

# **INDEPENDENT COMPLAINTS MECHANISM (ICM)**

## **First Monitoring Report for Lomé Container Terminal**

20 March 2025

### **DEG and FMO Complaint 18-001**

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#### **Recipients:**

LCT

Complainants (*Collectif de Victimes d'Erosion Côtière*)

DEG

FMO

## Abbreviations

2022 study	Independent revised Study on the Causes of Coastal Erosion along the Togolese Coast between 1955 and 2019 (completed in 2022)
AfDB	African Development Bank
ANGE	<i>Agence Nationale de gestion de l'Environnement</i>
CAO	Office of the Compliance Advisor Ombudsman (IAM of IFC/MIGA)
Collective	<i>Collectif des personnes victimes d'érosion côtière</i>
CSR	Corporate Social Responsibility
DEG	<i>Deutsche Investitions- und Entwicklungsgesellschaft</i>
FMO	Dutch Entrepreneurial Development Bank
ESIA	Environmental and Social Impact Assessment
E&S	Environmental and Social
EHS	Environmental Health and Safety
Proparco	<i>Société de Promotion et de Participation pour la Coopération Economique</i>
MSC	Mediterranean Shipping Company
IAM	Independent Accountability Mechanism
ICM	Independent Complaints Mechanism
IEP	Independent Expert Panel
IFC	International Finance Cooperation
IFI	International Finance Institution
LCT	Lomé Container Terminal
MAP	DEG and FMO Joint Management Action Plan to the ICM Compliance Review Report on Lomé Container Terminal, January 15, 2024
MSC	Mediterranean Shipping Company
MMEFCP	Ministry of Maritime Economy, Fisheries and Coastal Protection of the Republic of Togo
OPEC Fund	OPEC Fund for International Development
PAL	Port Authority of Lomé
PK	Kilometer Point
PROPARCO	<i>Société de Promotion et de Participation pour la Coopération Economique</i>
PS1	IFC Environmental and Social Performance Standard 1
ToR	Terms of Reference
WACA	West Africa Coastal Areas Management Program

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## Executive Summary

This is the first Monitoring Report of complaint 18-001 related to the Lomé Container Terminal project in Togo. This Report monitors non-compliance findings of the Compliance Review Report issued by the Independent Complaints Mechanism (“ICM”) on 31 August 2022 as per paragraph 3.2.22 of the ICM policy. The project is located within the Port of Lomé. It is owned and operated by Lomé Container Terminal SA (“LCT” or “Client”) and operates under a concession agreement with the Government of Togo which was awarded to develop, construct and operate a greenfield transshipment container terminal. The container terminal became operational in 2014.

The International Finance Corporation (“IFC”) was the sole arranger of a EUR 225 million secured loan for LCT which was funded by the IFC, the Dutch Entrepreneurial Development Bank (“FMO”), the Deutsche Investitions- und Entwicklungsgesellschaft (“DEG”), the Société de Promotion et de Participation pour la Coopération Économique (“Proparco”), the African Development Bank (“AfDB”) and the OPEC Fund for Development (“OPEC Fund”). FMO and DEG each participated with a EUR 25 million loan. In 2015, FMO provided an additional EUR 10 million as part of an additional EUR 30 million debt package. LCT fully repaid the loans in 2023, thus ending the financial relationship with DEG and FMO.

In response to the ICM Compliance Review Report, DEG and FMO Management Board issued a Management Action Plan (“MAP”) on 19 January 2024. In the ICM Compliance Review Report, the Panel indicated that a MAP should lay out detailed time-bound measures which would address non-compliances and related harm. The Independent Expert Panel (“Panel” or “IEP”) of the ICM appreciates the joint effort of DEG and FMO to produce a MAP in line with best international practices. At the same time, the Panel wishes to stress that it follows the ICM Policy when executing its monitoring mandate, which reads that: “[i]n cases where material non-compliances are identified, the ICM will monitor the situation until actions by DEG [and FMO] assure the ICM that DEG [and FMO are] addressing the non-compliances”.

This Monitoring Report thus covers the period between September 2022 and July 2024. The Report is based on the mission conducted by the IEP to Togo in December 2023 which included meetings with LCT, representatives of the *Collectif des personnes victimes d'érosion côtière* (“Collective” or “Complainants”), the Minister of Maritime Economy, Fisheries and Coastal Protection, and the authorities which implement the West Africa Coastal Areas Management Program (“WACA”). The IEP also visited coastal communities east of the port. The IEP further reviewed the joint MAP that was published in January 2024 after the monitoring visit to Togo took place as well as relevant implementation progress documents provided by DEG and FMO. It also conducted conversations with FMO operational staff. As FMO has a lead role in managing this case, interactions took place mainly with FMO staff.

### **The Complaint**

The Complaints Offices of DEG and FMO received a complaint on 28 August 2018 (see Annex 1 for the full complaint letter). The complainants are communities located east of the port and are represented by the civil society organisation *Collectif des personnes*

*victimes d'érosion côtière*. The Complainants allege adverse impacts due to coastal erosion accelerated by the project, specifically:

- Loss of land and destruction of houses;
- Loss of farms, coconut plantations, and places for tourism activities;
- Difficulties with fishing activities;
- 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, marketplaces, schools, wells, and roads.

The same complaint was filed with the Compliance Advisor Ombudsman (“CAO”), the Independent Accountability Mechanism (“IAM”) of the IFC, in March 2015. The CAO issued a Compliance Investigation Report in response to this complaint in August 2016 and has since issued four Monitoring Reports to monitor the status of its non-compliance findings. The CAO Compliance Investigation Report made the following noncompliance findings:<sup>1</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 coastal erosion issues met Performance Standard 1 and did not recognize that additional assessments of the 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.

### **Findings of the ICM Compliance Review Report**

In accordance with paragraph 3.1.7 of its Policy, which provides that the ICM should assess on a case-by-case basis the handling of identical complaints that were filed with other IAMs and aim to avoid duplication of work, the ICM decided to take the findings of the CAO Investigation Report as its departure point and only reviewed progress made in implementing remedial actions to address the non-compliance findings laid out in the CAO Investigation Report. The ICM investigation thus focused on assessing whether measures taken since 2018 brought the project into compliance with DEG and FMO’s Environmental and Social Safeguards policies which were applicable to the project.

The ICM Compliance Review Report found persistent non-compliances. It found that no remedial measures have been designed to address the impact on coastal erosion, which is attributable to the LCT project, and recommended that FMO and DEG should work with LCT, the port and relevant Togolese authorities to help design and implement measures which would reduce coastal erosion impacts caused by the Port on the east of the port.

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<sup>1</sup> See CAO, Compliance Investigation Report, IFC Investment in Lomé Container Terminal, Togo, 8 August 2016, available at: [https://www.cao-ombudsman.org/sites/default/files/downloads/CAO\\_Compliance\\_InvestigationReport\\_Togo\\_LCT-01\\_08082016.pdf](https://www.cao-ombudsman.org/sites/default/files/downloads/CAO_Compliance_InvestigationReport_Togo_LCT-01_08082016.pdf)

According to the coastal erosion study that was completed in 2022 to complement the original ESIA, a limited amount of the total coastal erosion could be attributed to the LCT project. To bring the disclosure and consultation process in compliance with IFC Performance Standard 1, the ICM recommended that a non-technical summary of the coastal erosion study should be disclosed and consulted with affected people, including the complainants. In addition, the ICM found that DEG and FMO should have pursued more independent supervision of the project once the CAO Compliance Investigation Report found non-compliances attributable to IFC in its report issued in August 2016.

### **The DEG and FMO Management Action Plan**

In response to the ICM Compliance Review Report and non-compliance findings, DEG and FMO issued a Management Action Plan (“MAP”) which expresses the following positions:

- The MAP states that: *“[...] based on the findings of the Environmental and Social Audit 2020 as well as the 2022 Study, DEG and FMO will not require LCT to design additional measures or to provide for individual compensation as this would only be appropriate if the studies would have concluded that the impacts observed are a result of significant contribution of the Project.”* The MAP states that as a potential very limited contribution cannot be excluded, FMO follows the application of the precautionary principle in line with the 2020 Environment and Social Audit and therefore supports the implementation of actions as defined in the 2020 Audit, which includes Corporate Social Responsibility (“CSR”) measures, to be an appropriate approach.
- The MAP states that DEG and FMO support disclosure and consultation of a non-technical summary of the coastal erosion study but that this disclosure requires the approval of the Togolese authorities and that lenders have asked the responsible Ministry to provide approval for disclosure.
- The MAP lays out adjustments in DEG and FMO internal processes on how supervision and risk management will be strengthened in case that complaint mechanisms of other International Finance Institutions (“IFIs”) have non-compliance findings on projects in which DEG and FMO are also involved.

The joint MAP summarized DEG and FMO’s joint response to the ICM recommendations and outlined different actions which DEG and FMO committed to implement to address the IEP’s findings and recommendations. Annex 2 provides an overview of the ICM non-compliance findings and related harms, the ICM recommendations, and DEG and FMO MAP commitments to address these recommendations.

