosion U.E.M.O.A. 2007
- Etude d'impact environnemental 2010
- Echange de correspondance avec le bureau régional de la SFI 2014
- Bureau local de la Banque Mondiale 2014
- Avis du Panel d'inspection 2015
- Rapport d'évaluation 2015
- Rapport de pré-enquête 2015
- Intermède d'enquête 2016
- Enquête de conformité 2016
- Directive modifiée SFI 2017
- Premier suivi 2018
- Un mandat de communauté.

**AMPLIATION :**

- Ambassade de la République Fédérale d'Allemagne
- Ambassades des USA
- Ambassade de France
- Compliance Advisor Ombudsman (CAO)
- Panel d'inspection
- ONU-CLIMAT
- Accountability counsel



**Complaint, translated in English:**

**Association des personnes victimes de l'érosion côtière**

**PO Box: 4180**

**Email: [deleted on purpose]**

**Website: erosioncotièretogo.skyrock.com**

**Tel.: [deleted on purpose] Lomé - Togo Lomé , 11 July 2018**

**Subject: Request for investigation into documents and follow-up of the German Development Bank (DEG) and FMO**

With regard to the Lomé Container Terminal project (Togo)

Dear Sir/Madam,

We hereby file a complaint against the German Development Bank (DEG) and FMO concerning the negative impact of the construction of the Lomé Container Terminal (LCT) in which they were active financial partners.

The construction of the Lomé Terminal, in which the German Development Bank (DEG) and FMO were financial participants, has led to accelerated sea ingress to the east of the Lomé Autonomous Terminal since 2012. Togo, a West African country located between Benin to the east, Ghana to the west, Burkina-Faso to the north, and to which nature has given the wonderful gift of the Atlantic Ocean to the south, had already been confronted with the threatening ingress of ocean water along the coast east of the port since its construction in 1968, albeit at a moderate rate of **1 to 7m every year** prior to 2012, when ingress began to accelerate to a rate of about **15m every month**.

Alarmed by the damage (coastal erosion, destruction of homes, devastation of cemeteries, exhumation of human bones, charming huts, houses of worship, coconut plantations, tourism areas, notably Obama beach, and adverse impact on fisheries), the local community mobilised to establish a collective with the purpose of identifying the causes and finding ways to reduce the suffering of the affected populations, who were being forced to relocate on a daily basis. Taking peaceful and civic-minded steps, initially at the national level, we consulted certain professors at the University of Lomé specialised in the subject and contacted authorities, but without obtaining any satisfaction. We then turned to international organisations, namely the local World Bank field office, the IFC regional representative in Ghana, the World Bank Inspection Panel in the USA and the Compliance Advisor Ombudsman (CAO) in the USA. The latter, acting under the direct authority of the President of the World Bank, is empowered to investigate the investment of the World Bank's private partners in the LCT construction. The conclusion of their investigations, which can be found enclosed as well as on their website at [Www.cao-ombudsman.org](http://www.cao-ombudsman.org), identified many deficiencies relating to:

- World Bank documents
  - Rights of victim communities
  - The incompetency of the experts from INROS LACKNER (the office that prepared the environmental and social impact study), LCT, IFC and the bank consortium that financed the project (DEG and FMO) resulted in them overlooking the historical impact of the first port in the 1960s.
- 
- In view of the World Bank's classification of the LCT project as **Category A** (high risk project for the local community)
  - In view of the UEMOA 2007 study, stating that the port construction work amplifies coastal erosion,
  - In view of the questions raised by the Republic of Benin regarding the adverse effects of the Port of Lomé and its breakwaters,
  - In view of the conclusion in the CAO 2016 compliance report that INROS LACKNER, LCT and IFC did not consider the historical consequences of the initial Port of Lomé built in the 1960s,

➤ □ In view of the first follow-up report to the CAO compliance investigation of March 2018 stating how IFC informed the CAO that it had developed a new (ESS) guideline for ports, harbours, container terminals, drawing in particular on lessons learned from the case of LCT in Togo and other projects, this report having been published in January 2017 and this new ESS guideline including a section on coastal processes and geomorphology of the seabed and coastline,

we respectfully request that your investigative body, acting with the aim of promoting democracy and equal rights, examine and determine the liability, reparations and position of DEG and FMO with regard to international environmental regulations, bank regulations and the rights of local residents in relation to the Lomé Container Terminal, which the victim community considers to be harmful to the environment and in violation of human rights. Counting on your legal expertise to review your investigation and provide explanations for the shortcomings in the above-mentioned investigation documents,

we remain grateful to you for your kind attention.

**PRESIDENT**

**TONOUDO Edo**

**Enclosures: Documents and CD**

- UEMOA Regional Erosion Control Programme 2007
- Environmental Impact Assessment 2010
- Exchange of correspondence with IFC regional office 2014
- World Bank field office 2014
- Inspection Panel Report 2015
- Evaluation report 2015
- Preliminary investigation report 2015
- Interim investigation 2016
- Compliance investigation 2016
- Amended IFC Guideline 2017
- First follow-up 2018
- Community mandate.

**cc:**

- Embassy of the Federal Republic of Germany
- US Embassies
- French Embassy
- Compliance Advisor Ombudsman (CAO)
- Inspection panel
- UN CLIMATE CHANGE
- Accountability counsel

### ***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“ PS1 20006 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).
- Because 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 „reflected the outcomes of consultation on social and environmental risks and adverse impacts and the proposed measures and actions to address these. “.
- 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).

# ANNEX 3 – Maps of the Project

