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# **Compliance Appraisal of Complaint Regarding IFC Investment in Lomé Container Terminal, Togo**

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IFC Project: #29197

November 10, 2023

## About CAO

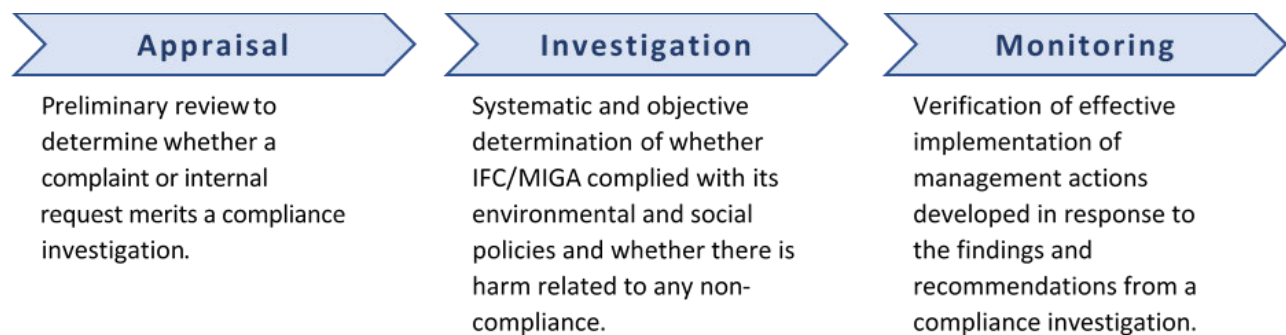
The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism of the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA), members of the World Bank Group. We work to facilitate the resolution of complaints from people affected by IFC and MIGA projects in a fair, objective, and constructive manner, enhance environmental and social project outcomes, and foster public accountability and learning at IFC and MIGA.

CAO is an independent office that reports directly to the IFC and MIGA Boards of Executive Directors. For more information, see [www.cao-ombudsman.org](http://www.cao-ombudsman.org).

## About the CAO Compliance Function

CAO's compliance function reviews IFC and MIGA compliance with environmental and social policies, assesses related harm, and recommends remedial actions where appropriate.

CAO's compliance function follows a three-step approach:



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## Acronyms

<b>Acronym</b>	<b>Definition</b>
BIC	Bank Information Center (complainant representative organization)
CAO	Office of the Compliance Advisor Ombudsman (IFC and MIGA)
CSR	Corporate Social Responsibility
E&S	Environmental and Social
ESAP	Environmental and Social Action Plan
ESIA	Environmental and Social Impact Assessment
ESDD	Environmental and Social Due Diligence
ESRP	Environmental and Social Review Procedures
ESRS	Environmental and Social Review Summary
IFC	International Finance Corporation
LCT	Lomé Container Terminal
MIGA	Multilateral Investment Guarantee Agency
PS	Performance Standards (IFC)
SEP	Stakeholder Engagement Plan
SPI	Summary of Project Information
WACA	West Africa Coastal Areas
WCA	West and Central Africa

## Executive Summary

This report documents CAO's compliance appraisal of a 2022 complaint from six coastal communities regarding the environmental and social impacts of the Lomé Container Terminal (LCT) in Togo. The complainants assert that the port terminal has contributed to coastal erosion, loss of land and property, and negative impacts on livelihoods. CAO concludes that the criteria for a compliance investigation are met. However, this complaint is substantially related to the same issues raised in an earlier compliance process relating to the same project, LCT-01, which is currently in CAO's compliance monitoring phase. Therefore, in accordance with para. 93 of the CAO Policy, CAO has decided to merge this case with the LCT-01 compliance process, for which a fourth monitoring report is forthcoming.

### IFC Investment

Lomé Container Terminal is a locally incorporated company that received a 35-year concession from the Government of Togo to develop, construct, and operate a greenfield transshipment container terminal within the Port of Lomé. This work included construction of a 300-meter spur groyne and dredging of the access channel to the container terminal and port. In 2011, IFC provided a total of €82.5 million in loans to LCT and also mobilized approximately €142.5 million from other lenders. Construction works started in 2012 and the terminal has been operational since October 2014. In 2015, IFC provided LCT with additional financing of €10 million. IFC's loan to LCT is scheduled to be fully repaid in December 2023.

### The Complaint

On August 20, 2022, CAO received a complaint from the *Collectif des personnes victimes d'érosion côtière* (the Collectif), a Togolese community-based nongovernmental organization, representing themselves and a group of residents from six coastal villages to the east of the port and container terminal. The complainants are supported by the Washington DC-based organization Bank Information Center (BIC).

The complaint raised concerns about the impacts of coastal erosion caused by the construction and operation of the container terminal, port, and breakwater, which the Collectif asserts are impacting around 2,500 people. The complainants' concerns include damage and loss of property as well as wider displacement impacts; loss of livelihood and land; damage and loss of sacred sites; and community division and safety. In addition, the complainants expressed frustration with the ongoing CAO process for an earlier complaint filed by the Collectif in 2015 (LCT-01 case).

CAO found the complaint eligible on December 20, 2022. During the subsequent assessment process, neither the complainants nor LCT expressed interest in a CAO-facilitated dispute resolution process, and the case therefore proceeded to a compliance appraisal.

One of two prior complaints to CAO regarding the LCT project is relevant to this compliance appraisal. In 2015, the Collectif submitted a complaint (LCT-01) that resulted in a compliance investigation which found IFC noncompliant with its E&S due diligence and supervision requirements relating to coastal erosion impacts and stakeholder engagement with coastal communities. The investigation was completed under the CAO Operational Guidelines in October

2016 and CAO has since released three compliance monitoring reports in relation to this case, with a fourth report forthcoming.

### **IFC Management Response**

In its response, IFC states that it has been working on the earlier complaint (LCT-01) submitted by the NGO (the Collectif) since 2015, and has dealt appropriately with the issues raised by the complainants through its actions and continued engagement. According to IFC, in its response to the LCT-01 case, Management acknowledged shortfalls in its E&S due diligence regarding the level of consultation with coastal communities, but has taken the necessary steps to address them. Regarding the project's impact on coastal erosion, IFC states that existing studies have not found a link of any significance, but that IFC continues to work with LCT to identify additional steps the project can take to support local communities. IFC also requests that the LCT-03 case be merged with the ongoing LCT-01 compliance process in order to avoid duplicating efforts and resources.

### **CAO Analysis**

According to the CAO Policy, the purpose of the CAO compliance appraisal process is to determine whether a complaint merits an investigation. Based on an initial review of available information, CAO's appraisal concludes that the complaint meets the three criteria for a compliance investigation.

#### **a) Preliminary indications of Harm:**

Multiple studies have documented the progression and impact of coastal erosion on the Togo coast – in particular to the east of Lomé port – where the complainants live. CAO compliance team members also observed firsthand, and heard testimony from coastal community members about, impacts to land and livelihoods during a January 2023 monitoring mission for the LCT-01 case. Consequently, CAO considers that there are preliminary indications of harm to the complainants in this case. In addition, CAO examined complainants' concerns about divisions and security issues within their coastal communities. Available documentation and information suggest that LCT's approach to stakeholder engagement, including requirements imposed on communities in order to access LCT funds for social development activities, also constitute preliminary indications of harm.

#### **b) Preliminary indications of IFC non-compliance with its E&S policies:**

Available information and documentation suggest that there are preliminary indications of potential IFC non-compliance with its supervision requirements for this project, summarized below:

- Following CAO's LCT-01 investigation, IFC and other lenders supported the client to commission a study on the causes of coastal erosion east of the Port of Lomé. Through this study, which was finalized in 2022, IFC became aware that the port's infrastructure, on which the LCT project depends, was a major contributor to coastal erosion, and the LCT project itself made a comparatively modest contribution to coastal erosion east of the port. An independent expert contracted by CAO in relation to the LCT-01 monitoring process confirmed the adequacy of the quality of the methodology and findings of the

study, further noting that the LCT project's contribution to coastal erosion was potentially higher than suggested in the 2022 study as the impact of the spur groyne, constructed in 2012, was averaged out over the 1955-2019 period evaluated for the study. CAO's preliminary review therefore indicates that IFC may not have taken sufficient steps following the 2022 study's findings, to ensure its client conducted an E&S impact assessment that addressed coastal erosion and met IFC's Performance Standards.

- There are preliminary indications that, contrary to Performance Standard 1 (paras. 30 and 26), IFC has yet to assure itself that LCT met disclosure requirements relating to the 2022 coastal erosion study, which remains unpublished 20 months after completion. Further, IFC may not have followed its own Access to Information Policy (AIP), which requires that IFC update the E&S disclosure page of a project with electronic copies of any relevant project assessment documents prepared by or commissioned for the client, as well as any material new E&S information throughout the life of the investment.
- The 2022 study's disclosure is reportedly on hold pending agreement from the Government of Togo, which raises questions regarding IFC's engagement on third party performance and whether it has taken adequate steps to achieve project outcomes consistent with the PS, as required (IFC Sustainability Policy, paras. 24 and 25).
- Available information suggests that IFC's engagement with LCT may have fallen short of assuring that LCT's stakeholder engagement approach is in compliance with Performance Standard 1.

**c) The alleged harms to the complainants are plausibly linked to IFC's potential non-compliance:** The complainants live in a region where impacts from coastal erosion are well documented. Since IFC has been aware as of February 2022 that the project has contributed to coastal erosion, and relevant studies have yet to be disclosed, CAO concludes a plausible link between the alleged harms and IFC potential non-compliance. In addition, while IFC has acted on complainant concerns regarding stakeholder engagement, IFC may not have ascertained whether its client has adequately addressed these concerns in line with PS1 requirements. Accordingly, CAO concludes there is a plausible link between the alleged harm and IFC potential non-compliance.

### **CAO Decision and Next Steps**

CAO determines that the complaint relating to LCT meets the criteria for a compliance investigation. However, CAO considers that the issues raised in the LCT-03 complaint are substantially related to those of the LCT-01 complaint and that therefore the complaints should be merged. This decision was made on the basis of the CAO policy (para. 93), which states: "In relation to a Project...that has already been the subject of a compliance investigation, CAO may: (a) close the complaint; (b) merge the complaint with the earlier compliance process, if still open, and the complaint is substantially related to the same issues as the earlier compliance process; or (c) initiate a new compliance investigation only where the complaint raises new issues or new evidence is available."

This means that the issues raised in the LCT-03 case will be addressed by the ongoing LCT-01

compliance monitoring process. CAO's three monitoring reports to date acknowledged IFC efforts to address issues of coastal erosion at the systems level. However, they found that complainants' concerns have not yet been addressed in accordance with IFC requirements and that IFC should therefore work with LCT to determine possible remediation measures.

This appraisal report will be published on the CAO website and shared with the Board, IFC management, the client, and the complainants.



# 1. Introduction

This section provides an overview of IFC's investment in the Lomé Container Terminal (LCT, the client) and relevant aspects of the CAO complaint process.

## a) IFC Investment

In December 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 container terminal (the project) within the existing Port of Lomé. Project construction works started in 2012 and involved dredging the port's access channel and building a new spur groyne to prevent the port access channel re-filling with sand.<sup>1</sup> LCT terminal commenced operations in October 2014. LCT is a joint venture between Global Terminal Limited, a subsidiary of Terminal Investment Limited (TIL), one of the largest terminal operators in the world and majority owned by Mediterranean Shipping Company (MSC), and Oasis King Limited, a subsidiary of China Merchant Holdings.<sup>2</sup>

LCT has been an IFC client since 2011 at which time IFC provided €82.5 million in loans for project construction and start-up costs. IFC also mobilized approximately €142.5 million from other lenders. In 2015, IFC provided LCT with additional financing of €10 million. IFC viewed the project's development impact as significant, combining deep-water location advantages, state-of-the-art container handling equipment, and world-class management knowhow to create the first modern container transshipment hub in West and Central Africa (WCA) capable of handling larger vessels.<sup>3</sup> This in turn would enable the region to become more competitive and significantly lower transportation costs for the terminal's users.

The project was structured under IFC's 2006 Sustainability Framework. IFC classified the E&S risk of the project as Category A<sup>4</sup>, noting that "the Government led physical and economic displacement of 175 market gardeners and 1,494 sand miners, along with potential impacts on the nest sites of IUCN-listed turtles and mangroves are considered significantly diverse and potentially irreversible impacts."<sup>5</sup> As a result, Performance Standards 1-6 were triggered. IFC did not trigger PS7 or PS8, noting that there were no communities in the area considered 'Indigenous' under the World Bank Group definition and no known cultural heritage sites in the port area.