This Monitoring Report assesses DEG and FMOs implementation of ICM recommendations taking into account the MAP. Section 7 covers the non-compliance findings related to coastal erosion impacts, and monitors the implementation of ICM recommendations 1, 2, and 4. Section 8 covers the non-compliance findings related to disclosure and consultation, monitoring the implementation of recommendation 3. Section 8 covers the non-compliance finding on project supervision in complaint cases and monitors the implementation of ICM recommendation 5.

### **Non-compliance Findings related to Coastal Erosion Impacts**

In response to the non-compliance finding of the CAO Compliance Investigation Report issued in 2016, lenders agreed to support LCT in the development of a coastal erosion study, which would assess causes of coastal erosion. As part of this study, the contribution of the LCT project on coastal erosion should also be determined. This has been laid out in the Terms of Reference (“ToR”) for the study. The study was completed in 2022 and showed that the construction of the Port of Lomé caused significant coastal erosion. The study concludes that the LCT project has comparatively modest contribution to the total coastal erosion east of the port as a result of the construction of the 300 m spur groyne which interrupts the flow of sand from west to east as well as due to the deepening of the access channel. The IEP considers the completed study as the final response to the non-compliance findings in the 2016 CAO Investigation Report. FMO’s E&S specialists expressed disagreements with the interpretation of the findings of the study.

The IFC Performance Standard 1 (“PS1”), which is applied by DEG and FMO, requires that negative impacts be avoided, and if not possible to be avoided, then be mitigated or remedied. The study points to a below 3 or below 5 percent contribution to coastal erosion, which is attributable to the LCT project, depending on the parameters used in the modelling. Thus, any impacts caused by coastal erosion due to the project on e.g., livelihood, land, and infrastructure, need to be remedied (Recommendation 1, ICM Compliance Review Report 2022). According to the IEP, this has not happened. The IEP disagrees with the position of DEG and FMO taken in the MAP that additional measures are only required if there is a significant contribution of the project. That position is not consistent with PS1. Though contribution may be very limited, the impacts on affected people may be significant and therefore must be assessed and addressed. The IEP finds that DEG and FMO should have worked with LCT and other relevant stakeholders to assess project-related erosion impacts on coastal communities and based on the scope and magnitude of the impacts, determine mitigating and remedial measures in line with PS1. Such remedial measures go beyond relying on LCT’s Corporate Social Responsibility activities.

In the 2022 Compliance Review Report, the IEP recommended that DEG and FMO should support LCT to assure that remedial actions specified in the Environmental Audit of May 2020 to be implemented (Recommendation 2, ICM Compliance Review Report 2022). The IEP understands that FMO and DEG are making significant efforts to support LCT in the implementation of a community support project, which LCT conducts as part of its Corporate Social Responsibility activities.

As stated above, the IEP does not consider a framework for community engagement and development to be a remedy approach in line with IFC PS1. Nonetheless, it recognizes that such a framework could stimulate local development as well as enhance relationships with local communities including those which have historically been affected by coastal erosion. The IEP emphasizes that the community development program should, as defined by the Environmental Audit and incorporated in the MAP in response to ICM recommendation 2, encompass an employment program for the youth and income-generating activities for the affected community members, and that the community engagement framework should also include community stakeholders adversely affected by coastal erosion.

Furthermore, the Environmental Audit defines support in the construction of coastal protection infrastructure as one of the five specific actions. While the construction of coastal erosion protection could be addressed at national level, the IEP is of the view that FMO and DEG should support LCT with obtaining clarification from national agencies, such as from the *Agence Nationale de Gestion de l'Environnement* ("ANGE") about the scope of this activity as per the Environmental Audit and implement measures accordingly in collaboration with relevant stakeholders.

**To conclude, DEG and FMO are making significant efforts to support LCT with a framework for community engagement and development, which LCT conducts as part of its Corporate Social Responsibility activities. Nonetheless, the IEP is of the view that coastal erosion impacts caused by LCT are not adequately addressed in the MAP as adverse impacts on communities are not assessed and addressed in line with PS1 and there remains unclarity about support to the construction of coastal protection infrastructure. Therefore, the identified harms have not been remedied, and the project remains in non-compliance status.**

#### **Non-compliance Findings related to Disclosure and Consultation**

The 2022 ICM Compliance Review Report contains a non-compliance as the 2022 coastal erosion study, designed as a complement of the ESIA, had not been disclosed. The Report recommended that at least a non-technical summary of the study must be disclosed and consulted with affected people. LCT informed the lenders that – in accordance with the LCT concession agreement - disclosure is only possible with approval of Togolese government authorities. Such approval was not provided.

In 2023, the lenders sent a joint note to the Ministry of Maritime Economy, Fisheries and Coastal Protection ("MMEFCP"), to request approval for disclosure. Their request was officially refused by the respective Minister.

The IEP finds it noteworthy that the lenders only learned in 2022 that the study could not be disclosed without Government approval. The study was under preparation between 2019 and 2022, and the lenders were in close contact with LCT in regard to this study. The expected disclosure of the study thus should have been a subject of discussions between the lenders and LCT. Importantly, the CAO's second and third Monitoring Reports, issued in 2019 and 2021, prominently highlighted the need to disclose and consult on the study with affected communities. The IEP is concerned that insufficient attention was given to this requirement as only in 2022 the position was taken by LCT that the disclosure of the study required approval by Government authorities.

**Disclosure of the non-technical summary of the 2022 study has not happened and the project thus remains in non-compliance with IFC PS1.**

#### **Conclusion**

The IEP is of the view that the project remains in non-compliance status as (i) no adequate measures have been designed and implemented to remedy the impacts of coastal erosion in the area east of the port, mainly concentrated in the areas 1-11 km east of the port, and



(ii) no disclosure and consultation has taken place for the 2022 coastal erosion study. According to the IEP, measures to address these non-compliances are required.

## **1. The ICM Monitoring Process**

This is the first Monitoring Report of the FMO and DEG complaint 18-001 related to Lomé Container Terminal in Togo. A Compliance Review Report was issued by the ICM on August 31, 2022.<sup>2</sup> The Report found non-compliances and related harm. According to para 3.2.22 of the ICM Policy, “[i]n cases where material non-compliances are identified, the ICM will monitor the situation until actions by DEG [and FMO] assure the ICM that DEG [and FMO are] addressing the material non-compliances.”

This Monitoring Report, which covers the period September 2022 – July 2024, is based on a mission conducted by the Independent Expert Panel to Togo in December 2023 which included meetings with LCT, the complainants, the Minister of Maritime Economy, Fisheries and Coastal Protection, and the authorities which implement the West Africa Coastal Areas Management Program (“WACA”). The IEP also visited the coastal communities in the area east of the port. The IEP further reviewed the joint MAP that was published in January 2024 after the monitoring visit to Togo as well as relevant project update documents provided by FMO and DEG. It also conducted conversations with FMO operational staff. As FMO has a lead role in managing this case, interactions took place mainly with FMO staff.

The joint MAP summarized DEG and FMO’s joint response to the ICM’s recommendations and outlined different actions which DEG and FMO committed to implement to address the IEP’s findings and recommendations. Annex 2 provides an overview of the ICM’s non-compliance findings and related harms, the ICM recommendations, and DEG and FMO MAP commitments to address these recommendations.

This Monitoring Report assesses DEG and FMOs implementation of ICM recommendations. Section 7 covers the non-compliance findings related to coastal erosion impacts, and monitors the implementation of ICM recommendations 1, 2, and 4. Section 8 covers the non-compliance findings related to disclosure and consultation, monitoring the implementation of recommendation 3. Section 8 covers the non-compliance finding on project supervision in complaint cases and monitors the implementation of ICM recommendation 5.

## **2. The Lomé Container Terminal Project and Financing Agreements**

In 2008, LCT 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 Togo. The port is administered by the Lomé Port Authority (“PAL” or “port”), a state-owned enterprise. Project works included (i) the construction of 1050 m quay, (ii) dredging the port’s access channel, (iii) dredging along the quays, access channel, and turning the basin to 16.6 m depths (from a previous depth

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<sup>2</sup> See Independent Complaint Mechanism (ICM), Compliance Review Report, August 31, 2022, FMO and DEG Complaint 18-001 Lomé Container Terminal SA (LCT), Togo, available at: <https://www.deginvest.de/DEG-Documents-in-English/About-us/Responsibility/English-LCT-Compliance-Review-report-August-31-2022.pdf>.

of 14 meters), and (iv) the construction of a new spur groyne<sup>3</sup> to prevent sand from entering the access channel and the dock areas. The 250m groyne was built in 2012 and extended to 300m in 2015. The container terminal became operational in 2014. LCT is a joint venture between Global Terminal Limited, a subsidiary of Terminal Investment Limited, one of the largest terminal operators in the world and majority owned by Mediterranean Shipping Company (“MSC”), and Oasis Kind Limited, a subsidiary of China Merchant Holdings.

The original project costs amounted to EUR 324 million. The International Finance Cooperation (“IFC”) was the sole arranger of a EUR 225 million 12-year secured loan for LCT which was funded by the IFC, the Dutch Entrepreneurial Development Bank (“FMO”), the *Deutsches Investitions- und Entwicklungsgesellschaft* (“DEG”), the *Société de Promotion et de Participation pour la Coopération Économique* (“Proparco”), the African Development Bank (“AfDB”), and the OPEC Fund for International Development (“OPEC Fund”).