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<sup>1</sup> Stakeholders sometimes use the term breakwater extension to refer to this spur groyne. CAO uses the term groyne as it is known to be a cross-shore structure that is meant to trap the longshore drift, while breakwater is more general and is often aligned parallel to the shoreline. The spur groyne was constructed in two stages: 250m-long in 2012 and extended to 300m in 2015. ESIA for the Lomé Container Terminal project, May 2010, sections 6.3.1.1 and 6.3.1.8, at: <https://disclosures.ifc.org/project-detail/ESRS/29197/togo-lct> .

<sup>2</sup> IFC Management Response to the CAO Assessment Report on LCT, July 27, 2023.

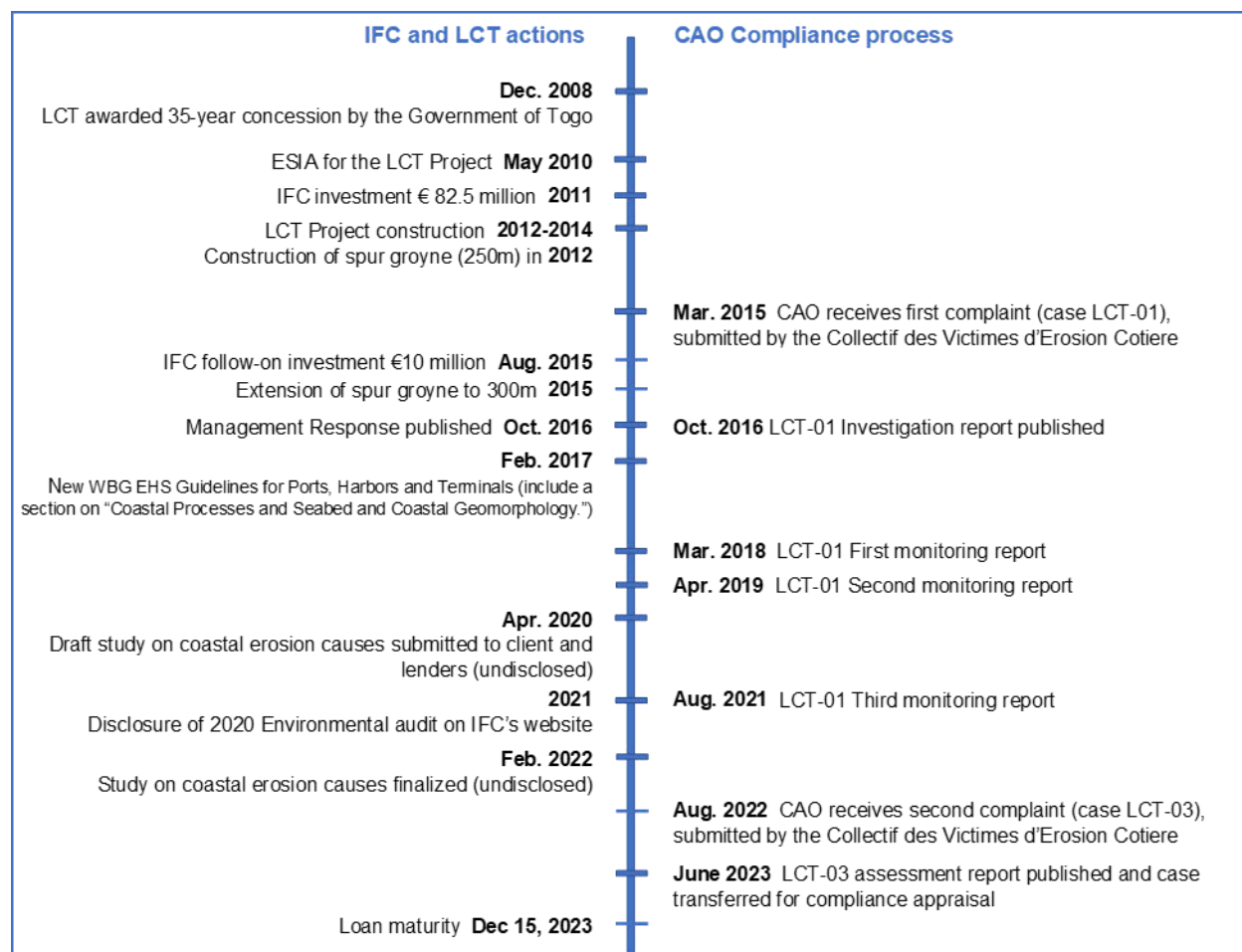
<sup>3</sup> According to the Summary of Proposed Investment (<https://bit.ly/3F32kAg>), the LCT project was estimated to cost €350 million, including terminal infrastructure, container handling equipment, IT systems, contingencies, working capital, interest during construction, start-up costs, etc. IFC provided a total of €92.5 million in loans to LCT (€82.5 million in 2011 and €10 million in 2015). IFC also mobilized approximately €142.5 million from other lenders. The other lenders involved in the project when the complaint was received are the African Development Bank (AfDB), the German Investment Corporation (Deutsche Investitions – und Entwicklungsgesellschaft - DEG), the Dutch Entrepreneurial Development Bank (FMO), the OPEC Fund for International Development (OFID), and Proparco (a subsidiary of Agence Française de Développement, AFD).

<sup>4</sup> The 2006 Sustainability Policy defines Category A projects as having "potential significant adverse social or environmental impacts that are diverse, irreversible or unprecedented".

<sup>5</sup> Togo LCT (IFC project # 29197) Environmental and Social Review Summary - <https://bit.ly/459L0Ek> . .

The client is scheduled to fully repay IFC's loan in December 2023.

**Figure 1. Project and Complaint Timeline**



## b) Compliance Appraisal Scope and Methodology

The scope of this compliance appraisal<sup>6</sup> is limited to issues raised in the LCT-03 complaint (attached to this report as Appendix 1) and CAO's Assessment Report in relation to the complaint.

CAO made the appraisal decision based on the appraisal criteria and other relevant considerations in accordance with the CAO Policy. The appraisal involved a preliminary review of the following information:

- The complaint
- Relevant documents including CAO's Assessment Report and IFC's Management Response as well as the 2016 CAO Compliance Investigation Report and subsequent three Monitoring Reports

<sup>6</sup> CAO Policy, para. 88.

- IFC and client documents, including the 2022 coastal erosion study
- The report of CAO’s technical advisor on coastal erosion for the LCT-01 monitoring process
- Relevant publicly available material.

CAO also considered information gathered through communications with the complainants and IFC project team.

CAO extends its appreciation to all parties mentioned in this Compliance Appraisal Report who have shared their perspective, knowledge, and time with the CAO compliance team.

## 2. The Complaint and Connection to LCT-01 Case

### a) Concerns Raised in the Complaint and During CAO Assessment

On August 20, 2022, CAO received a complaint from Togolese community-based nongovernmental organization the *Collectif des personnes victimes d’érosion côtière* (the Collectif). The complainants included the Collectif and a group of coastal community members from six villages to the east of the Port of Lomé and the IFC client’s container terminal. The Bank Information Center (BIC), a Washington DC-based non-profit, nongovernmental organization is supporting the complainants.

The complaint raised concerns associated with the impact of coastal erosion allegedly caused by the construction and operation of the container terminal, the port, and the breakwater. These concerns related to: (i) damage and loss of property, as well as displacement impacts; (ii) loss of livelihood and land; (iii) damage and loss of sacred sites; (iv) community division and safety concerns; and (v) community frustration with the ongoing CAO process in the LCT-01 case. According to the Collectif, approximately 2,500 people have been affected by coastal erosion in the six villages where complainants live – Bobole Kope, Agbe Kope, Tango, Agbetiko, Adissem, and Gonou Kope.

On December 20, 2022, CAO found the complaint eligible for assessment. During the assessment, the complainants elaborated their concerns to the CAO team as follows:

- **Damage to and loss of property and displacement impacts.** Complainants assert that since the construction of the LCT dock and spur groyne in the Port of Lomé between 2012 and 2014, coastal erosion has intensified, with increased impacts on the areas to the east of the port. The complainants acknowledge that coastal erosion has been a local issue since the 1960s but assert that its intensity and pace has strongly increased due to LCT’s construction and operation. They claim that coastal erosion has resulted in the loss of 1.5-5 kilometers of beach inland (depending on the area) since 2012, when LCT started building its dock, and that they are now losing approximately 12 meters of land every three months. Most complainants’ houses are by the seafront, along the port’s eastern coast and they raised concerns about their living environment and safety. They state that many homes have been lost or damaged, and several community members have been forced to relocate further from the coastline multiple times.

- **Loss of livelihood and land.** Complainants claim that coastal erosion has severely affected their land, beaches, and economic activities, causing a devastating impact on their livelihoods. The large local fisher community raises concerns about their inability to easily access the sea as a result of the rock formations and hard sediments emerging along the eroded coast which damage their boats and nets. The loss of beaches is also adversely impacting tourism and related market activities. Some complainants assert they are no longer able to participate in other economic activities such as sand mining, farming and cultivation.
- **Damage and loss of sacred sites.** Complainants explain that coastal erosion has caused the loss of sacred sites and cemeteries and that the loss of shrines, churches, and places of worship continues, as coastal erosion worsens. Complainants assert that in one community where the cemetery was washed away in 2014, the government provided financial support to collect the bodies and re-bury them in a single common grave.
- **Community division and safety concerns.** Some complainants raise concerns about LCT's stakeholder engagement activities, which they believe are causing community divisions. Several village chiefs claimed that the IFC client tried to require them to sign of a Memorandum of Understanding in order to access community development funds, and that due to resulting tensions between LCT and some community members, LCT staff have been asked not to visit certain villages. Some complainants also raise safety concerns, including in relation to tensions arising from the government requirement for a buffer zone between the shoreline and residential areas.
- **Overall frustration about delays in the CAO process.** Complainants express dissatisfaction with the handling of their previous complaint (LCT-01), which they assert has contributed to the worsening of the situation as they wait for a tangible outcome. The complainants also express frustration that the IFC client has taken no remedial actions to address coastal erosion even though, in their view, LCT's own E&S impact assessment acknowledges erosion impacts associated with the project.

#### **b) Summary of Prior CAO Investigation Relating to LCT**

The Lomé Container Terminal project was subject to a CAO compliance investigation in 2016,<sup>7</sup> which has a direct bearing on this current compliance appraisal process.<sup>8</sup> Below is a summary of the complaint, investigation, IFC response, and CAO monitoring since the conclusion of the investigation. Further details are provided in Appendix 3.

**Complaint:** In March 2015, the Collectif submitted a complaint to CAO, identifying as a group of coastal settlers negatively impacted by the construction of the LCT container terminal. The complainants raised concerns about land erosion and a general lack of consultation and

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<sup>7</sup> The LCT-01 complaint and CAO Assessment Report are available at <https://bit.ly/46txYCC>.

<sup>8</sup> CAO Policy, para. 93 provides that "In relation to a Project ... that has already been the subject of a compliance investigation, CAO may: (a) close the complaint; (b) merge the complaint with the earlier compliance process, if still open, and the complaint is substantially related to the same issues as the earlier compliance process; or (c) initiate a new compliance investigation only where the complaint raises new issues or new evidence is available."

information about the project. Specific issues related to the project's Environmental and Social Impact Assessment (ESIA) were also raised, including lack of consultation with coastal communities and disclosure. A CAO assessment of the complaint, completed in August 2015, described additional alleged impacts including loss of land and housing, adverse impacts to livelihoods, loss of religious sites and loss of local infrastructure.

**CAO Compliance Investigation:** Completed in October 2016, the investigation made a number of findings in relation to IFC's E&S performance, namely:

- **Review of the client's E&S assessment:** IFC's pre-investment E&S review did not identify coastal erosion as a project risk, although the ESIA acknowledged the potential for erosion impacts during the container terminal's construction and described a history of coastal erosion since the port was built in the 1960s. CAO found IFC noncompliant with the 2006 Sustainability Policy on this issue. Further, CAO found that requirements in relation to cumulative impact assessment were applicable and should have been addressed expressly in IFC's E&S review.
- **Disclosure and consultation:** CAO found that IFC did not assure itself that the client provided project information to potentially affected coastal communities in a manner that met PS1 requirements. The lack of consultation and disclosure of information to communities living within the area of influence did not meet IFC's PS1 requirements.
- **Action plan:** CAO noted that the project ESIA describes mitigation measures to be taken regarding the erosion risk, but the subsequent Action Plan did not include such actions. CAO found IFC noncompliant in failing to ensure the Action Plan met PS1 requirements, and noted that IFC did not ensure that the client disclosed the Action Plan to affected communities or included reporting to these communities in the plan.

CAO further found that IFC had not provided advice designed to bring the client back into compliance as required under the Sustainability Policy.

**CAO Monitoring:** During monitoring, CAO tracks and reviews IFC and client actions to address the non-compliance identified in compliance investigation reports. CAO monitoring reports for the LCT-01 case were issued in March 2018, April 2019, and August 2021. These reports acknowledged IFC efforts at the systems level, including updated Environmental, Health and Safety Guidelines for Ports, Harbors and Terminals, and, at the project level, support to LCT in commissioning of a study on the causes of coastal erosion in Togo. However, CAO monitoring has concluded that complainants' concerns have yet to be adequately addressed in accordance with IFC requirements. Of particular concern, CAO highlights that erosion impacts associated with the project due to its reliance on the Port of Lomé infrastructure continue to affect complainants. In order to resolve this issue in accordance with IFC requirements, CAO noted that it will be necessary for IFC to work with LCT to determine possible remediation measures to address erosion impacts associated with the project, due to its reliance on the Port of Lomé infrastructure as required by paragraph 13 of the 2006 Sustainability Policy. CAO further noted that it is necessary for IFC to ensure completion of the client-commissioned study of project erosion impacts in accordance with PS1, and that this completion includes the requirement to consult with affected communities based on prior disclosure of the study, impact assessment, and associated action plans.

### 3. IFC Management Response

In its response to the current complaint, IFC states that the central issues raised in the LCT-03 case are the same as for the LCT-01 case, and argues that it dealt appropriately with the issues raised by the LCT-01 complainants (see Appendix 2 for full IFC Management Response). IFC acknowledged in its 2016 response to the CAO compliance investigation report for the LCT-01 case that its pre-investment E&S review had fallen short but argues that it has since taken appropriate steps to address those gaps. IFC further states in its response to the LCT-03 complaint that it continues to monitor the client's E&S performance and implementation of the project's E&S Action Plan. IFC requests that CAO consider merging the LCT-03 case with the earlier LCT-01 compliance process in order to avoid duplicating efforts.

On the specific issues raised in the LCT-03 complaint, IFC makes the following points:

- **E&S supervision of Lomé Container Terminal and response to LCT-01**

According to IFC, its supervision of the project's ongoing E&S performance has focused on monitoring and updating the Environmental & Social Action Plan (ESAP) on the basis of site supervision visits, remote engagement with the company, and regular reports by the lenders' E&S consultant. IFC explains that the project was unable to progress on some ESAP items due to factors outside LCT's control. For example, stakeholder engagement during the COVID-19 pandemic was limited by restrictions on mobility and disclosure of the 2022 coastal erosion study has been held up due to government approval requirements. Overall, IFC asserts that the project has progressed in addressing remaining gaps in compliance with the Performance Standards.

IFC notes that in its response to the LCT-01 CAO compliance investigation report, IFC acknowledged that the ESIA process could have included greater consultation with coastal communities. To address this shortcoming, LCT prepared a Stakeholder Engagement Plan for the project in 2016 following requests from IFC and the other senior lenders. IFC and LCT have since engaged with coastal communities and the complainants in various ways (see Appendix 2 for more details).

Regarding complainants' allegations of intimidation of coastal community members, the Management Response states that IFC discussed these concerns with the LCT-01 complainants during an in-person meeting in November 2022 and with the client. IFC subsequently provided detailed recommendations to LCT to strengthen its stakeholder engagement approach and avoid further concerns of this nature in the future. LCT confirmed to IFC in June 2023 that it has engaged a specialized consultant to support its stakeholder engagement program.

- **Impacts of coastal erosion**

IFC notes that the project's ESIA did not foresee adverse effects from proposed project facilities beyond potential minor erosion for a short period post construction. In response to the LCT-01 complaint, IFC commissioned a study in 2016 to review the project's ESIA and prepare a critical analysis of the assessment of erosion impacts east of the port. In 2017, IFC met with the complainants to share the findings of this study – notably that the study did not identify any significant causal link between the LCT project and increasing coastal erosion. A second study commissioned by LCT on the causes of coastal erosion east of the port between 1955 and 2019

was finalized in February 2022. IFC notes that its disclosure is pending approval by the Government of Togo. IFC continues to maintain that, based on the information it has reviewed to date, there has not been evidence of a causal link of any significance between the project and increased coastal erosion east of the port.

Nonetheless, recognizing the worsening situation for many coastal communities, IFC explains that it has continued to engage with the national government and other actors to understand how IFC may be able to support broader initiatives targeting coastal erosion in Togo.

The Management Response also states that LCT has committed to engaging national and international actors in support of initiatives targeting coastal erosion in Togo. For example, LCT has engaged with the World Bank on its West Africa Coastal Areas (WACA) program and is working with the Ministry of Maritime Economy in Togo to identify potential collaboration on measures to address coastal erosion. IFC also states that it has supported LCT in developing its Corporate Social Responsibility (CSR) program, through which it is providing resources to coastal communities to support their development needs.

- **Community division and safety concerns**

IFC states that it engaged with LCT on the allegations of intimidation shortly after becoming aware of them. This included sharing IFC's anti-retaliation position statement and guidance for clients in November 2022. As part of a site supervision visit later that month, IFC discussed the specific concerns raised by some LCT-01 complainants with regard to the agreements (i.e., the Memorandums of Understanding, which LCT made with communities and which included provision of community development activities). IFC states that LCT prepared these agreements at the recommendation of the project's senior lenders and to meet the requirements of the project's environmental license following an audit by the Ministry of Environment in 2020. IFC notes that it was not provided with a copy of the agreements until after they were signed by communities but provided feedback to LCT on potential revisions to the contents to address the LCT-01 complainants' concerns. IFC also states that it provided specific recommendations to strengthen the project's stakeholder engagement plan in accordance with PS1 requirements and industry best practice.

With regard to concerns raised in the CAO Assessment Report related to the Togo government's enforcement of its coastal buffer zone, IFC notes there is no evidence that LCT has had any role in creating the situation nor would it be appropriate for LCT to be involved in its resolution, though the complainants reportedly consider this situation to be an indirect impact of the project. IFC points out that Togo's Ministry of Maritime Economy is actively participating in the World Bank's WACA program and considering additional measures in collaboration with the private sector to address coastal erosion impacts.

- **Concerns about delays in CAO processes**

IFC asserts that it has made a consistent and continuous effort to support resolution of the LCT-01 case since 2016, including responding to CAO's compliance findings in 2016 and engaging with CAO and the LCT-01 complainants during compliance monitoring over seven years. Throughout this engagement, IFC has maintained its position on the lack of a causal link of any significance between the Project and coastal erosion. Instead, IFC states it has focused on

strengthening LCT's stakeholder engagement approach, building communication with LCT-01 complainants and other local stakeholders, and optimizing the support its client can provide to the development of coastal communities through its CSR program. IFC notes that a central ongoing challenge is the delay in publication of the findings of the 2022 study which LCT commissioned on the causes of coastal erosion, which requires governmental approval. IFC asserts that, together with LCT and the project's other senior lenders, it continues to encourage government authorities to allow the LCT-01 complainants access to the study's findings.

## **4. Client Statement**

LCT has not provided a statement in the context of this compliance appraisal.

## **5. CAO Analysis**

This section summarizes CAO's analysis of the LCT-03 complaint based on research, document review, and engagement with IFC, LCT, and the complainants. It presents analyses of the three appraisal criteria required to determine whether to initiate a compliance investigation. These criteria are:

- Whether there are preliminary indications of Harm or potential Harm;
- Whether there are preliminary indications that IFC/MIGA may not have complied with its E&S policies; and
- Whether the alleged Harm is plausibly linked to the potential IFC non-compliance.

Other criteria outlined in the CAO Policy for analysis during appraisal are also addressed.

Based on the analysis set out below, CAO concludes that this complaint regarding IFC's investment in LCT meets the criteria for a compliance investigation. However, in accordance with the CAO Policy (para. 93), CAO has determined that the complaint should be merged with the prior LCT-01 compliance process, currently in CAO monitoring, as the issues are substantially related.

### **a) Analysis of preliminary indications of Harm**

In this case, CAO's compliance appraisal concludes that there are preliminary indications of Harm to the complainants resulting from the LCT project.<sup>9</sup>

The complainants live in six coastal communities east of the port and allege wide-ranging project-related harms due to coastal erosion as well as concerns due to community divisions and safety. The complaint also expressed frustration with the ongoing eight-year CAO process in relation to the LCT-01 complaint also filed by the Collectif, in 2015.

Coastal erosion in Togo and specifically to the east of the Port of Lomé has been documented and established in a range of literature. The World Bank 2018 Country Profile of Togo identified

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<sup>9</sup> CAO Policy requirement, para. 91.



the eastern section of Lomé harbor as being particularly affected by erosion, with the coastline receding at an annual rate of 20 meters.<sup>10</sup> Coastal erosion is influenced by natural factors and human activities and infrastructure.<sup>11</sup> Erosion of the area in question has been traced to the development of the deep seaport of Lomé, among other factors.<sup>12</sup>

**The issues raised in the complaint are known potential adverse E&S impacts of coastal erosion.** In 2015, the Togolese government raised concerns regarding the displacement of populations due to coastal erosion.<sup>13</sup> Five years later a technical report commissioned by WACA projected that increased erosion along the eastern section of the port would likely lead to the proliferation of informal settlements and displaced populations.<sup>14</sup> National and international media outlets have also reported damage and loss of housing among the area's coastal communities.<sup>15</sup> A 2019 study by the World Bank estimated the economic costs associated with erosion across Togo as US\$213 million in losses of assets (houses and infrastructure), production, and land.<sup>16</sup> An additional report commissioned by the World Bank in 2022 established that coastal erosion in West Africa has resulted in coastline retreat, lowering beaches and threatening roads and activities, with a strong negative impact on agriculture<sup>17</sup> and fisheries. Other sources have reported the consequences of coastal erosion in Togo on fishing and these accounts align with testimonies provided by the complainants.<sup>18</sup> Both government reports<sup>19</sup> and media publications<sup>20</sup>

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<sup>10</sup> The World Bank, Climate Risk and Adaptation Country Profile, Togo, 2018, p. 13. Available at: <https://bit.ly/3ruPffQ>.

<sup>11</sup> The World Bank Group, Compendium: Coastal Management Practices in West Africa. World Bank, 2022, p.8. Available at: <https://bit.ly/45eBeAK>; Guerrero, F.; Martín-Martín, M.; Tramontana, M.; Nimon, B.; Essotina Kpémoua, K., Shoreline Changes and Coastal Erosion: The Case Study of the Coast of Togo (Bight of Benin, West Africa Margin), Geosciences 2021, 11, 40, pp.14 ff. Available at: <https://bit.ly/46rI5Yx>

<sup>12</sup> The African Development Bank, African Ports and the Blue Economy Nexus: Institutional, Policy and Governance Arrangements. African Natural Resources Centre (ANRC) of the African Development Bank, 2022, p.11. Available at: <https://bit.ly/3EW155J>; Guerrero, F.; Martín-Martín, M.; Tramontana, M.; Nimon, B.; Essotina Kpémoua, K., Shoreline Changes and Coastal Erosion: The Case Study of the Coast of Togo (Bight of Benin, West Africa Margin), Geosciences 2021, 11, 40, pp.14 ff. Available at: <https://bit.ly/46rI5Yx>.

<sup>13</sup> République Togolaise, Troisième Communication Nationale sur les Changements Climatiques, 2015, p.20. Available at: <https://bit.ly/454Be6o>.

<sup>14</sup> Technical Report commissioned by the West Africa Coastal Areas Program (WACA) under the World Bank's Environment, Natural Resources and Blue Economy Global Practice, Effects of Climate Change on Coastal Erosion and Flooding, May 2020, p. 79. Available at: <https://bit.ly/48AJqhU>.

<sup>15</sup> See: Laurent Filippi, Erosion de la côte au Togo: "Un jour la mer nous prendra par surprise et nous ne saurons pas où aller", France Télévisions, June 13, 2020. Available at: <https://bit.ly/3ZBigmP>; Kayi Lawson, L'érosion menace les villages côtiers au Togo, VOA, September 22 2018. Available at: <https://bit.ly/3PCfjxz>; AFP, Au Togo, la mer avance et les communautés de pêcheurs doivent quitter les rivages, July 11, 2018. Available at: <https://bit.ly/3rzwUhN>; Luc Gnago, Villagers in Togo mourn homes swallowed by the sea, Reuters, June 4, 2020. Available at: <https://bit.ly/3Q0G0gQ>; Célian Macé, Au Togo, plages et villages emportés par les vagues, Libération, December 9, 2018. Available at: <https://bit.ly/46pRSP0>.