FMO and DEG each participated with a EUR 25 million loan and signed the loan agreement in 2012. In 2015, FMO provided an additional EUR 10 million as part of an additional EUR 30 million debt package to finance equipment to further increase capacity. DEG did not provide additional financing. The Client fully repaid the loans to DEG, FMO and IFC in December 2023, thus ending the financial relationship.

### **3. The Complaint filed with DEG and FMO**

The Complaints Offices of FMO and DEG received a complaint on 28 August 2018 (see Annex 1 for the full complaint letter). The complainants are the civil society organisation called *Collectif des personnes victimes d'érosion côtière* (“Collective” or “Complainants”). The Collective represents members of communities who live east of the Port of Lomé. The Complainants allege that the project contributed to the acceleration of coastal erosion, which in turn caused:

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

### **4. The CAO Investigation Findings and Monitoring Reports**

The same Complainants who filed the complaint with the ICM already filed a complaint with the Office of the Compliance Advisor Ombudsman (“CAO”) in March 2015. The CAO issued a Compliance Investigation Report in response to the complaint in August 2016.<sup>4</sup>

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<sup>3</sup> The spur groyne is also referred to as ‘breakwater extension’. This Report uses the term ‘spur groyne’ as it is known as a cross-shore structure that is meant to trap the longshore drift, while a breakwater extension is more general and is often aligned parallel to the shoreline. Environmental and Social Impact Assessment (ESIA) for the LCT project, May 2010, sections 6.3.1.1 and 6.3.1.8, available at: <https://disclosures.ifc.org/project-detail/ESRS/29197/togo-lct>.

<sup>4</sup> CAO, Compliance Investigation Report, IFC Investment in Lomé Container Terminal, Togo, 8 August 2016, available at: <https://www.cao->

Para. 3.1.7 of the ICM Policy provides that when identical complaints are handled by other Independent Accountability Mechanisms, the ICM should aim to coordinate and cooperate with other IAMs with the view to minimise duplication of work. Therefore, the ICM decided to take the findings of the CAO Investigation Report issued in 2016 as its departure point for the ICM investigation and not to reopen a full own investigation since inception of the project. The CAO Compliance Investigation Report laid out the following key findings:

- 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 ESIA in relation to erosion issues met IFC PS 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.

Since the issuance of the Compliance Investigation Report in 2016, the CAO released four Monitoring Reports in relation to actions IFC had taken and/or had proposed to address CAO's investigation findings:

- **CAO's first Monitoring Report from March 2018<sup>5</sup>** recognized positive actions taken by IFC at the level of policies, procedures, and knowledge. These included updated guidance in 2017 in the World Bank Group Environmental, Health and Safety (EHS) Guidelines for Ports, Harbors and Terminals related to assessment of project impacts on coastal processes. The CAO also acknowledged several actions initiated by IFC at the project-level but found these still at the initial stage of implementation without substantially addressing investigation findings.
- **CAO's second Monitoring Report from April 2019<sup>6</sup>** noted that LCT had commissioned both an environmental audit including a component on coastal erosion as part of the renewal process for its governmental environmental license, and a study on the contribution of different infrastructure projects to coastal erosion. LCT noted that both studies would include consultations with coastal communities. The CAO acknowledged these positive steps toward addressing non-compliance findings, and indicated that it expected to review these studies, together with appropriate corrective actions depending on their outcomes, prior to closing the monitoring process.

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[ombudsman.org/sites/default/files/downloads/CAO\\_Compliance\\_InvestigationReport\\_Togo\\_LCT-01\\_08082016.pdf](https://www.cao-ombudsman.org/sites/default/files/downloads/CAO_Compliance_InvestigationReport_Togo_LCT-01_08082016.pdf)

<sup>5</sup> CAO, First Compliance Monitoring Report of IFC's Response to: CAO Investigation of IFC Investments in Togo LCT, 28 March 2018, available at: [https://www.cao-ombudsman.org/sites/default/files/downloads/CAOComplianceMonitoringReportTogoLCT-01\\_EN.pdf](https://www.cao-ombudsman.org/sites/default/files/downloads/CAOComplianceMonitoringReportTogoLCT-01_EN.pdf).

<sup>6</sup> CAO, Second Compliance Monitoring Report of IFC's Response to: CAO Investigation of IFC Investments in Togo LCT, 17 April 2019, available at: [https://www.cao-ombudsman.org/sites/default/files/downloads/CAOCompliance\\_MonitoringReport\\_TogoLCT-01\\_April172019.pdf](https://www.cao-ombudsman.org/sites/default/files/downloads/CAOCompliance_MonitoringReport_TogoLCT-01_April172019.pdf).

- **CAO's third Monitoring Report from August 2021**<sup>7</sup> noted IFC and LCT's actions between May 2019 and July 2021 in relation to the assessment of impacts and sources of coastal erosion. The environmental audit was completed in 2020 and was disclosed on IFC's website in 2021.<sup>8</sup> CAO noted that the audit provided a historical description of coastal erosion in Togo but did not assess in detail the relationship between the LCT project and the erosion experienced east of the port in recent years. LCT had also initiated a study on coastal erosion in early 2019, which was finalized in April 2020. However, both LCT and IFC had questions related to the methodology and findings of the study and were in the reviewing process at the time. As a result, the question whether LCT's construction had contributed to coastal erosion remained open from a technical perspective. CAO made several recommendations to bring the project into compliance:
  - (i) Ensure completion of the outstanding assessment of project erosion impacts in accordance with PS1, including consulting with affected communities based on prior disclosure of draft assessment reports as well as any associated actions plans;
  - (ii) Ensure disclosure of all required E&S documentation, including the final version of the coastal erosion study of April 2020, or any revised version of the coastal erosion study, and the updated project E&S Action Plan;
  - (iii) Work with LCT to determine possible remediation measures to address erosion impacts associated with the project due to its reliance on the port's infrastructure as required by the 2006 Sustainability Policy of IFC.
- **CAO's fourth Monitoring Report from April 2024**<sup>9</sup> noted that the lenders considered the study on coastal erosion completed in 2022 of adequate quality. The lenders agreed that this revised study adequately met its ToR which included, among other things, the assessment of impacts on coastal erosion by the LCT project. The completion of the study marked an important step towards meeting the PS1 requirement on assessing project impacts. However, the study has not been disclosed. CAO hired an additional independent expert to review the findings of the 2022 study and concluded that the Port of Lomé and the LCT project have contributed to coastal erosion since their respective construction in 1964 and 2012. CAO stated that the port's contribution to coastal erosion is large and that LCT's contribution, while comparatively modest, is confirmed as extending up to 10 km east of the LCT project. CAO stated that IFC should have worked and should continue to work with LCT, to assess the magnitude of E&S impacts so that mitigating and remedial measures could be developed.

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<sup>7</sup> CAO, Third Compliance Monitoring Report of IFC's Response to: CAO Investigation of IFC Investments in Togo LCT, 11 August 2021, available at: <https://www.cao-ombudsman.org/sites/default/files/downloads/CAO%20Compliance%20Monitoring%20Report%20Togo%20LCT-01%2010Aug21.pdf>

<sup>8</sup> Groupement SECDE/BRLi, Environmental and Social Audit for LCT, May 2020, available at: <https://disclosures.ifc.org/project-detail/ESRS/29197/togo-lct>

<sup>9</sup> CAO, Fourth Compliance Monitoring Report of IFC's Response to: CAO Investigation of IFC Investments in Togo LCT, 2 April 2024, available at: [https://www.cao-ombudsman.org/sites/default/files/downloads/CAO\\_4th\\_Compliance\\_Monitoring%20Report\\_LCT01-Togo-noEN.pdf](https://www.cao-ombudsman.org/sites/default/files/downloads/CAO_4th_Compliance_Monitoring%20Report_LCT01-Togo-noEN.pdf)

CAO further noted that the 2022 coastal erosion study has not been publicly disclosed due to lack of government approval which, according to LCT, is required through confidentiality agreements. The fourth CAO Monitoring Report stated that delayed disclosure of the study's findings has also prevented any mitigating and remedial actions from being taken to address coastal erosion impacts related to the LCT project's construction. CAO also noted that the Complainants raised concerns with CAO about alleged intimidating conduct by LCT towards coastal communities and members of the Collective.