<sup>16</sup> World Bank Group, West Africa Coastal Areas Management Program, The Cost of Coastal Zone Degradation in West Africa: Benin Côte d'Ivoire, Senegal and Togo, 2019, p.30. Available at: <https://bit.ly/45fhUDp>;

<sup>17</sup> WBG (2022). Compendium: Coastal Management Practices in West Africa. World Bank, p. 6.

<sup>18</sup> These impacts encompass abandonment of certain fishing sites, the displacement of fishing zones, the destruction of fishing boats, and difficulties in bringing boats ashore. See: Koku-Azonko Fiagan, L'impact de l'érosion côtière sur la pêche artisanale maritime au Togo, Revue de Géographie Tropicale et d'Environnement, n° 2, 2013; Célian Macé, Au Togo, plages et villages emportés par les vagues, Libération, December 9, 2018. Available at: <https://bit.ly/46pRSP0>.

<sup>19</sup> Ministry of Environment and Forest Resources, L'érosion côtière, une préoccupation du Gouvernement, April 10, 2021. Available at: <https://bit.ly/3rAV6QV>.

<sup>20</sup> Hector Nammangue, Togo/ Erosion du littoral: A quand la délocalisation du village de Doevi Copé?, VerTogo,

have documented impacts to land, livelihoods, and sacred sites of communities along the Togolese coast, in particular those living east of the Port of Lomé.

CAO compliance team members also observed and heard testimony from coastal community members about impacts to their land, property, and livelihoods during a monitoring mission to Togo in January 2023 relating to the LCT-01 complaint. Taken together, this provides a clear basis for concluding that there are preliminary indications of harm.

**The complainants also raise issues related to LCT’s stakeholder engagement activities, which they assert are causing community divisions and social tensions.** CAO’s analysis took into account information and documentation provided by both the complainants and the IFC client (in the context of the monitoring process for LCT-01 case). For example, CAO understands from the complainants that village chiefs were asked by LCT to sign a Memorandum of Understanding (MoU) in order to receive corporate social responsibility (CSR) support. The complainants and LCT expressed different views on whether financial incentives were offered to village chiefs for endorsing the MoU. In its Management Response for this compliance appraisal, IFC mentioned allegations of intimidation in relation to agreements signed by communities and stated that IFC provided feedback to LCT on potential revisions to the MoU contents. The agreements include provisions that both LCT and the signatory communities agree that the CSR program cannot be recognized as remedial actions taken to address coastal erosion impacts caused by the project in the absence of an established causal link with the occurrence or acceleration of erosion. Furthermore, the MoU restricts signatories from making allegations that attribute coastal erosion impacts to the project without proof and from making any declaration that may adversely reflect on the parties’ reputation. CAO also took into account the local context of shrinking civic space in Togo as well as the broader context of threats and reprisals commonly occurring against communities that oppose clients of development finance institutions such as IFC.<sup>21</sup> Against this background, requirements for project-affected people not to raise any issue that may be considered defamation and to provide proof when raising project-related concerns constitute a preliminary indication of harm as it potentially restricts people’s ability to freely raise concerns.

In addition, as discussed in CAO’s 2016 investigation report, a number of studies acknowledge that coastal erosion represents a major threat to Togo’s vulnerable coastal communities, and more generally to the country’s economic development. These circumstances create social tensions within affected communities, which consider that they have been left to their fate.

Based on the considerations above, CAO concludes there are preliminary indications of harm

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September 11, 2019. Available at: <https://bit.ly/46hiLVM>; Luc Gnago, Villagers in Togo mourn homes swallowed by the sea, Reuters, June 4, 2020. Available at: <https://bit.ly/3Q0G0gQ>; Charles Djade, Togo: La course contre la montre des villages côtiers menacés par l’érosion, SciDevNet, January 28, 2022. Available at: <https://bit.ly/3Q1K28X>; Célian Macé, Au Togo, plages et villages emportés par les vagues, Libération, December 9, 2018. Available at: <https://bit.ly/46pRSPO>; ATOP, Togo: le changement climatique, un déficit majeur dans la préfecture des Lacs, June 14, 2022 Available at <https://bit.ly/3RFMqTR>; AFP, Au Togo, la mer avance et les communautés de pêcheurs doivent quitter les rivages, July 11, 2018. Available at: <https://bit.ly/46wHMvQ>.

<sup>21</sup> 2022 Country Reports on Human Rights Practices: Togo, US Department of State. Available at: <https://bit.ly/3F2wGD0>; Report of the Office of the UNHCHR, Compilation on Togo, 2021, A/HRC/WG.6/40/TGO/2, para. 23. Available at: <https://bit.ly/48DPMNb>; SLAPPed but not silenced, Defending Human Rights in the Face of Legal Risks, Business and Human Rights Resource Centre, 2021. Available at: <https://bit.ly/3tfbEP1>.

relating to the allegations of community divisions and tensions raised in this case.

## **b) IFC E&S Framework Requirements and Analysis of Preliminary Indications of Non-compliance**

### **Relevant IFC Sustainability Policy and Performance Standards Requirements**

IFC's investment in Lomé Container Terminal was made in the context of its 2006 Policy on Social and Environmental Sustainability (2006 Sustainability Policy) and Performance Standards (PS), together referred to as the Sustainability Framework. Central to its development mission, IFC seeks to carry out its investment operations in ways that “do no harm” to people and the environment.<sup>22</sup> IFC notes that negative impacts should be avoided where possible, or reduced, mitigated, or compensated for as appropriate. In addition, IFC commits to “ensuring that the costs of economic development do not fall disproportionately on those who are poor or vulnerable, that the environment is not degraded in the process, and that natural resources are managed efficiently and sustainably.”

In order to meet its E&S commitments, IFC requires its clients to operate in accordance with the Performance Standards (PS) throughout the life of an investment.<sup>23</sup> The Performance Standards define IFC clients' responsibilities for managing the E&S risks and impacts of their business operations. Clients are also required to comply with applicable aspects of national law.

An important component of an IFC client's management of its social and environmental performance is engagement with the affected communities through disclosure of relevant project information, consultation, and informed participation, as stated in Performance Standard 1 (Sustainability Policy, para. 10).

When financing a project, IFC first conducts pre-investment due diligence aimed at assessing the full business potential, risks, and opportunities associated with the investment. Once the project is approved and IFC has invested in a client, the investment is monitored throughout the project cycle to ensure compliance with the conditions in the loan agreement and IFC's applicable policies and standards.

### **Supervision Requirements**

IFC seeks to “ensure that the projects it finances are operated in a manner consistent with the requirements of the Performance Standards.”<sup>24</sup> Each client's E&S performance is monitored throughout the life of the investment for compliance with the E&S commitments in the investment agreement.<sup>25</sup> This includes reviewing project performance and, where relevant, reviewing with the client any performance improvement opportunities including in the case of changed project circumstances resulting in adverse social or environmental impacts. If a client fails to comply with

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<sup>22</sup> IFC Sustainability Policy (2006), para. 8.

<sup>23</sup> The IFC Performance Standards (2006) include PS 1: Social and Environmental Assessment and Management System; PS 2: Labor and Working Conditions; PS3: Pollution Prevention and Abatement; PS4: Community Health, Safety and Security; PS5: Land Acquisition and Involuntary Resettlement; PS 6: Biodiversity Conservation and Sustainable Natural Resource Management; PS7: Indigenous Peoples; and PS8: Cultural Heritage.

<sup>24</sup> IFC Sustainability Policy (2006), para. 5.

<sup>25</sup> IFC Sustainability Policy (2006), paras. 11 and 26.

its E&S commitments as expressed in the agreed project Action Plan or legal agreement, IFC is required to work with the client to establish compliance to the extent feasible, and if the client fails to reestablish compliance, to exercise remedies when appropriate. IFC must also encourage the client to continue to meet PS requirements after IFC's exit from a project (Sustainability Policy, para. 26).

The Policy also recognizes that a client's ability to achieve social or environmental outcomes consistent with the Performance Standards may be dependent on third party activities. In such circumstances, IFC expects its clients to collaborate with the third party to achieve PS-consistent outcomes. Specific requirements and options will vary from case to case (para. 24-25).

Under PS1, clients must monitor and measure the effectiveness of mitigation and performance improvement measures they take to address identified project-related E&S risks and impacts. This should include the use of dynamic mechanisms, such as inspections and audits, where relevant, to verify compliance and progress toward the desired outcomes. The client will document monitoring results and implement any needed corrective and preventive actions as well as follow up on these actions to ensure their effectiveness.

PS1 also requires that consultation with project-affected communities be "carried out on an ongoing basis as risks and impacts arise" (para. 21). In addition, IFC clients must "disclose periodic reports that describe progress with implementation of the Action Plan on issues that involve ongoing risk to or impacts on affected communities, and on issues that the consultation process or grievance mechanism has identified as of concern to those communities." Community engagement must be free of external manipulation, interference, or coercion, and intimidation, and conducted on the basis of timely, relevant, understandable and accessible information (para. 19).

### **Analysis of Preliminary Indications of Non-Compliance with IFC E&S Framework Requirements**

A CAO compliance appraisal must consider whether there are "preliminary indications that IFC/MIGA may not have complied with its E&S Policies."<sup>26,27</sup> In relation to the issues raised in the LCT-03 complaint, CAO concludes that there are preliminary indications that IFC may not have discharged its E&S supervision responsibilities as set out in the 2006 Sustainability Policy. In reaching this conclusion, CAO took the following considerations into account:

- **Lack of impact assessment and mitigation measures relating to coastal communities affected by erosion.**

Following CAO's LCT-01 investigation, IFC and other senior lenders supported the client to commission a study on the causes of coastal erosion downdrift of the Port of Lomé. This study presented historical data from 1955–2019 and suggested estimates of the contributions of various structures to coastal erosion during that time period. Since the study's finalization in 2022, IFC has been aware that the port's infrastructure, on which the LCT project depends, is a major

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<sup>26</sup> CAO Policy, para. 91.

<sup>27</sup> This compliance appraisal does not reconsider findings made by CAO in the 2016 investigation, which included findings of non-compliance in relation to IFC's E&S due diligence and supervision relating to coastal erosion impacts and stakeholder engagement.

contributor to coastal erosion, a conclusion that is also cited in other research publications.<sup>28</sup> IFC was also aware that, while relatively modest in comparison to the contribution of the port, the LCT project - the construction of the spur groyne and the digging of the access channel in particular - also contributed to coastal erosion east of the port. An independent coastal erosion scientist contracted by CAO as part of the LCT-01 monitoring process analyzed the study and confirmed that its methodology and findings, despite some weaknesses, were of adequate quality. The scientist also noted that the LCT project's contribution to coastal erosion is potentially higher than stated in the 2022 study given that the authors averaged the project's impact over the entire 1955-2019 timeline, while the LCT spur groyne was only constructed in 2012. IFC therefore became aware in 2022 that the LCT project contributed to coastal erosion.<sup>29</sup>

Where a project results in impacts, Performance Standard 1 sets the expectation that these be minimized, mitigated or compensated (PS1, para 6). In this instance, CAO's preliminary review of IFC's supervision indicates that IFC may not have worked with its client to address coastal erosion impacts as a result of the LCT project or taken sufficient actions to ensure that a PS-compliance impact assessment was conducted. Accordingly, CAO finds that there are preliminary indications that IFC's supervision may not have complied with its Sustainability Policy requirements (paras. 5, 11, and 26) to ensure that its investment was operating in a manner consistent with PS requirements.

- **Lack of disclosure of E&S information and engagement with affected stakeholders.**

To date, the 2022 coastal study has not been disclosed. IFC's Management Response indicates that disclosure is pending agreement by the Government of Togo.

IFC's Performance Standard 1 (para. 20) sets out a requirement for disclosure of E&S information, such as the 2022 study, to affected stakeholders. Consequently, the ongoing lack of disclosure of this critical report may give rise to potential IFC non-compliance with its client supervision requirements. Further, IFC may not have followed its own disclosure requirements, laid out in the Access to Information Policy (AIP) and associated IFC procedures. These require that IFC update the E&S disclosure page of a project with electronic copies of any relevant social and environmental assessment documents prepared by or commissioned for the client, as well as any material new E&S information as it becomes available throughout the life of the investment.

Further, the assertion that the Government of Togo must give its approval for the disclosure of the 2022 study raises questions about IFC policy requirements relating to third party performance and specifically whether IFC has taken adequate steps to achieve project outcomes consistent with the PS, as required by the Sustainability Policy (paras 15 and 24-25).<sup>30</sup>

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28 The African Development Bank, African Ports and the Blue Economy Nexus: Institutional, Policy and Governance Arrangements. African Natural Resources Centre (ANRC) of the African Development Bank, 2022, p.11. Available at: <https://bit.ly/3EW155J>; Guerrero, F.; Martín-Martín, M.; Tramontana, M.; Nimón, B.; Essotina Kpémoua, K., Shoreline Changes and Coastal Erosion: The Case Study of the Coast of Togo (Bight of Benin, West Africa Margin), *Geosciences* 2021, 11, 40, pp.14 ff. Available at: <https://bit.ly/46r15Yx>.