The fourth CAO Monitoring Report noted that progress to address non-compliance findings for the LCT project has been slow and adverse impacts of coastal erosion remain unassessed and unaddressed. It stated that IFC must work with LCT, the other lenders, and other stakeholders to ensure (a) disclosure of the 2022 coastal erosion study and related stakeholder engagement with project-affected communities, and (b) completion of an assessment of project-related erosion impacts, on the basis of which mitigation and remedial measures could be determined. CAO will keep the case open in monitoring and expects to issue its next monitoring report in relation to this project in fiscal year 2025 (1 July 2024 – 30 June 2025).<sup>10</sup>

## **5. ICM Compliance Review Report Findings**

The IEP issued its Compliance Review Report in 2022. The ICM Compliance Review Report focused on the status of non-compliances as of issuance of the CAO report in 2016. It focused thus on assessing whether measures taken since 2016 brought the project into compliance with DEG and FMO's E&S policies. The ICM Compliance Review Report contained three main findings of non-compliance, which are presented in Table 1. The non-compliance findings were:

- (i) while the revised coastal erosion study had been completed in 2022, remedial measures to address any impacts caused by coastal erosion had not been designed and implemented;
- (ii) the coastal erosion study pointed to significant impacts of the port and that LCT had a contributing impact on coastal erosion east of the port, which should be mitigated;
- (iii) a nontechnical summary of the coastal erosion study should be disclosed and consulted with affected people (including the Complainants) in order to meet the requirements of PS1.

In addition, the ICM found that DEG and FMO should have made more determined efforts to assure that the coastal erosion study be conducted and completed in a timely manner, especially as the loan was to be closed in December 2023 which significantly reduced DEG and FMO's leverage to achieve remedial actions.

The ICM further found that DEG and FMO should have pursued a more independent supervision approach once the CAO Compliance Investigation Report was issued in August 2016, considering that it found important non-compliances related to IFC's investment in the LCT project. DEG and FMO continued to follow IFC's functional lead among the lenders.

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<sup>10</sup> Ibid., page 23-24.

The ICM expressed the view that a more proactive stance should have been pursued by DEG and FMO in such a case where an investigation report found significant non-compliances ascribed to IFC.

**Table 1: Non-compliances with DEG/FMO Policies as reflected in the ICM Compliance Review Report of August 2022**

Non-compliance issue	Actions taken since August 2016 (after publication of CAO Investigation Report)	Outstanding issues	Compliance status
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.	Non-compliance
Cumulative Impact Assessment of Lomé Container Terminal on Coastal Erosion	Environmental Audit report and Coastal Erosion Study point to detrimental impact of the port of Lomé 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.	Non-compliance
Non-compliance with PS1 due to consultation failure on ESIA (2010) with people living in area 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).	Non-compliance

The ICM Compliance Review Report issued the following recommendations to address the stated non-compliances regarding the 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.
- (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 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) DEG and FMO 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 which should lay out detailed time-bound measures which would address non-compliances and related harm.

Compliance Review Report issued the following recommendation to address the stated non-compliances regarding DEG and FMO's policies and procedures:

- 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.

## 6. The DEG and FMO Management Action Plan

DEG and FMO issued a Joint Management Action Plan ("MAP") on 19 January 2024 which summarized the joint responses of DEG and FMO to the ICM Compliance Review Report.<sup>11</sup> The MAP outlined the actions which DEG and FMO, working together with LCT and other relevant stakeholders, intend to implement to address the ICM findings. It outlined positions in response to the recommendations stated in the Compliance Review Report (see Annex 3 for the detailed overview of the response and actions per ICM recommendation as per Annex 1 in the MAP):

ICM Recommendation 1: FMO and DEG to work with LCT to design and implement remedial actions to mitigate impacts identified in the revised Coastal Erosion Study completed in February 2022. The MAP stated that the coastal erosion study of 2022 concludes an estimated very limited contribution to coastal erosion resulting from the effects of the combination of the spur groyne and access channel. The MAP further noted that the findings of the 2022 study in relation to causation of observed erosion are similar to those of the 2020 Environmental and Social Audit. The MAP stated: "[...] hence based on the findings of the Environmental and Social Audit 2020 as well as the 2022 Study, DEG and FMO will not require LCT to design additional measures or to provide for individual compensation as this would only be appropriate if the studies would have concluded that the impacts observed are a result of significant contribution of the Project." The MAP stated that LCT's implementation of the actions defined in the 2020 Environmental and Social Audit is deemed an appropriate approach where the surrounding communities benefit from the efforts LCT is willing to undertake in relation to community development.

ICM Recommendations 2: FMO and DEG to support LCT to assure that remedial actions specified in the Environmental Audit will be implemented. The MAP noted that LCT is

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<sup>11</sup> DEG and FMO joint management to the ICM Compliance Review Report on Lomé Container Terminal SA, 19 January 2024, available at: [https://www.deginvest.de/DEG-Documents-in-English/About-us/Responsibility/FMO-and-DEG-Management-Action-Plan-LCT\\_English.pdf](https://www.deginvest.de/DEG-Documents-in-English/About-us/Responsibility/FMO-and-DEG-Management-Action-Plan-LCT_English.pdf)

already implementing Corporate Social Responsibility activities following consultation with surrounding communities which are within LCT's area of influence. The MAP stated that DEG and FMO will make use of their respective Technical Assistance funds to engage a specialized consultant to support LCT specifically in relation to (i) strengthening internal capacity building with a focus on the development of a solid stakeholder engagement strategy; and (ii) development and implementation of the ongoing CSR activities by LCT to improve communities' livelihoods.

ICM Recommendation 3: DEG and FMO to 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 to the project, including the Complainants. The MAP stated that DEG, FMO and LCT support the disclosure of the 2022 study. However – so the MAP noted – publication of any document related to LCT is subject to the approval of the Togolese authorities. The LCT project is part of the Port of Lomé, which is under supervision of, among others, the Ministry of Maritime Economy, Fisheries and Coastal Protection. LCT signed a 35-year concession agreement with the Togolese Republic that establishes roles and responsibilities between the Togolese authorities and LCT. The MAP stated that DEG and FMO, together with IFC, have submitted a formal *Note Verbale* to the Minister to seek a formal endorsement for the publication of the nontechnical summary of the 2022.

ICM Recommendation 4: DEG and FMO to work with LCT and relevant Togolese authorities and stakeholders to design and implement measures which would reduce coastal erosion impacts on the coast east of the port. The MAP stated that all aspects of coastal erosion are coordinated by the MMEFCP and that LCT's engagement with the Togolese authorities is limited to the actions specified in the Environmental Audit of 2020. DEG and FMO intend to focus their support only on LCT's implementation of the Environmental Audit measures and not have further engagement in coastal protection measures.

ICM Recommendation 5: DEG and FMO to assume an intensified engagement in project supervision in cases where there is credible evidence of significant non-compliances, particularly if these 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. The MAP noted that DEG and FMO have intensified their engagement in project supervision as a lesson learned from the LCT complaint of the ICM and recognize that further improvements can be made to internal processes and procedures. FMO plans two process adjustments in their investment process: FMO's Financial Proposal will contain a mandatory field related to complaints at other IAMs to signal any identified non-compliances before contracting. For complaints filed after contracting, FMO will design an internal procedure for FMO investment teams to report on complaints and identified non-compliances by other IAMs in periodic reviews. DEG plans to introduce standard legal building blocks for non-finance sector investments which require clients to inform DEG of any complaint that they are made aware of filed with any complaint mechanism or ombudsperson of their international development financiers or multilateral development banks.



## 7. Non-compliance Findings related to Coastal Erosion Impacts

In response to the non-compliance finding regarding the incomplete ESIA on shorelines, the lenders agreed that LCT should be supported in conducting a coastal erosion study. The study on the causes of coastal erosion to the east of the Port of Lomé between 1955 and 2019, including potential impacts of the spur groyne construction, was commissioned by LCT in 2019. In February 2020, consultants presented a draft study which was discussed in detail with the lenders and LCT. The study showed that the construction of the Port of Lomé in 1964-1967 significantly impacted the coastline over the study period, leading over the subsequent decades to a zone of sand accumulation to the west of the port, and a zone of erosion to the east (where the Complainants are located). The draft study further noted a range of factors causing erosion east of the port. The draft study stated that the construction of the LCT project, namely, the extension of the port, has had an additional negative impact on coastal erosion due to the increased footprint of the port, associated accumulation of sand to the west of the Port and increased diffraction of waves.<sup>12</sup>

IFC hired a consultant to review the final draft version of the study. The consultant disagreed with the findings that the LCT project was contributing to increased erosion around Agbodrafo and Baguida due to (i) dredging of the port's access channel, and (ii) the building of a new spur groyne.<sup>13</sup> Rather, the consultant hired by IFC noted some omissions concerning the interpretation of results. DEG and FMO, as well as the IEP, were included in extensive discussions with the consultant about the findings of the study, focussing on the reasons for increased erosion noted in several hotspots.

Subsequent to these technical reviews, the lenders decided to engage a recognized expert group to review and potentially revise the study. DEG and FMO were actively engaged in the drafting of the TOR for this expert. The study was subsequently revised. Key findings of the revised 2022 study are as follows:<sup>14</sup>

- Various factors between 1955 and 2019 – both anthropogenic and natural – have caused shoreline changes to Togo's 50km-long coastline, including large infrastructure such as the Port of Lomé and smaller structures such as the 2017 fishing port, beach rock degradation, and sand extraction activities to the west and east of the port.
- Among the sources of erosion, the construction of the Port of Lomé in 1964 significantly impacted the Togolese coastal dynamics, leading, over the subsequent decades, to a zone of sand accumulation to the west of the port, with the port being located at kilometer point ("PK") 10, and a zone of erosion downdrift to the port, to the east.
- Based on the numerical modelling exercise assessing relative contributions of selected sources of erosion, the study estimated that the 250m sand groyne

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<sup>12</sup> See CAO, Third Compliance Monitoring Report of IFC's Response to: CAO Investigation of IFC Investments in Togo LCT, 11 August 2021, page 8.

<sup>13</sup> The LCT project as described in the 2010 ESIA and IFC's documents, included the construction of the 300-meter spur groyne and associated dredging of the port basin and access channel, as well as the construction of the container facility. See ESIA for the Lomé Container Terminal project, May 2010, sections 6.3.1.1 and 6.3.1.8.

<sup>14</sup> See CAO, Fourth Compliance Monitoring Report of IFC Response to CAO Investigation of IFC's Investment in Lomé Container Terminal, Togo (LCT-01), April 2, 2024, page 10.

construction in 2012 (extended to 300m in 2015), combined with the depth of the access channel, would have caused between below 3 and below 5 percent of anthropogenic erosion east of the port during 1955-2019, depending on parameters used in the modelling.<sup>15</sup> The port's relative contribution to coastal erosion is estimated to be much larger in these scenarios.

The lenders had different interpretations on some of the findings of the revised study. Thus, CAO – in preparation of its fourth Monitoring Report - in 2023 contracted an additional expert to review the study. The CAO expert stated that, despite some limitations, the revised study is of adequate quality. Limitations which the CAO expert noted include:<sup>16</sup>

- The numerical modelling exercise only considered and compared contributions to shoreline changes of a small number of parameters (specifically, the Port of Lome, the maintenance of the access channel, artisanal sand extraction, beach replenishment in 1984 and 2012, and the construction of the 300m-spur groyne), using several simplifying assumptions and excluding other sources of erosion.
- The main methodological weakness is a contradiction over whether sand transport occurs through the access channel or not. In the descriptive part of the study, it is stated that no sand transport occurs through the channel. Yet, in the theoretical modelling exercise, a factor above zero is assumed, which indicates that some sand transport does occur through the channel. A non-zero transmission factor means that the access channel does not fully prevent sand transmission and thus, that structures located west of the access channel, including the spur groyne, also have an erosion impact of the downdrift coast.

The IEP considers the revised coastal erosion study of 2022 as appropriate to establish the contribution of the LCT project on coastal erosion east of the port. The coastal erosion study studied historical causes of shoreline changes in Togo more broadly than only the contribution of the LCT project and concluded that a relatively modest contribution of coastal erosion east of the port can be attributed to the LCT project compared with the port's impact as a whole. The port's overall contribution to coastal erosion is much larger.

In response to recommendation 1 of the ICM Compliance Review Report 2022, DEG and FMO's MAP states that DEG and FMO will not require LCT to design additional measures or to provide for individual compensation as this would only be appropriate if the studies would have concluded that the impacts observed are a result of significant contribution of the Project.

The IEP does not agree with this position. Even though a below 3 or below 5 percent contribution rate to coastal erosion east of the port of Lome is relatively modest compared

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<sup>15</sup> The nontechnical summary of the 2022 coastal erosion study expresses an estimate of below 3 percent of relative contribution to LCT, while the CAO expert review estimates a below 5 percent of relative contribution in the numerical model to be more reliable (see CAO's Fourth Monitoring Report, page 11). The ICM acknowledges that differences in estimates might occur while using different calculations but wishes to emphasize the importance of the fact that a limited contribution of LCT to coastal erosion can be established.

<sup>16</sup> See CAO, Fourth Compliance Monitoring Report of the IFC'S Response to: CAO Investigation of IFC's Investments in Lome Container Terminal, Togo (LCT-01) page 11.

with the port's impact as a whole, such modest contributions could lead to considerable negative impact on land, property, cultural heritage and livelihood, which need to be remedied in line with PS1. The general coastal erosion impacts in Togo are very significant. A 2019 study published under the WACA program estimates that average erosion rates between 1984 and 2016 were of 2.4 meters/year in Togo, with an average loss of 7.8 ha/year.<sup>17</sup> The expert engaged by the CAO found a similar rate (2.43 meters/year) for the period between 1998 and 2023 to the east of the port.<sup>18</sup> Given this very significant overall coastal erosion impact, even a modest share of below 3 or below 5 percent of this overall impact results in a noticeable impact on affected people.

Based on the above, the IEP is satisfied that there is a relevant link between the LCT project and adverse environmental and social impacts up to 10 km to the east of the project site, even though LCT project's contribution is comparatively modest.

While project-related impacts on coastal erosion have been determined through the coastal erosion study, an analysis of the implications of the erosion on coastal communities to the east of LCT, in the project's area of influence, and the design and implementation of mitigation measures to address them as required by PS1 has not been undertaken. During the IEP's visit to Togo in December 2023, some communities stated that they were severely affected by the coastal erosion, which worsened in recent years, and led to loss of houses, places of cultural importance, infrastructure such as schools and marketplaces as well as loss of livelihood. The IEP finds that DEG and FMO should have worked with LCT and other relevant stakeholders to assess project-related erosion impacts on coastal communities and based on the scope and magnitude of the impacts and determine mitigating and remedial measures in line with PS1. Such remedial measures go beyond relying on LCT's Corporate Social Responsibility activities. Until adverse impacts on communities are assessed and addressed, the project remains in non-compliance status.

In the 2022 Compliance Review report, the IEP recommended that DEG and FMO should support LCT to ensure that remedial actions specified in the Environmental Audit of May 2020 are implemented (Recommendation 2, ICM Compliance Review Report 2022). The Environmental Audit specified five actions in relation to the communities affected by coastal erosion in the past decades:

- i) Development of a Memorandum of Understanding with communities;
- ii) Support to the construction of coastal protection infrastructure;
- iii) Development and implementation of a community development program;
- iv) An employment program for the youth; and
- v) Income-generating activities for the affected community members.

The IEP welcomes DEG and FMO's support to LCT's stakeholder engagement and CSR strategy and activities. DEG and FMO are making use of their respective Technical Assistance funds to engage a specialized consultant to support LCT specifically in relation to: (i) strengthening internal capacity building with a focus on the development of a solid

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<sup>17</sup> Croitoru, L. et al, 2019, The Cost of Coastal Zone Degradation in West Africa: Benin, Cote d'Ivoire, Senegal and Togo. World Bank and WACA, Table 1 and page 28-29.

<sup>18</sup> See CAO, Fourth Compliance Monitoring Report of IFC's Response to: CAO Investigation of IFC's Investments in Lome Container Terminal, Togo (LCT-01), page 12.

stakeholder engagement strategy; and (ii) development and implementation of CSR activities by LCT to improve communities' livelihoods. The IEP recognizes that such a framework for community engagement and development, while not considered to be an adequate remedy approach in line with PS1, could stimulate local development as well as enhance relationships with local communities including those which have historically been affected by coastal erosion. However, the IEP notes that the CSR program is designed as a general outreach program to support poor communities. It is key that such program and activities are targeted at project-affected community members and addresses the specific needs of the impacted communities east of the port who lost houses and agricultural lands.

During its visit in December 2023, the IEP understood that LCT has agreed to establish a Corporate Social Responsibility program and entered discussions with some communities to provide funding for infrastructure, mostly schools. In line with the Environmental Audit actions, the IEP emphasizes that a community development program should also be focused on affected community members and encompass an employment program for the youth and income-generating activities.

Furthermore, the Environmental Audit required the provision of support to the construction of coastal protection infrastructure as one of the five specific actions (Recommendations 2 and 4 of ICM Compliance Review report 2022). While DEG and FMO have raised this with LCT and the construction of coastal erosion protection could be addressed at national level, the IEP is of the view that DEG and FMO should continue to support LCT with obtaining clarification from national agencies, such as the ANGE, about the scope of this activity as per the Environmental Audit and implement measures accordingly in collaboration with relevant stakeholders.

**To conclude, DEG and FMO are making significant efforts to support LCT with a framework for community engagement and development, which LCT conducts as part of its Corporate Social Responsibility activities. Nonetheless, the IEP is of the view that coastal erosion impacts caused by LCT are not adequately addressed in the MAP as adverse impacts on communities are not assessed and addressed in line with PS1, and as there remains unclarity about support of LCT to the construction of coastal protection infrastructure. Therefore, the identified harms have not been remedied, and the project remains in non-compliance status.**

## **8. Non-compliance Findings related to Disclosure and Consultation**

The coastal erosion Study of 2022 has not been published nor disclosed to project-affected communities, neither in its complete version nor as a nontechnical summary and thus no consultations have taken place with affected communities. The ICM Compliance Review Report found the lack of disclosure and consultation as constituting a non-compliance with PS1 (see Table 1). The ICM Compliance Review Report considered disclosure and consultation of at least a nontechnical summary of the 2022 study essential to achieve compliance status. As no disclosure and consultation has taken place, the project remains with disclosure and consultation failures and thus remains in non-compliance.

The cause of the non-disclosure is the understanding of LCT and the lenders that the Government of Togo must agree to the study's public disclosure by LCT, and that in turn

lenders must await the Government's approval. It is argued that the basis for seeking Government approval is the concession agreement between LCT and the Government of Togo which contains confidentiality provisions.