<sup>29</sup> Additional information in relation to the 2022 coastal erosion study will be included in CAO's forthcoming fourth monitoring report for the LCT-01 case.

<sup>30</sup> IFC Sustainability Policy (2006) (para. 15) provides that the E&S review at appraisal include three key components,

Finally, in the absence of disclosure of the 2022 coastal erosion study to local coastal communities, IFC may not have been able to assure itself that the project’s ongoing consultation with affected communities was effective, in accordance with PS1 (paras. 20-21).

- **Lack of effective stakeholder engagement consistent with E&S requirements.**

Based on available information and documentation, CAO finds preliminary indications of IFC non-compliance in relation to the allegations made by complainants regarding community division and safety concerns. These preliminary indications of IFC non-compliance relate to IFC’s supervision of LCT’s stakeholder engagement, in particular in relation to PS1 (para. 19) requiring that stakeholder engagement be free of external manipulation, interference, coercion, and intimidation.

IFC reports in its Management Response to this compliance appraisal that it took immediate action upon becoming aware of allegations of intimidation made by some LCT-01 complainants against staff of its client. IFC states that it heard from complainants at a meeting during a November 2022 site visit to Togo that some individuals perceived that community leaders had signed MoUs to access LCT CSR funds under pressure. IFC asserts that it engaged with LCT on the allegations of intimidation by providing feedback on potential revisions to the MoU. IFC also states that it provided specific recommendations to strengthen the project’s Stakeholder Engagement Plan. According to the Management Response, IFC continues to engage with LCT regarding CSR-related agreements with communities in its area of operation and LCT confirmed to IFC in June 2023 that it has engaged a consultant to support its stakeholder engagement program and implementation of CSR commitments.

Nevertheless, CAO does not have information from its preliminary review indicating IFC had adequate assurance that LCT revised the MoU and adopted an approach to stakeholder engagement consistent with PS1 requirements and IFC’s Position Statement on Retaliation Against Civil Society and Project Stakeholders.

Based on the above, CAO considers that there are preliminary indications of potential IFC non-compliance in relation to its supervision obligations of LCT’s implementation of PS1.

### **c) Analysis of Plausible Link between Harm Allegations and Potential IFC Non-compliance**

Lastly, a CAO compliance appraisal must consider whether “the alleged Harm is plausibly linked to the potential non-compliance.”<sup>31</sup> In determining whether there is a plausible link, CAO considers the relationship between the potential non-compliance and alleged harm without requiring

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the third of which being the role of third parties in the project’s compliance with the Performance Standards. Each of these components helps IFC to ascertain whether the project can be expected to meet the Performance Standards. Para. 24 and 25 provides that at times, the client’s ability to achieve social or environmental outcomes consistent with the Performance Standards will be dependent on third party activities, which includes a government agency. IFC seeks to ensure that the projects it finances achieve outcomes consistent with the Performance Standards, even if the outcomes are dependent upon the performance of third parties. When the third party risk is high, and when the client has control or influence over the actions and behavior of the third party, IFC requires the client to collaborate with the third party to achieve the outcomes consistent with the Performance Standards. Specific requirements and options will vary from case to case.

<sup>31</sup> CAO Policy, para. 91.



evidence of causation or contribution.<sup>32</sup>

In this case, there are indications that the complainants are impacted by coastal erosion, and the 2022 study identifies that the LCT project has contributed to coastal erosion. At the same time, CAO notes that IFC has yet to assure itself that the project has developed measures to mitigate and compensate for potential adverse E&S impacts of the project's contribution to coastal erosion, in accordance with PS1 requirements (paras 13-14). Specifically, CAO notes that IFC may not have assured that the project commissioned an assessment of the environmental and social impacts and costs associated with the project's contribution to coastal erosion (as provided for by PS1 paras. 4-5 and Guidance Note to PS1 G33). In addition, while IFC has acted on complainant concerns regarding stakeholder engagement, IFC may not have ascertained whether its client has adequately addressed these concerns in line with PS1 requirements. Accordingly, CAO concludes there is a plausible link between the harm allegations and IFC potential non-compliance.

#### **d) Additional Appraisal Considerations**

As set out in the CAO Policy, the compliance appraisal must take into account a number of additional considerations, two of which are relevant to this case.

Under the CAO Policy para. 92, CAO must consider whether Management has clearly demonstrated that it dealt appropriately with the issues raised in the complaint and followed E&S Policies.<sup>33</sup>

In this case, CAO acknowledges that IFC has worked with the client to commission studies on the underlying causes of coastal erosion; supported efforts for disclosure of the 2022 coastal erosion study; fostered engagement and met with complainants and coastal communities over the last several years; and sought assurance that LCT was improving its stakeholder engagement and Corporate Social Responsibility programs. However, IFC first became aware of community concerns regarding coastal erosion in late 2014 and it has been eight years since the CAO investigation of the LCT-01 complaint was finalized. This investigation found key gaps in IFC's due diligence and supervision linked to coastal erosion as well as stakeholder engagement with coastal communities. Moreover, IFC became aware in 2022 of an assessment determining that the LCT project, through the construction of the spur groyne and dredging of the access channel, and because of its reliance on the Port of Lomé, had contributed to coastal erosion east of the Port of Lomé. Nevertheless, IFC continues to maintain the position that "there has not been evidence of a causal link of any significance between the Project and increased coastal erosion east of the Port."<sup>34</sup> The PS1 requirement in this instance is that the project conducts an impact assessment. However, IFC has yet to assure itself that its client has conducted such an assessment. Such actions would support project compliance and be consistent with 2006 IFC

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<sup>32</sup> OHCHR, The Corporate Responsibility to Respect: An Interpretive Guide, p.5, at: <https://bit.ly/3zuLgSI>; OECD Guidelines for Multinational Enterprises and the United Nations Guiding Principles on Business and Human Rights (UNGPs), 2011, available at: <https://bit.ly/3RLJi94> and <https://bit.ly/3S72BpP>, and OHCHR response to request from BankTrack and OECD Watch for advice regarding the application of the UN Guiding Principles on Business and Human Rights where private-sector banks act as nominee shareholders, August 30, 2021, p.4.

<sup>33</sup> CAO Policy, para. 92.

<sup>34</sup> IFC Management Response for this compliance appraisal.

Sustainability Policy (para. 26). Accordingly, IFC has not clearly demonstrated that it has dealt appropriately with the issues raised in the complaint and followed its E&S policies.

CAO Policy para. 93 is also relevant to this compliance appraisal case. Since a prior CAO investigation made findings in relation to IFC's investment in LCT (LCT-01), under the CAO Policy, CAO may: (a) close the complaint; (b) merge the complaint with the earlier compliance process, if still open, and the complaint is substantially related to the same issues as the earlier compliance process; or (c) initiate a new compliance investigation only where the complaint raises new issues or new evidence is available.<sup>35</sup>

As described above, the appraisal criteria in relation to the present complaint have been met and there is no justification for CAO to close this case as a result. However, because of the previous investigation relating to LCT, CAO must decide whether to initiate a new compliance investigation or merge with that earlier compliance process.

CAO concludes that the LCT-03 case should be merged with the LCT-01 compliance process considering that the LCT-03 complaint raises issues that are substantially related to the issues addressed in the LCT-01 case currently in monitoring. While there are new reported coastal erosion impacts, additional complainants, and coastal erosion studies assessing the contribution of LCT and the Port of Lomé to coastal erosion, these issues and information may be directly or indirectly linked to the CAO process triggered by the Collectif in 2015. Specific matters addressed in this compliance appraisal – namely, follow-on actions related to the 2022 study, disclosure of the study, and stakeholder engagement – are interrelated with the CAO monitoring process for the LCT-01 complaint. The most recent CAO compliance monitoring report for the LCT-01 case (in August 2021) identified the need for the completion and disclosure of the coastal erosion study as well as the development of remedial measures, and consultation with affected communities on such remedial measures, to address erosion impacts associated with the project.

For the sake of completeness, analysis of each consideration under the CAO Policy, paras. 92-93 is presented in Appendix 4.

## **6. CAO Decision and Next Steps**

CAO determines that the complaint relating to LCT meets the criteria for a compliance investigation. In considering the requirements of paragraphs 92 and 93 of the CAO Policy, CAO concludes that the LCT-03 complaint should be merged with the LCT-01 compliance process, currently in CAO monitoring.

The complaint and IFC response are included in the appendices to this appraisal report.

This report will be shared with the Board, the World Bank Group President, IFC management, the clients, and the complainants, and published on CAO's website.<sup>36</sup>

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<sup>35</sup> CAO Policy, para. 93.

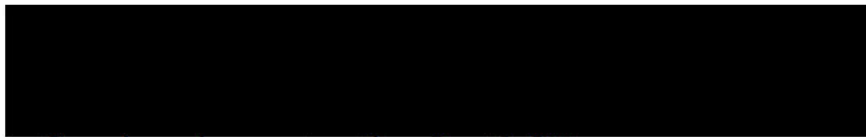
<sup>36</sup> CAO Policy, para. 106.



TOGO



Objet : Demande de conformité et réparation



CAO  
Compliance Advisor  
Omdudsman USA

Causé par la construction Port LCT  
La cause de non-respect du rapport de conformité CAO 2016.

Chère Madame,

Nous avons l'honneur de venir avec une grande désolation portée la deuxième plainte sur les impacts du port de LCT (aggravation d'érosion côtière.) Malgré tous nos revendication Pacifique de nos droit environnemental, nous avons l'impression que la représentante régional de SFI basé au Ghana nous tourne à rond et ne prendre pas ses responsabilité ou solution adéquate, vis-à-vis de cet problème qui fait perte déjà des vies humains.

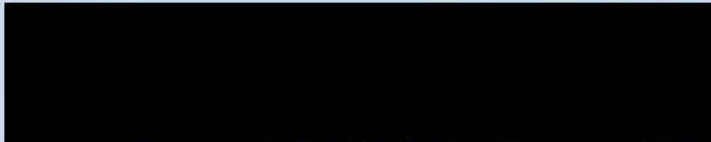
La destruction maximes des maisons de fortune. La perte des activités génératrice de revenu (pêche, la perte et déplacement des héritages culturel...) causé par l'Aggrandissement de la dite port de LCT. Après la publication du rapport de conformité CAO 2016. Toutes nos discussions entre LCT et SFI sont sans suite favorable, même une demande de rencontre avec les hautes responsables de la SFI chargé de l'environnement et conformité de SFI ne sont pas accepté. Tous les rapports d'enquête sur l'érosion côtière sont dans les tiroirs et c'est très compliqué au plaignant d'avoir accès à ce rapport et notons aussi la création d'un mécanisme de plainte sans tenir compte à l'adhésion féminine, et à notre avis le rôle de ce mécanisme de plainte est de divisé les plaignants et installer leurs système.

C'est dans cet optique que nous sollicitons une enquête de CAO pour déterminer les causes de nos respect des recommandations de CAO 2016 sans oublier les causes de lenteur observé dans notre peinte déposé depuis 2015 sur la table de CAO.

Dans l'entente d'une suite favorable veiller agréé madame la vice-présidente de CAO d'expression de nos haute considération.



Collectif des victimes l'érosion côtière



A CAO / SFI / PANEL / BIC / BAD / FMO - DEG

OBJET : Information urgente.

Chers partenaires et associés du port LCT.

Nous venons par cette présente lettre vous informé d'une situation de division très grave causé par deux responsables de la société LCT dans notre communauté ce 20 octobre 2022.

Certains nombres de nos chefs traditionnels ont subits des intimidations et pressions pour la signature du protocole d'accord d'entente fait par LCT. Nous avons informé madame [redacted] chargé de notre dossier à la CAO depuis presque quatre semaines de cette situation désastreuse de division. Malgré tous nos efforts les pressions faites à notre égard ont continué jusqu'à la signature de la dite accord par certains chefs de village ce 20 octobre 2022 à la mairie de baguida ; ce qui a causé des tensions et des incompréhensions aux seins de la communauté.

Nous demandons l'appui de PANEL / SFI / BIC / CAO / BAD. FMO DEG afin de comprendre que cet accord est illégal vus qu'il a été signé sous pressions ; Et même le premier responsable du collectif n'a pas signé.

Nous souhaitons aussi une visite sur le terrain du chargé de notre dossier à la CAO ; afin de vérifier les vrais informations auprès de la communauté avant la publication de son rapport de suivi de 2022.