In the joint MAP, DEG and FMO expressed agreement with the need to disclose a nontechnical summary and recognized the difficulties they encountered in obtaining agreement from the Government. Lenders sent a joint letter to the MMEFCP and requested approval for disclosure. On 11 March 2024, the respective Minister formally responded to the lenders' request and indicated not to be in favour of publication. The ICM was informed by FMO that alternative options are being considered as to how key findings of the study could be disclosed, or how impacts on coastal erosion could be established through an alternative study which would not be conducted through LCT and thus not be subject to the alleged confidentiality clause.

The non-disclosure of the 2022 study is a matter of serious concern. The study was agreed upon by the lenders to be conducted in order to complement the ESIA completed in 2010 where impacts on the coast east of the port were insufficiently assessed. The coastal erosion study is thus a complement to the ESIA. Therefore, disclosure requirements for an ESIA are also applicable to this complementary coastal erosion study.

Paragraph 20 of PS1 states: *"Where the client has undertaken a process of Social and Environmental Assessment, the client will publicly disclose the Assessment document."* Complainants are deeply concerned about the non-disclosure of a study on which the DEG and FMO joint MAP is based. They expressed their concern in a letter sent to DEG and FMO dated 20 September 2023.

The IEP is concerned about the fact that the alleged legal obstacle for disclosure was only raised as an issue with the lenders in early 2022. The coastal erosion study has been under preparation since February 2019. It should have been evident to lenders that disclosure and consultation requirements for an ESIA as laid out in PS1 apply. In addition, the third CAO Monitoring Report, issued in August 2021, prominently laid out the need for disclosure and consultation of the final study. The IEP finds it difficult to understand why the alleged restrictions for disclosure were only raised as an issue at a very late stage, significantly later than the issuance of the third CAO Monitoring Report.

The fourth CAO Monitoring Report further raised the concern that no proactive role has been assumed by IFC in assessing the legal restrictions to disclosure. The Report stated: *"Once IFC became aware of the Government's potential opposition to disclosure and its position that the study could not be disclosed without its approval, it would have been appropriate for IFC to assess how these actions were compatible with IFC's and its client's compliance with the Sustainability Framework and to identify mitigating measures. CAO has not received evidence that IFC took all appropriate actions to that end. For instance, despite LCT's clear disclosure obligations under the Performance Standards [...] CAO is not aware that IFC conducted a comprehensive legal review of how confidentiality provisions in the concession agreement could impact disclosure of E&S information or that IFC considered or exercised contractual leverage to achieve disclosure of the study."*<sup>19</sup> The position articulated

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<sup>19</sup> See CAO, Fourth Monitoring Report of IFC's Response to: CAO Investigation of IFC's Investments in Lome Container Terminal, page 16.

in respect to IFC can also be opined in respect to DEG and FMO who are co-lenders. The ICM is not aware that DEG and/or FMO conducted a legal review of the concession agreement and the alleged restrictions it imposes.

Obstacles to disclosure should have been raised and addressed at an early stage in the design of the study. If at the time it would have become evident that disclosure of any study conducted by LCT was supposedly subject to approval the government, the lenders could have considered alternative options on how such a coastal impact study could have been conducted. The IEP must conclude that lenders and LCT did not pay sufficient attention to the CAO non-compliance findings in the CAO Investigation Report regarding the need for disclosure as also highlighted in the subsequent CAO monitoring reports.

## **9. Other Issues**

### **9.1. Project supervision in complaint cases**

The ICM Compliance Review Report recommended that DEG and FMO step up their engagement in project supervision in cases where there is credible evidence of significant non-compliances, particularly if these have been identified in a Compliance Review Report conducted by a complaint mechanism of one of the DFIs in which DEG and FMO pursue a joint funding of the project. The ICM was informed that FMO has adopted administrative procedures to create internal alerts and actions for complaints with other IAMs related to projects either prior to contracting or during monitoring.

According to the joint MAP, DEG intends to introduce standard legal building blocks for non-finance sector investments which require clients to immediately notify DEG of any complaint they are made aware of and pursuant to which their international development financiers or multilateral development banks have received a complaint through their respective complaint mechanism.

Such processes and legal requirements are useful but in itself not sufficient. The knowledge of these complaints must result in increased institutional resources and supervision efforts of those projects. It is a standard procedure among IAMs to inform co-financing DFIs about a complaint filed. In this particular complaint related to LCT, both DEG and FMO were aware of the complaint filed with the CAO in 2015 and exchanged views with IFC. Lack of knowledge was not the reason why DEG and FMO did not become more actively engaged in project supervision. It is the knowledge about non-compliance findings and related harm which must prompt significantly increased supervision involvement by DEG and FMO.

### **9.2. Fear of intimidation and reprisals**

During the monitoring period, the ICM was notified of troubling indications of intimidation and possible reprisals taken against individuals and communities who expressed dissent against the LCT project. DEG and FMO were also informed about an increased risk of retaliation against the Complainants through the Collective as well as through international NGOs.<sup>20</sup> Retaliation in any form, whether direct or indirect,

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<sup>20</sup> See joint Management Action Plan, Annex 3.

undermines the principles of transparency, accountability, and respect for human rights that are essential for the effectiveness and credibility of the ICM.<sup>21</sup>

The ICM notes that tensions initially increased around September 2022, following the signing of a Memorandum of Understanding (“MoU”) between LCT and surrounding communities with the purpose of confirming community participation in the project’s CSR activities.<sup>22</sup> The ICM wishes to reiterate the importance of decreasing the risk of reprisals as well as of including all coastal communities, including the Complainants, in LCT’s stakeholder engagement approach.

As per the zero-tolerance principle of DEG and FMO, DEG and FMO do not tolerate any activity by its clients that amount to the oppression of, violence toward, or any other violations of the human rights of those who voice their opinion in relation to DEG or FMO’s activities and the activities of their clients. Since the notification of increased threats of reprisals, DEG and FMO have alerted the German and Dutch embassies and reached out to its respective CSO networks. The ICM acknowledges the endeavours of DEG and FMO to identify risks and develop strategies to reduce risks. At the same time, it urges DEG and FMO to keep preventing retaliation from happening, even after the end of the financial relationship between LCT and the lenders.

## **10. Conclusions**

The IEP notes that a coastal erosion study has been completed in 2022, and that the lenders agreed that this study was satisfactory and consistent with the TOR supported by the lenders, including DEG and FMO. The coastal erosion study attributes a relatively moderate contribution on coastal erosion east of the port to the LCT project. The impacts of this contribution to coastal erosion on the coastal communities have not been assessed and no responsive mitigation measures have been designed and implemented.

DEG and FMO made significant efforts to support LCT in establishing capacity to conduct an improved Corporate Social Responsibility program and solid stakeholder engagement strategy. The IEP considers these efforts important and welcomes this engagement, while emphasizing that such program and activities should also target project-affected communities. Nonetheless, the Corporate Social Responsibility program as presently designed is not a remediation program for the adverse impacts on the local communities due to the LCT project’s contribution to coastal erosion.

While FMO and DEG have raised this with LCT and the construction of coastal erosion protection could be addressed at national level, IEP is of the view that DEG and FMO should continue to support LCT with obtaining clarification from national agencies, such as the ANGE, about the scope of this activity as per the Environmental Audit and implement measures accordingly in collaboration with relevant stakeholders.

Finally, the coastal erosion study or a nontechnical summary has yet to be disclosed. The project thus remains in non-compliance status (see Table 2 below).

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<sup>21</sup> See the ICM Non-retaliation statement on Addressing Risk of Reprisals related to ICM Operations, February 2021, available at: <https://www.deginvest.de/DEG-Documents-in-English/About-us/Responsibility/ICM-Non-Retaliation-Statement.pdf>

<sup>22</sup> See also the fourth CAO Monitoring Report, page 18-19.

To resolve the issues in accordance with IFC PS requirements, DEG and FMO must work with LCT, the other lenders, and other stakeholders to ensure:

- (a) undertaking of an assessment of project-related erosion impacts on the basis of which mitigating and remedial measures could be determined; and
- (b) disclosure of the coastal erosion study and related stakeholder engagement with project-affected communities.

The IEP also recommends DEG and FMO to continue supporting LCT with its community engagement and development framework and activities, making sure that affected community members are also targeted. Failing to address adverse impacts on project-affected communities, would create a reputational risk for DEG and FMO, even despite the fact that DEG and FMO are no longer a lender to the Project after December 2023.

In line with ICM Policy para. 3.2.22 and in light of the outstanding material non-compliances, the IEP will keep the case open for further monitoring, taking into account the implementation of the MAP.

**Table 2: Remaining non-compliances with DEG and FMO policies**

Non-compliance issue	Actions taken since August 2016 (after publication of CAO Investigation Report)	Outstanding Issues	Compliance status
Assessment of risks of Lomé Container Terminal on coastal area east of the port.	A coastal erosion study was completed in February 2022 and accepted by the lenders. The study showed a relatively modest impact - below 3 or below 5 percent - on coastal erosion which is attributable to the LCT project.	No assessment of the project-related erosion impacts on coastal communities has been conducted, nor have mitigating and remedial measures been determined based on the scope and magnitude of the impacts in line with PS1. Such remedial measures go beyond relying on LCT's Corporate Social Responsibility activities.	Non-compliance
Cumulative Impact Assessment of Lomé Container Terminal on Coastal Erosion		<p>FMO made significant efforts to support LCT in strengthening their Corporate Social Responsibility and stakeholder engagement strategy and activities which could stimulate community development and enhance relationships with local communities. However, the program should be tailored to also address the needs of the coastal communities who suffered project-related harm.</p> <p>No support has been provided to address the construction of coastal erosion protection as per the Environmental Audit.</p>	
Non-compliance with PS1 due to consultation failure on ESIA (2010) with people living in the area of influence east of port potentially at risk of impacts.	The coastal erosion study of 2022 (at least a nontechnical summary) needs to be disclosed.	The coastal erosion study or a nontechnical summary has not been disclosed. Significant efforts have been made by lenders, including DEG and FMO, to obtain agreement by Government authorities for disclosure, but such agreement has not been obtained.	Non-compliance



## ANNEX 1 Complaint letter

**Complaint in French :**

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

**BP: 4180**

**Courriel: [EXPURGÉ]**

**Web site : [EXPURGÉ]**

**Tél : [EXPURGÉ]** 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 impacts 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**

**[EXPURGÉ]**

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 inspection
- ONU-CLIMAT
- Accountability counsel

**Complaint, translated in English:**

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

**PO Box: 4180**

**Email: [REDACTED]**

**Website: [REDACTED]**

**Tel.: [REDACTED] 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**

**[REDACTED]**

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

## Annex 2: Summary of ICM non-compliance findings and related harm, ICM recommendations, and DEG and FMO MAP commitments to address the findings

ICM non-compliance findings	ICM recommendation	MAP commitments
<p><b>ICM non-compliance findings related to coastal erosion impact (recommendations 1, 2, 4):</b></p> <p>Non-assessment of risks of Lomé Container Terminal on coastal area east of the port.</p> <p>No cumulative impact assessment of Lomé Container Terminal on Coastal Erosion.</p>	<p><b>Recommendation 1:</b> FMO and DEG to work with LCT to design and implement remedial actions to mitigate impacts identified in the revised Coastal Erosion Study completed in February 2022.</p>	N/A
	<p><b>Recommendation 2:</b> FMO and DEG to support LCT to assure that remedial actions specified in the Environmental Audit will be implemented.</p> <p>The Environmental Audit specified five actions in relation to the communities affected by coastal erosion in the past decades:</p> <ul style="list-style-type: none"> <li>- i) Development of a Memorandum of Understanding with communities;</li> <li>- ii) Support to the construction of coastal protection infrastructure;</li> <li>- iii) Development and implementation of a community development program;</li> <li>- iv) An employment program for the youth; and</li> <li>- v) Income-generating activities for the affected community members.</li> </ul>	<p>As per actions (i) and (iii) of the Environmental Audit: Support LCT in their implementation of CSR activities that have been agreed with the coastal communities within LCT's area of influence by engaging an external consultant.</p> <p>As per the Environmental Audit, this plan should include the development and implementation of income-generating activities (action iv) and a local employment plan (action v). The categories of CSR activities may include i) health services, ii) education services, iii) local infrastructure, and iv) livelihood improvement, depending on the outcome of the consultation with communities.</p> <p><u>Deliverables:</u></p> <ul style="list-style-type: none"> <li>a) Signing of TA project;</li> <li>b) Consultant's audit of LCT community relations team's capacity and proposal for improved governance based on benchmarking and international best practice;</li> <li>c) Identification and implementation of CSR activities in 2024 based on priority needs of communities, including evidence of implementation of activities following consultations held with communities and progress reporting;</li> <li>d) Monitoring of implementation of Environmental Audit measures, with a focus on CSR;</li> <li>e) Evidence of income-generating activities and local employment plan.</li> </ul>
		<p>The development of a plan to support the construction of coastal erosion protection infrastructure (action ii). In line with the information provided under ICM recommendation 4 in relation to the coordination efforts of the WACA Project in specific, DEG and FMO are of the view that</p>

		<p>this action is addressed at national level. However, confirmation will be requested from ANGE.</p> <p><u>Deliverables:</u></p> <p>a) LCT to obtain clarification from Agence Nationale de Gestion de l'Environnement (ANGE) about the scope of the activity which is partly defined in the Environmental License.</p>
	<p><b>Recommendation 4:</b> DEG and FMO to work with LCT and relevant Togolese authorities and stakeholders to design and implement measures which would reduce coastal erosion impacts on the coast east of the port.</p>	N/A
<p><b>ICM non-compliance findings related to Disclosure and Consultation (recommendation 3):</b></p> <p>Non-compliance with PS1 due to consultation failure on ESIA (2010) with people living in the area of influence east of port potentially at risk of impacts.</p>	<p><b>Recommendation 3:</b> DEG and FMO to 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 to the project (including the complainants).</p>	<p>The disclosure of the nontechnical summary of the 2022 Coastal Erosion Study:</p> <p>a) DEG and FMO to request authorization for the publication of the 2022 Study from the Ministry of Maritime Economy, Fisheries and Coastal Protection (MMEFCP).</p> <p>If the abovementioned effort is not successful, DEG and FMO have identified the following alternative actions:</p> <p>b) DEG and FMO to request their respective Embassies to engage with the MMEFCP and/or other Togolese government officials.</p> <p><u>Deliverables:</u></p> <p>a) Evidence of DEG, FMO and LCT's efforts (e.g., official correspondence with government authorities).</p>
		<p>Consultation in respect of the nontechnical summary with the people residing in the area of influence of the Project (including the Complainant) with support from the consultant. If authorization for the publication of the 2022 Study is granted, DEG and FMO will support LCT in the preparation of a public information meeting to present the nontechnical summary of the 2022 Study to the communities. If deemed appropriate, DEG and FMO will participate in the public meetings.</p> <p><u>Deliverables:</u></p> <p>a) Evidence of support in preparation of meeting;</p>

		b) Evidence of public information meetings (e.g., minutes of meetings, attendance sheets, pictures).
<b>ICM non-compliance findings related to project supervision in complaint cases (recommendation 5)</b>	<b>Recommendation 5 (Policies and Procedures):</b> DEG and FMO to assume an intensified engagement in project supervision in cases where there is credible evidence of significant non-compliances, particularly if these 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.	<b>FMO:</b> Implementation of two specific actions throughout the internal procedures for FMO's investment process.  <u>Deliverables:</u> a) Investment process (before contracting): FMO's Financial Proposals will contain a mandatory field related to complaints at other independent accountability mechanisms (IAMs), including FMO's increased supervision requirements (if applicable). b) Monitoring process (after contracting): the design of an internal procedure for FMO's investment teams to report on complaints and identified non-compliances by other IAMs in periodic reviews
		<b>DEG:</b> Implementation of contractual arrangements with clients regarding complaints (initiative led by DEG, including involvement of FMO as member of the ICM).  <u>Deliverables:</u> a) Standard legal building blocks for non-finance sector investments: include in the DEG Environmental & Social contract building blocks that clients have to immediately notify DEG of any complaint they are made aware of and pursuant to which their international development financiers or multilateral development banks have received a complaint through their respective complaint mechanisms or ombudsmen.

### ANNEX 3: Annex 1 of the DEG and FMO Joint Management Action Plan to the ICM Compliance Review Report on Lome Container Terminal SA

**ICM Recommendation 1:** FMO and DEG to work with LCT to design and implement remedial actions to mitigate impacts identified in the revised Coastal Erosion Study completed in February 2022.

**Response DEG and FMO:** The conclusion of the revised Coastal Erosion Study (2022 Study), completed in February 2022, concludes (i) an estimated very limited contribution to coastal erosion resulting from the effects of the combination of the spur groyne and access channel of PAL (i.e., estimated potential cause linked to infrastructure utilized by among others LCT) while noting that this finding is based on modelling techniques, (ii) based on the analysis of actual coastal shoreline changes that occurred between 2010 and 2019, the 2022 Study did not mention the LCT, nor the infrastructures associated to it, among the causes of the observed coastal erosion east of the Port between 2010 and 2019. Lastly, the 2022 Study notes a decrease in overall erosion states between 2013 and 2019, except for hot spot areas where, according to the 2022 Study, erosion rates increased among others due to sand mining activities (from 1988 to 2013) and significant breaches in beach rock which had been exposed prior to construction of LCT. The findings of the 2022 Study in relation to the attribution of causation to observed erosion are similar to those of the 2020 Environmental and Social Audit, which has been made [publicly available](#) by IFC.

Hence, based on the findings of the Environmental and Social Audit of 2020 as well as the most recent 2022 Study, as referred to above, DEG and FMO will not require LCT to design additional measures or to provide for individual compensation as this would be only appropriate if the studies would have concluded that the impacts observed are a result of significant contribution of the Project. As the 2010 ESIA and the 2020 E&S Audit state, a potential very limited contribution cannot be excluded, thus we support the application of the precautionary principle taken by the 2020 E&S Audit. Therefore, LCT's implementation of the actions defined in the 2020 Environmental and Social Audit is deemed an appropriate approach where the surrounding communities (as a whole) benefit from the efforts LCT is willing to undertake in relation to community development.