**Appendix 2: IFC Management Response**

**INTERNATIONAL FINANCE CORPORATION**

**MANAGEMENT RESPONSE  
TO THE CAO ASSESSMENT REPORT  
ON**

**LOME CONTAINER TERMINAL  
TOGO  
PROJECT NO. 29197**

**July 27, 2023**

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## **ABBREVIATIONS AND ACRONYMS**

CAO	Office of the Compliance Advisor Ombudsman
CSR	Corporate Social Responsibility
E&S	Environmental and Social
ESAP	Environmental and Social Action Plan
ESIA	Environmental and Social Impact Assessment
ESRS	Environmental and Social Review Summary
GTL	Global Terminal Limited
IFC	International Finance Corporation
LCT	Lomé Container Terminal
MSC	Mediterranean Shipping Company
PSs	IFC's Environmental and Social Performance Standards
SEP	Stakeholder Engagement Plan
SSV	Site Supervision Visit
TIL	Terminal Investment Limited
US\$	United States Dollar
WACA	West Africa Coastal Areas
WBG	World Bank Group

## EXECUTIVE SUMMARY

This Management Response has been prepared by the International Finance Corporation (IFC) to address the issues raised in the third complaint (LCT-03) received by the Compliance Advisor Ombudsman (CAO) concerning IFC's investment in the Lomé Container Terminal (LCT) SA in Togo.

LCT was awarded a 35-year concession in December 2008 by the Government of Togo with an optional 10-year extension, to develop, construct, and operate a greenfield container terminal within the Port of Lomé in Togo (the "Port"). Proposed activities were estimated to cost €350 million, including terminal infrastructure, container handling equipment, IT systems, contingencies, working capital, interest during construction, start-up costs, etc. LCT does not own or operate the Port of Lomé and has no operational control over activities or facilities beyond the container terminal.

IFC provided loans to LCT totaling €92.5 million, which is scheduled to be repaid in full by 31 December 2023. IFC's financing has specifically covered terminal infrastructure, container handling equipment, IT systems and contingencies, as well as working capital, interest during construction and start-up/development costs (hereafter referred to as "the Project").

IFC's appraisal of the environmental and social (E&S) issues for the Project in 2010 led to a categorization of A under IFC's Sustainability Policy. Based on the findings of the Project's Environmental & Social Impact Assessment (ESIA), IFC developed an Environmental & Social Action Plan (ESAP) including supplemental actions needed for the Project to comply with IFC's Environmental & Social Performance Standards. IFC has continuously supervised the Project's E&S performance and implementation of its ESAP.

With regards to coastal erosion east of the Port, the Project's ESIA did not foresee adverse effects from the construction of the proposed facilities beyond potential minor erosion impacts for a short period of time post construction. Subsequent studies on the causes of coastal erosion east of the Port conducted to date have not demonstrated a causal link of any significance between the Project and erosion. The Project's ESIA, finalized in 2010, and an expert analysis commissioned by IFC in 2016 of the impacts of coastal erosion were publicly disclosed.<sup>1</sup>

CAO received the first complaint (LCT-01) from the *Collectif des personnes victimes d'érosion côtière* — a local non-governmental organization representing residents from thirteen communities east of the Port of Lomé (the "Complainants") — in January 2015. The LCT-01 complaint related to perceived contributions of the LCT Project to increasing coastal erosion east of the Port of Lomé. The LCT-01 case is currently being monitored through CAO's compliance function.

The LCT-03 complaint was submitted to CAO in August 2022 by the *Collectif des personnes victimes d'érosion côtière*, with the support of the Bank Information Center. The LCT-03 complaint relates to the same central issue as the LCT-01 complaint: the perceived link between the Project and increased coastal erosion east of the Port. The LCT-03 complaint raises five specific issues: damage and loss of property and involuntary resettlement; loss of livelihood and land; damage and loss of sacred sites; community division and safety concerns; and overall concerns about delays in CAO processes. CAO determined the LCT-03 complaint eligible on 20 December 2022, as they considered that the issues raised in the complaint are not

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<sup>1</sup> <https://disclosures.ifc.org/project-detail/ESRS/29197/togo-lct>

the same in all material respects to LCT-01.

Given the overlap between the LCT-01 and LCT-03 complainants and contents, the present Management Response summarizes the key steps IFC has taken to engage with the complainants and address the issues raised in the LCT-01 complaint. IFC's approach in this regard has been informed by the position it stated in its 2016 Management Response to CAO's Compliance Investigation Report for LCT-01; the 2016 Management Response did not agree with CAO's assumption of a causal link between the Project and coastal erosion east of the Port, stating that no such link had been established by the ESIA or in subsequent independent technical reports commissioned by IFC or CAO.<sup>2</sup>

In response to the LCT-01 complaint, IFC commissioned a study in 2016 to review the Project's ESIA and prepare a critical analysis of the assessment of impacts of erosion east of the Port. IFC met with the LCT-01 complainants in 2017 and shared the key findings of the study, notably that the study did not identify any significant causal link between the LCT Project and increasing coastal erosion. Additional consultation was carried out with the LCT-01 complainants and other community members by consultants engaged by the Ministry of Environment as part of an environmental audit of the Project in February 2019 and separately by consultants engaged by IFC in November 2019. In response to ongoing concerns raised by Project stakeholders, a study on the causes of coastal erosion east of the Port between 1955 and 2019 was commissioned by LCT. Disclosure of the final report of the study, which was finalized in February 2022, is pending approval by the Government of Togo. Based on the information IFC has reviewed to date, IFC maintains the position stated in its 2016 Management Response to the LCT-01 complaint that there has not been evidence of a causal link of any significance between the Project and increased coastal erosion east of the Port.

Nonetheless, recognizing the worsening situation for many communities due to increased erosion on the West African coast, IFC has continued to engage with the Government and other actors to understand how IFC may be able to support broader initiatives targeting coastal erosion in Togo. IFC also continues to work with LCT to identify additional steps the Project can take to support local communities.

Since the LCT-01 complaint was accepted by CAO in 2015, IFC has had numerous calls and meetings with CAO, the complainants, LCT and the Project's senior leaders to discuss the specific issues of the complaint and possible avenues to resolution. A central challenge is the publication of the findings of the study LCT commissioned on the causes of coastal erosion between 1955 and 2019 and the required approval of the Government. LCT, IFC and the other senior leaders on the Project continue to engage with Government authorities to encourage access by the LCT-01 complainants to the findings of the study.

Management is of the opinion that IFC has demonstrated that it dealt appropriately with the issues raised by the complainants in the LCT-01 case. Though Management acknowledged in its 2016 Management Response to the LCT-01 case that there had been shortfalls in the Project's E&S appraisal, IFC has taken appropriate steps to address those gaps.<sup>3</sup> IFC continues to monitor LCT's E&S performance and implementation of the Project's ESAP.

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<sup>2</sup> <https://www.cao-ombudsman.org/sites/default/files/downloads/IFCMgmtResponsetoCAOInvReportonLCTTogo.pdf>

<sup>3</sup> CAO Policy, para 92c.

IFC recognizes the important role CAO plays in facilitating the resolution of project-related complaints and requests CAO to consider the LCT-03 case be merged with the earlier LCT-01 compliance process in order to avoid duplicating efforts given LCT-03 relates to the same central issues as the LCT-01 complaint. IFC looks forward to continuing to work with CAO on the resolution of the LCT-01 complaint.



## I. INTRODUCTION

1. This Management Response reflects the International Finance Corporation’s (IFC) views on the third complaint (“LCT-03” or “the Complaint”) received by the Compliance Advisor Ombudsman (CAO) concerning IFC’s investment in the Lomé Container Terminal SA (“LCT” or “the Company”) (Project No. 29197 or “the Project”) in Togo.
2. In August 2022, the Office of the Compliance Advisor Ombudsman (CAO) received a complaint from the *Collectif des personnes victimes d’érosion côtière* — a local non-governmental organization — supported by the Bank Information Center (BIC), on behalf of themselves and a group of community members from six villages east of the Port of Lomé (the “Complainants”). The CAO’s Assessment Report (June 2023) states that the complaint relates to perceived impacts associated with “the construction and operation of the container terminal, the port, and the breakwater,” specifically the loss of houses, revenue-generating activities, and cultural heritage due to increasing coastal erosion. The Complaint also relates to LCT’s stakeholder engagement activities and the Complainants’ overall concerns with the delays in the CAO process for LCT-01. CAO determined the Complaint eligible on 20 December 2022, as they considered that the issues raised in LCT-03 are not the same in all material respects to LCT-01.<sup>4</sup>
3. This Management Response presents IFC’s perspective on the issues raised in LCT-03 and argues that the actions that IFC has taken to date in response to the LCT-01 case and as part of its ongoing supervision of the Project address the issues raised in LCT-03. IFC is of the view that, based on the information IFC has available regarding the relationship between the Project and coastal erosion in Togo, the steps IFC and LCT have taken to date to address the issues raised in the LCT-01 complaint have been implemented in accordance with IFC’s Performance Standards and the Sustainability Policy.
4. IFC also notes the important distinction between LCT’s facilities and operations and those of the Port of Lomé. As explained further below, the scope of IFC’s financing is limited solely to the container terminal developed, constructed, and operated by LCT. IFC’s financing and LCT’s operations do not extend beyond the container terminal.

## II. PROJECT OVERVIEW

5. LCT, a locally incorporated company, was awarded a 35-year concession in December 2008 by the Government of Togo (the “Government”), with an optional 10-year extension, to develop, construct, and operate a greenfield container terminal (the “Terminal”) within the Port of Lomé (the “Port”) in Togo. The Port, operated by the Port Authority of Lomé, is located on the Gulf of Guinea (Atlantic coast) east of Togo’s capital and close to the Ghanaian border. It is one of the few deep-water ports in West Africa and is strategically located to serve as a transshipment hub for the African west coast. It also serves as a gateway to the landlocked countries of Mali, Niger, and Burkina Faso and to the northern areas of Nigeria.

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<sup>4</sup> In February 2018, CAO received a second complaint (LCT-02) from a group of individuals belonging to communities west of the Port of Lomé. The LCT-02 case is currently in CAO’s Dispute Resolution process and is not addressed in this report.

6. LCT is a joint venture between Global Terminal Limited, a subsidiary of Terminal Investment Limited (TIL), one of the largest terminal operators in the world and majority owned by Mediterranean Shipping Company (MSC), and Oasis King Limited, a subsidiary of China Merchant Holdings.
7. The Project was estimated to cost €350 million, including terminal infrastructure, container handling equipment, IT systems, contingencies, working capital, interest during construction, start-up costs, etc. IFC provided loans to LCT totaling €92.5 million, including an initial loan of €82.5 million in 2011 to finance the construction of quays, the purchase and installation of equipment, and the development of the container yard and supporting infrastructure, and a second loan of €10 million in 2015 to finance the purchase of equipment. IFC also mobilized approximately €142.5 million from other lenders, including FMO, DEG and Proparco (the “senior lenders”). The loan provided by IFC and other senior lenders to LCT is scheduled to be repaid in full by 31 December 2023. IFC has total outstanding loan amounts of EUR 16.65 million. Both facilities mature on December 15, 2023, with the remaining installment due in December 2023 under the repayment schedule.
8. LCT does not own or operate the Port and has no operational control over activities or facilities beyond the container terminal. IFC’s financing of the Project has specifically covered terminal infrastructure, container handling equipment, IT systems and contingencies as well as working capital, interest during construction and start-up/development costs. Among the infrastructure built by LCT was a 300m breakwater (also referred to as a spur groyne) which was constructed in two stages: the initial 250m were constructed in 2012 and the remaining 50m were constructed in 2015.
9. With state-of-the-art container handling equipment, and world class management know-how, the Project has created the first modern container transshipment hub in West and Central Africa capable of handling today’s larger container ships. This has allowed shipping lines to deploy larger container vessels in the region, improving the quality of transport and logistics services in the region and lowering transport costs to the Terminal’s users. In addition, the Company has brought terminal operation and management as well as environmental, social, governance, and health and safety know-how to Togo, resulting in upskilling of the local workforce.
10. IFC’s appraisal of the environmental and social (E&S) issues for the Project in 2010 led to a categorization of A under IFC’s Sustainability Policy, due primarily to a government-led resettlement process west of the Port and potential impacts on the nest sites of IUCN-listed tortoises and on mangroves. With regards to coastal erosion east of the Port, the Project’s Environmental & Social Impact Assessment (ESIA) finalized in 2010 foresaw only minor potential erosion impacts for a short period of time from the construction of the proposed facilities. Subsequent studies conducted by the Company on the causes of coastal erosion east of the Port have not demonstrated a causal link of any significance between the Project and erosion.
11. In the context of IFC’s 2016 Management Response to the CAO Compliance Investigation Report on IFC’s Investment in LCT (LCT-01), IFC has acknowledged that the ESIA process could have included greater consultation with coastal communities, including possible solutions for erosion issues should they occur. Since then, IFC has supported LCT in improving its stakeholder engagement program and

consulting communities on potential support the Company can provide to address their development needs, as described further in this response.