Action(s)	Deliverable(s)	Timeline
N/A	N/A	N/A

**ICM Recommendation 2:** FMO and DEG to support LCT to assure that remedial actions specified in the Environmental Audit will be implemented.

**Response DEG and FMO:** DEG and FMO note LCT's already ongoing implementation of the actions specified in the Environmental and Social Audit, which includes (among others) the implementation of Community Development / Corporate Social Responsibility (CSR) activities following consultation with the surrounding communities which are within LCT's area of influence.

To support LCT in their community engagement strategy and implementation of the five actions specified in the Environmental License of 2020, DEG and FMO will make use of their respective Technical Assistance funds to engage a specialized consultant to support LCT specifically in relation to (i) strengthening internal capacity building with a focus on the development of a solid stakeholder engagement strategy; and (ii) development and implementation of the ongoing CSR activities by LCT to improve communities' livelihoods. We believe that supporting LCT in developing a sound framework for community engagement will contribute to improved mutual understanding between LCT and the communities, as well as to a clear process to jointly identify CSR activities that will be in the benefit of the communities at large, including those historically affected by coastal erosion.

Action(s)	Deliverable(s)	Timeline
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As per actions (i) and (iii) of the Environmental Audit: Support LCT in their implementation of CSR activities that have been agreed with the coastal communities within LCT's area of influence by engaging an external consultant.	a) Signing of TA project; b) Consultant's audit of LCT community relations team's capacity and proposal for improved governance based on benchmarking and international best practice;	a) Completed before 15 December 2023 b) Completed by December 2024 c) Starting January 2024 d) Starting January 2024 e) Started
As per the Environmental Audit, this plan should include the development and implementation of income-generating activities (action iv) and a local employment plan (action v). The categories of CSR activities may include i) health services, ii) education services, iii) local infrastructure, and iv) livelihood improvement, depending on the outcome of the consultation with communities.	c) Identification and implementation of CSR activities in 2024 based on priority needs of communities, including evidence of implementation of activities following consultations held with communities and progress reporting; d) Monitoring of implementation of Environmental Audit measures, with a focus on CSR; e) Evidence of income-generating activities and local employment plan.	
The development of a plan to support the construction of coastal erosion protection infrastructure (action ii). In line with the information provided under ICM recommendation 4 in relation to the coordination efforts of the WACA Project in specific, DEG and FMO are of the view that this action is addressed at national level. However, confirmation will be requested from ANGE.	a) LCT to obtain clarification from Agence Nationale de Gestion de l'Environnement (ANGE) about the scope of the activity which is partly defined in the Environmental License.	a) Upon response from ANGE
<b>ICM Recommendation 3:</b> DEG and FMO to 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 to the project (including the complainants)		
<p><b>Response DEG and FMO:</b> DEG, FMO, and LCT support the disclosure of the 2022 Study. However, it should be noted that the disclosure of this study is beyond the immediate span of control of LCT, DEG and FMO. The Project is part of the Autonomous Port of Lomé, which is under supervision of, among others, the Ministry of Maritime Economy, Fisheries and Coastal Protection (MMEFCP) of Togo. In 2008, LCT signed a 35-year Concession Agreement with the Togolese Republic that establishes roles and responsibilities between the Togolese authorities and the concessionaire (LCT). The publication of any documents related to LCT is subject to the approval of the Togolese authorities.</p> <p>As this has proven to be more complex than was initially foreseen, we have identified alternative ways to attempt to disclose the 2022 Study. Following the consultation with the Minister of Maritime Economy, Fisheries and Coastal Protection in April 2023, DEG and FMO, together with IFC, have submitted a formal <i>Note Verbale</i> to the Minister to seek a formal endorsement for the publication of the nontechnical summary of the 2022 Study. We are awaiting the Minister's response and approval and will continue to urge for public disclosure going forward.</p>		
<b>Action(s)</b>	<b>Deliverable(s)</b>	<b>Timeline</b>

<p>The disclosure of the nontechnical summary of the 2022 Coastal Erosion Study:</p> <p>a) DEG and FMO to request authorization for the publication of the 2022 Study from the Ministry of Maritime Economy, Fisheries and Coastal Protection (MMEFCP)</p> <p>If the abovementioned effort is not successful, DEG and FMO have identified the following alternative actions:</p> <p>b) DEG and FMO to request their respective Embassies to engage with the MMEFCP and/or other Togolese government officials.</p>	<p>a) Evidence of DEG, FMO and LCT's efforts (e.g., official correspondence with government authorities).</p>	<p>a) Completed before publication of the MAP</p> <p>b) Completed by April 2024</p>
<p>Consultation in respect of the nontechnical summary with the people residing in the area of influence of the Project (including the Complainant) with support from the consultant.</p> <p>If authorization for the publication of the 2022 Study is granted, DEG and FMO will support LCT in the preparation of a public information meeting to present the nontechnical summary of the 2022 Study to the communities. If deemed appropriate, DEG and FMO will participate in the public meetings.</p>	<p>a) Evidence of support in preparation of meeting;</p> <p>b) Evidence of public information meetings (e.g., minutes of meetings, attendance sheets, pictures).</p>	<p>a) Within six months after approval for disclosure from Togolese authorities</p> <p>b) Within six months after approval for disclosure from Togolese authorities</p>
<p><b>Recommendation 4:</b> DEG and FMO to work with LCT and relevant Togolese authorities and stakeholders to design and implement measures which would reduce coastal erosion impacts on the coast east of the port.</p>		

**Response DEG and FMO:** DEG and FMO recognize that coastal erosion is still putting livelihoods of coastal communities and local private businesses at risk and agree with the IEP that the involvement of multiple actors is essential for addressing this matter. We note that efforts by the Government of Togo and its respective Ministries to address the coastal erosion matter and reduce impacts of the Autonomous Port of Lomé have already commenced and are ongoing, including various projects by WACA, which involves partnerships with national and regional organizations as well as international development partners. In Togo, WACA is funded by the World Bank and implemented in collaboration with a number of other international development partners, including AFD, RVO, IsDB and AfDB among others.

For a better understanding of the scope of WACA and its implementation, specifically in relation to the coastal communities east of the Port, FMO (also on behalf of DEG) engaged with relevant stakeholders like the WACA Project Implementation Unit and IsDB's local implementation unit. We note that all communities east of the Port fall within scope of one of the funding partners. Invest International, a Joint Venture of the Dutch State and FMO, will contribute to the completion of protection measures started on the coast section going from Gbodjomé to the Port area. In addition, the IsDB announced its financial support to the area west of the WACA area, covering a 14-km long area from the village of Katanga to the village of Gbodjomé.

As it concerns an issue of national importance in Togo, DEG and FMO have thus learned that all aspects related to impacts of coastal erosion are coordinated by the Ministry of Maritime Economy, Fisheries and Coastal Protection of Togo. LCT's engagement with the Togolese authorities is limited to the actions specified in the Environmental Audit. Therefore, our support will focus on LCT's implementation of the Environmental Audit measures as described above. In addition, as the WACA Program includes the implementation of social projects, DEG and FMO welcomed the suggestion of direct engagement between LCT and the WACA Project Implementation Unit to seek alignment on the design of social projects (to avoid potential duplication of efforts).

Action(s)	Deliverable(s)	Timeline
N/A	N/A	N/A

**Recommendation 5 (Policies and Procedures):** DEG and FMO to assume an intensified engagement in project supervision in cases where there is credible evidence of significant non-compliances, particularly if these 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.

<b>Response DEG and FMO:</b> DEG and FMO have intensified their engagement in project supervision in different cases, both through more frequent engagement with financiers and internally through established committees, as a lesson learned from the LCT ICM case. We appreciate the observation of the IEP and recognize that further improvements can be made to internal processes and procedures. Each Development Finance Institution has identified action items to address this recommendation.		
Action(s)	Deliverable(s)	Timeline
<b>FMO:</b> Implementation of two specific actions throughout the internal procedures for FMO's investment process.	a) <u>Investment process (before contracting):</u> FMO's Financial Proposals will contain a mandatory field related to complaints at other independent accountability mechanisms (IAMs), including FMO's increased supervision requirements (if applicable). b) <u>Monitoring process (after contracting):</u> the design of an internal procedure for FMO's investment teams to report on complaints and identified non-compliances by other IAMs in periodic reviews.	a) Completed by July 2023 b) Starting January 2024
<b>DEG:</b> Implementation of contractual arrangements with clients regarding complaints (initiative led by DEG, including involvement of FMO as member of the ICM).	a) <u>Standard legal building blocks for non-finance sector investments:</u> include in the DEG Environmental & Social contract building blocks that clients have to immediately notify DEG of any complaint they are made aware of and pursuant to which their international development financiers or multilateral development banks have received a complaint through their respective complaint mechanisms or ombudsmen.	a) Completed by January 2024