### III. CAO COMPLAINT

12. As per Paragraph 2, the Complaint was lodged with CAO by the *Collectif des personnes victimes d'érosion côtière*, on behalf of themselves and community members from six villages east of the Port. The Complaint relates to perceived impacts associated with “the construction and operation of the container terminal, the port, and the breakwater” and the Complainants’ overall concerns with delays in the CAO process. The specific issues identified by CAO in the Assessment Report are (i) damage and loss of property and displacement impacts, (ii) loss of livelihood and land, (iii) damage and loss of sacred sites, (iv) community division and safety concerns, and (v) overall frustration with the ongoing CAO process for LCT-01.
13. CAO found the Complaint eligible on 20 December 2022, concluding that “although it raised similar issues as Togo LCT 01, it was not the same in all material respects, due to a material change in circumstances concerning (i) the construction of the breakwater that allegedly exacerbated the impacts of coastal erosion on the east side of the port, (ii) the emergence of community division allegedly caused by some LCT stakeholder engagement activities, and (iii) new impacts of coastal erosion being raised.”<sup>5</sup> IFC engaged with CAO’s eligibility team in January and February 2023 and has continued to engage with its assessment team to understand the nature of the issues raised in the Complaint and support its resolution. IFC has encouraged LCT to continue participating in the CAO process, despite reservations LCT has raised over the eligibility of the case (as discussed below). IFC’s Senior Country Manager for Togo met with the CAO assessment team during the latter’s in-country mission in March 2023. IFC also continues to engage with CAO in support of resolution of the LCT-01 case.

### IV. MANAGEMENT RESPONSE

14. IFC acknowledges that the issues raised in the Complaint are serious and provides a detailed response to them here. IFC’s response is structured in two parts: the first explaining IFC’s general efforts in E&S supervision of the Project and responding to the LCT-01 case since 2016, and the second responding to concerns in the Complaint, which IFC considers to relate to the same central issues as the LCT-01 complaint.
15. It is noteworthy that out of fear of reprisals CAO keeps the identity of complainants confidential. The CAO Assessment Report (June 2023) states the Complaint was filed by the *Collectif des personnes victimes d'érosion côtière* on behalf of “themselves as well as a group of riverine community members from six villages in the vicinities of the Lomé port, container terminal and breakwater in Togo.” The *Collectif* also represents the complainants in the LCT-01 complaint, but the six villages listed in the LCT-03 complaint are different than the 13 listed in the LCT-01 complaint. The number of complainants for LCT-03 is unknown.

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5 CAO Assessment Report Togo LCT-03 (June 2023)

16. The CAO Assessment Report refers to various facilities perceived by the Complainants to be contributing to increased erosion, with references to the Port, container terminal, breakwater, and the “third and last dock.” As noted above, IFC’s financing and LCT’s operations do not extend beyond the container terminal.

#### **A. IFC E&S Supervision and Response to LCT-01**

17. IFC’s supervision of the Project’s E&S performance has focused on monitoring and updating the Project’s Environmental & Social Action Plan (ESAP) on the basis of site supervision visits, remote engagement with the Company, and regular reports by the Lenders’ E&S Consultant (see Annex A for a detailed record of activities). In some regards the Project was unable to progress on ESAP items due to factors outside LCT’s control, for example, stakeholder engagement during the COVID-19 pandemic due to restrictions to mobility at the time and disclosure of the coastal erosion report due to Government approval requirements. Overall, IFC believes that the Project has progressed in addressing the remaining gaps in compliance with the Performance Standards.

18. IFC’s 2016 Management Response to CAO’s Compliance Investigation Report for LCT-01 did not agree with CAO’s assumption of a causal link between the Project and erosion, stating that no such link was established by the ESIA nor in subsequent independent technical reports commissioned by IFC or CAO.<sup>6</sup> IFC disclosed the Project’s ESIA, finalized in 2010, as well as the study it commissioned in 2016 to review the ESIA and prepare a critical analysis of the assessment of impacts of erosion east of the Port.<sup>7</sup> Further independent analysis has indicated the Project has not contributed to coastal erosion east of the Port beyond the level anticipated in the ESIA. IFC has maintained this position in its engagement with CAO and the LCT-01 complainants. Nonetheless, recognizing the worsening situation for many communities due to increased erosion on the West African coast, IFC has continued to engage with the Government and other actors to understand how IFC may be able to support broader initiatives targeting coastal erosion in Togo.

19. In its Management Response to the LCT-01 Investigation Report, IFC acknowledged that the ESIA process could have included greater consultation with coastal communities. LCT subsequently prepared a Stakeholder Engagement Plan (SEP) for the Project in 2016 in response to requests of IFC and the other senior lenders. IFC conducted its own consultation with the LCT-01 complainants in February 2017 with the participation of the Ministry of Environment and LCT, and the LCT-01 complainants were subsequently engaged by consultants for the Ministry of Environment in February 2019 as part of an environmental audit of the Project and by consultants to IFC in November 2019 on potential mechanisms to facilitate resolution of the LCT-01 complaint and address coastal erosion issues on a broader scale. IFC has continued to monitor the Project’s stakeholder engagement activities and its overall E&S performance through regular calls, emails and videoconferences with the Company and site supervision visits (SSV) (see timeline in Annex A). In addition to ongoing engagement by phone and email with the President of the *Collectif des personnes victimes d’érosion côtière*, IFC has organized two subsequent meetings with the LCT-01 complainants (one by videoconference in April

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<sup>6</sup> <https://www.cao-ombudsman.org/sites/default/files/downloads/IFCMgmtResponsetoCAOInvReportonLCTTogo.pdf>

<sup>7</sup> <https://disclosures.ifc.org/project-detail/ESRS/29197/togo-lct>

2022 and one in-person in Lomé in November 2022) to discuss the complainants' concerns regarding the perceived contribution of the Project to increasing coastal erosion. IFC ensured simultaneous translation was provided for its meetings with complainants and provided meeting summaries to all parties thereafter. Most recently, on June 13, 2023, IFC met with two representatives of the complainants in an in-person meeting at the IFC office in Washington, DC that was organized by BIC.

20. CAO informed IFC of allegations that LCT intimidated certain members of the *Collectif des personnes victimes d'érosion côtière* in the context of the LCT-01 case. IFC takes seriously any credible allegations of reprisals. IFC's Position Statement on Retaliation Against Civil Society and Project Stakeholders makes clear that IFC does not tolerate any action by an IFC client that amounts to retaliation – including threats, intimidation, harassment, or violence – against those who voice their opinion regarding the activities of IFC or its clients. Upon becoming aware of the allegations, IFC discussed these concerns with the LCT-01 complainants during an in-person meeting in November 2022 and with the Company, as detailed below. IFC has subsequently provided detailed recommendations to LCT to strengthen its stakeholder engagement approach and avoid further concerns of this nature in the future, as described further below. LCT confirmed to IFC in June 2023 it has engaged a specialized consultant to support its stakeholder engagement program.

## **B. Impacts of Coastal Erosion**

21. The CAO Assessment Report explains that LCT-03 complainants perceive coastal erosion east of the Port to have worsened since “the third and last dock of the port” was built between 2012 and 2014. Impacts of coastal erosion reported by the complainants are loss of and damage to houses, land, livelihood activities, and sacred sites. The CAO Assessment Report states that many Complainants have had to move from their homes due to the impacts of erosion, which they say has hindered their children's education and disrupted their lives. Complainants report that erosion has affected their livelihoods and economic activities, notably fishing and sale of fish, tourism, farming, market gardening, and coconut tree cultivation. The CAO Assessment Report states that coastal erosion has resulted in the loss of sacred sites, cemeteries, shrines, churches, and places of worship; it notes that after a cemetery was affected by erosion in 2014, the Government provided the community with 1.5 million XOF (equivalent to US \$2500.00) to cover the costs of reburial.
22. The Project's ESIA did not foresee adverse effects from the construction of the proposed Project facilities beyond potential minor erosion impacts for a short period post construction. Subsequent studies conducted on the causes of coastal erosion east of the Port have not demonstrated a causal link of any significance between the Project and erosion. Specifically, in response to ongoing concerns raised by Project stakeholders, a study on the causes of coastal erosion east of the Port between 1955 and 2019 was commissioned by LCT; disclosure of the final report of this study is pending approval by the Government of Togo.
23. Coastal erosion is a complex and challenging issue for Togo, and IFC recognizes that the threat it poses to coastal communities requires collective action by a range of actors. LCT has committed to engaging national and international actors in support of initiatives targeting coastal erosion in Togo; LCT has engaged with the World Bank regarding its West Africa Coastal Areas (WACA) program and is working with the Ministry of Maritime Economy in Togo to identify potential opportunities to

collaborate on measures to address coastal erosion. IFC has supported LCT in developing its Corporate Social Responsibility (CSR) program, through which it is providing resources to coastal communities to support their development needs.

### **C. Community division and safety concerns**

24. The CAO Assessment Report explains that some members of the *Collectif des personnes victimes d'érosion côtière* have expressed concerns that LCT's stakeholder engagement activities have caused "community division." It also notes that the Complainants reported LCT attempted to bribe two village chiefs in exchange for signature of a "community engagement Memorandum of Understanding." CAO reports that, as a result, several representatives of LCT have been asked not to visit "the villages." The CAO Report describes concerns raised by Complainants related to actions taken by Government officials to enforce the state's required 100m buffer zone along the coast.
25. In the context of the LCT-01 case, IFC was alerted in October 2022 to allegations of intimidation made by some LCT-01 complainants against representatives of LCT. IFC takes seriously any credible allegations of reprisals and took immediate action. Through engagement with CAO and the LCT-01 complainants, IFC understood the allegations stemmed from opposition by some members of the *Collectif des personnes victimes d'érosion côtière* to the signature of agreements drafted by LCT outlining the conditions of the support the Company would provide to communities through its CSR program. The LCT-01 complainants explained to IFC during a site visit in November 2022 that some individuals perceived that community leaders had signed these agreements under pressure from LCT and that the overall process was creating tension between some community members. During the November 2022 meeting, some LCT-01 complainants alleged LCT had attempted to bribe community leaders to sign the agreements; the complainants later clarified to IFC that the allegations related to payments of 10,000 FCFA (US \$16.00) to cover transportation costs of community leaders who attended a meeting convened by the local mayor to facilitate signature of the agreements.
26. After securing the consent of the LCT-01 complainants, IFC engaged with LCT on the allegations of intimidation shortly after they were shared. This included sharing IFC's anti-retaliation position statement and guidance for clients on 10 November 2022. As part of the SSV later that month, IFC discussed the specific concerns raised by some LCT-01 complainants with regards to the agreements, which LCT had prepared on the recommendations of the senior lenders and the requirements of the Project's environmental license following an audit by the Ministry of Environment in 2020. IFC was not provided with a copy of the agreements until after they had been signed by communities but provided feedback to LCT on potential revisions to the contents to address the LCT-01 complainants' concerns. IFC also provided specific recommendations to strengthen the Project's SEP in accordance with PS1 requirements and industry best practice.
27. IFC continues to engage with LCT regarding the signature of agreements with communities in its area of impact, which has since been put on hold due to concerns raised by the Government of Togo over the issues flagged by the LCT-01 complainants. While these discussions are ongoing, LCT is proceeding with the provision of support to the seven communities with which it has signed agreements as part of its CSR program. LCT confirmed to IFC in June 2023 it has engaged a consultant to support its stakeholder engagement program and implementation of its CSR commitments.

28. With regards to concerns raised in the CAO Assessment Report related to the Government's enforcement of its coastal buffer zone, there has been no information provided that suggests LCT has had any role in creating the situation nor would it be appropriate for the Company to be involved in its resolution, though the Complainants reportedly consider this to be an indirect impact of the Project. Of note, the Ministry of Maritime Economy reports to be actively participating in the World Bank's WACA program and is considering additional measures it can take in collaboration with the private sector to address coastal erosion impacts.

#### **D. Overall concerns about delays in CAO processes**

29. The CAO Assessment Report states the Complainants are dissatisfied with the pace and outcome of the CAO process for the LCT-01 case. IFC has made a consistent and continuous effort to support resolution of the LCT-01 case since 2016, including responding to CAO's compliance findings in 2016 and continuously engaging with CAO and the LCT-01 complainants during compliance monitoring over seven years. Throughout this engagement, IFC has maintained its position regarding the lack of a causal link of any significance between the Project and coastal erosion; instead, IFC has endeavored to focus on strengthening LCT's stakeholder engagement approach, building lines of communication with LCT-01 complainants and other local stakeholders, and optimizing the support the Company can provide to the development of coastal communities through its CSR program.

30. IFC has had numerous calls and in-person meetings with LCT and the senior leaders to discuss the specific issues of the LCT-01 case and possible avenues to resolution. A central challenge is the publication of the findings of the study LCT commissioned on the causes of coastal erosion and the required approval of the Government. LCT, IFC and the other senior leaders continue to engage with Government authorities to encourage access by the LCT-01 complainants to the findings of the study. Similarly, concerns raised by Government following the LCT-01 complainants' opposition to LCT's signature of agreements with coastal communities have also led to that process being put on hold; LCT is engaging directly with the Government to find a solution in this regard, with the support of IFC.

### **V. CONCLUSION**

31. The CAO Policy provides specific appraisal criteria for determining whether a compliance investigation is necessary, including: (a) whether there are preliminary indications of harm or potential harm; (b) whether there are preliminary indications that IFC may not have complied with its E&S Policies; and (c) whether the alleged harm is plausibly linked to the potential non-compliance.<sup>8</sup> In relation to a project that has already been subject of a compliance investigation, CAO may: (a) close the complaint; (b) merge the complaint with the earlier compliance process, if still open, and the complaint is substantially related to the same issues as the earlier compliance process; or (c) initiate a new compliance investigation only where the complaint raises new issues or new evidence is available.<sup>9</sup>

32. The LCT-03 complaint was submitted by the same NGO, *Collectif des personnes victimes d'érosion côtière*, and relates to the same central issue as the LCT-01 complaint, a case on which IFC has been

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<sup>8</sup> CAO Policy, para 91.

<sup>9</sup> CAO Policy, para 93.

working since 2015. The LCT-03 complaint deals with the same issues that are being addressed in the LCT-01 case and includes overall concerns about delays in CAO's LCT-01 process as the subject of one of the five issues the LCT-03 complaint raises.

33. CAO's Assessment Report stated LCT-03 was deemed eligible because it was found not to be the same in all material respects as LCT-01, specifically CAO considered there to have been "a material change in circumstances concerning (i) the construction of the breakwater that allegedly exacerbated the impacts of coastal erosion on the east side of the port, (ii) the emergence of community division allegedly caused by some LCT stakeholder engagement activities, and (iii) new impacts of coastal erosion being raised." IFC does not agree that there is a material difference between LCT-01 and LCT-03 for the following reasons: (i) LCT constructed a 300m breakwater (spur groyne) in two stages – the initial 250m were constructed in 2012, three years before the LCT-01 complaint was sent to CAO, and the remaining 50m were constructed in 2015, prior to CAO's compliance investigation of the LCT-01 case; (ii) the activities that led to a perception of community division were raised by the LCT-01 complainants directly with IFC, were discussed at length during an in-person meeting between IFC and the LCT-01 complainants in Togo in November 2022, and IFC has taken steps to address these concerns with LCT and strengthen the Project's stakeholder engagement practices to avoid similar issues in the future; and (iii) as the CAO Compliance Assessment Report for LCT-01 (Nov. 2015) identifies impacts of coastal erosion on land and houses, displacement impacts, loss of farms and livelihood activities, and loss of religious sites, it remains unclear to IFC why CAO would consider these materially different from the impacts of coastal erosion identified in LCT-03, which are damage and loss of property, displacement impacts, loss of livelihood and land, and damage and loss of sacred sites.
34. Management is of the opinion that IFC has clearly demonstrated that it dealt appropriately with the issues raised by the complainants of the LCT-01 case and its related response and continued engagement. In its response to the LCT-01 case, Management acknowledged shortfalls in its E&S due diligence, specifically related to the level of consultation with coastal communities but considers IFC to have taken the necessary steps to address them.<sup>10</sup>
35. With regards to the overarching issue of the impact of the Project on coastal erosion, while existing studies have not found a link of any significance between the Project and coastal erosion, IFC continues to work with LCT to identify additional steps the Project can take to support local communities.
36. In light of the above, IFC recommends the LCT-03 case be merged with the earlier LCT-01 compliance process. An additional compliance investigation would divert resources for grievance response from LCT, IFC and CAO as well as the Complainants, may constitute a duplication of efforts and raise unrealistic expectations of redress.
37. IFC remains committed to engaging with CAO and supporting the resolution of all pending complaints related to the Project.

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<sup>10</sup> CAO Policy, para 92c.



## VI. ANNEX A

The following timeline includes the transaction milestones and key E&S activities that are relevant to the LCT-03 complaint. Note activities related to the LCT-01 case have been included as the LCT-03 complaint deals with the same issues that are being addressed in the LCT-01 case; activities related to the LCT-02 case are not noted but can be accessed on the CAO's website.

### Timeline:

- December 2008 – LCT awarded 35-year concession by the Government of Togo
- February 2010 – Appraisal visit conducted by IFC
- October 2010 – Final ESIA report issued
- November 2010 – Environmental & Social Review Summary disclosed by IFC
- January 2011 – IFC approves investment of €82.5 million in the Project
- October 2014 – Start of Terminal operations
- November 2014 – Site Supervision Visit conducted
- 2015 – IFC approves additional investment of €10 million
- March 2015 – CAO receives complaint from the *Collectif des personnes victimes d'érosion côtière* (LCT-01)
- August 2015 – CAO issues Assessment Report for LCT-01
- November 2015 – CAO issues Compliance Appraisal Report for LCT-01
- November 2015 – Site Supervision Visit conducted, ESRR downgraded to 3
- August 2016 – CAO issues Investigation Report for LCT-01
- September 2016 – IFC issues Management Response for LCT-01
- March 2016 – Final version of Project's Stakeholder Engagement Plan finalized
- July 2016 – Final report of the "Lomé Container Terminal and Coastal Erosion" study issued
- December 2016 – SSV conducted
- February 2017 – SSV conducted, including consultation with LCT-01 complainants
- December 2017 – SSV conducted
- March 2018 – CAO issues first Monitoring Report for LCT-01
- November 2018 – SSV conducted
- December 2018 – SSV conducted
- February 2019 – Consultation with LCT-01 complainants and other community members carried out as part of environmental and social audit on behalf of Ministry of Environment
- April 2019 – CAO issues second monitoring report for LCT-01
- October/November 2019 – SSV conducted, including meetings with coastal communities
- November 2019 - Consultation with Project stakeholders carried out by IFC consultant
- May 2020 – Final Report issued for the Environmental & Social Audit of the Lomé Container Terminal
- July 2020 – Environmental Permit issued, valid for four years
- August 2021 – CAO issues third monitoring report for LCT-01
- February 2022 – Final report of the "Rapport sur les causes de l'érosion côtière entre 1955 et 2019" study issued

- October 2022 – Signature of agreements between LCT and coastal communities outlining commitment to support community development as part of the Project’s CSR program
- November 2022 – SSV conducted, including meeting with the LCT-01 complainants
- December 2022 – CAO informs IFC is has received a new complaint from the *Collectif des personnes victimes d’érosion côtière* and found it eligible for assessment
- February 2023 – IFC calls with CAO Eligibility Team and Investigation Team to discuss LCT-03

## **Disclaimer**

This IFC Management Response is provided in response to the Assessment Report of the Office of the Compliance Advisor Ombudsman (CAO) finding a complaint to a project supported by IFC finance or investment eligible for compliance appraisal.

Nothing in this IFC Management Response or in the process provided for in the CAO Policy (“CAO Process”) (1) creates any legal duty, (2) asserts or waives any legal position, (3) determines any legal responsibility, liability, or wrongdoing, (4) constitutes an acknowledgment or acceptance of any factual circumstance or evidence of any mistake or wrongdoing, or (5) constitutes any waiver of any of IFC’s rights, privileges, or immunities under its Articles of Agreement, international conventions, or any other applicable law. IFC expressly reserves all rights, privileges, and immunities. IFC does not create, accept, or assume any legal obligation or duty, or identify or accept any allegation of breach of any legal obligation or duty by virtue of this IFC Management Response.

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### **Appendix 3: Background on LCT Complaints to CAO**

The complaint subject of this compliance appraisal is the third CAO has received in relation to the LCT project. There are two prior complaints. Togo: LCT-02/Lomé is currently in a CAO-led dispute resolution process and is not directly pertinent to this compliance appraisal. The LCT project was also subject to a CAO compliance investigation in 2016 (LCT-01 complaint). The LCT-01 case has a direct bearing on this compliance appraisal process.

#### **LCT-01 Complaint:**

In March 2015, the Collectif submitted a complaint to CAO, identifying as a group of coastal settlers negatively impacted by the construction of the LCT container terminal. The complainants raised concerns about land erosion and a lack of consultation and information about the project. Issues related to the project's Environmental and Social Impact Assessment (ESIA) were also raised. A CAO assessment of the complaint, completed in August 2015, further describes the following as alleged impacts of the project according to the complainants:

- Loss of land and destruction of their houses, which has left them physically displaced;
- Loss of farms, coconut plantations, and places for tourism activities, which formed the basis of their livelihoods;
- Changes in sea levels along the coastline, making previous fishing activities difficult;
- Loss of religious sites like divinity houses or other places of cultural importance to the communities;
- Loss of local infrastructure, including royal palaces, community halls, market places, schools, wells and roads;
- Lack of identification as affected communities in the ESIA of the project, resulting in a lack of consultation and disclosure of information.

#### **CAO Compliance Investigation:**

In January 2016, CAO published Terms of Reference (ToR) for a compliance investigation, which state that the compliance investigation will consider whether IFC's investment in the client was appraised, structured and supervised in accordance with applicable IFC policies, procedures and standards; and whether IFC's Policy and Performance Standards on Environmental and Social Sustainability and Policy on Disclosure of Information as applied to this project provide an adequate level of protection. Specific investigation questions were set out as follows: 1. Was IFC's review of community consultation around the ESIA process adequate, particularly as relates to the communities represented by the complainants? 2. Was IFC's supervision of the client's monitoring of the coastal erosion risk during and post construction adequate, in particular after becoming aware of the complainants' concerns?

CAO's compliance investigation, completed in October 2016, made a number of findings in relation to IFC's E&S appraisal and supervision of the project. Regarding IFC's appraisal, CAO concluded:

- **Review of the client's E&S Assessment:** IFC's E&S review did not identify coastal erosion as a risk of the project, although the ESIA acknowledged potential erosion impacts during construction and describes the history of coastal erosion since the port was constructed in the 1960s. CAO found IFC noncompliant with the 2006 Sustainability Policy on this issue. Further, CAO found that Performance Standard (PS1) requirements in relation to cumulative impact assessment were applicable and should have been addressed expressly in IFC's E&S review. CAO also noted that IFC did not review the credentials and experience of the consultants who prepared the ESIA, nor the methodology used to assess the project's potential impacts on coastal erosion.
- **Disclosure and Consultation:** CAO noted that IFC's review of the client's disclosure and consultation focused on the two groups that were economically and/or physically displaced by the project. IFC did not assure itself that information was disseminated by the client to other potentially affected communities in a manner that met the requirements of PS1. The lack of consultation and disclosure of information to communities living within the area of influence did not meet IFC's PS1 requirements.
- **Action Plan:** CAO noted that the ESIA describes mitigation measures to be taken regarding the erosion risk, but the Action Plan did not include such actions. CAO found IFC to be noncompliant with the requirement to ensure that the Action Plan met the requirements of PS1. CAO also noted that IFC did not assure itself that the client disclosed the Action Plan to affected communities or that it included a structure for reporting to affected communities.

Regarding IFC's supervision of the project CAO acknowledged that IFC and its client agreed on actions regarding the project's impacts on coastal erosion in February 2016. However, CAO found these actions insufficient in several respects, including serving as a timely response to the concerns (coming more than three years after project construction began and IFC became aware of the concerns). Additionally, IFC did not have sufficient grounds to be assured that the client's support for an academic institution to fund coastal erosion research met the requirement for environmental assessment under PS1. There was also no agreed action for consultation and disclosure required by PS1. IFC did not seek assurance that agreed actions were developed following consultation with, or disclosure to affected communities as required by PS1. Similarly, the revised Action Plan lacks a mechanism for external reporting as required by PS1. IFC's decision to rely on the Government of Togo and Port of Lomé authorities to address complainants' concerns was not supported by an appropriate assessment of those entities' commitment or capacity to address the issues. CAO found that IFC has not provided advice which would bring the client back into compliance as per the Sustainability Policy.

#### **IFC Response to CAO Investigation:**

IFC's response to CAO's investigation report indicated that the ESIA did not foresee adverse effects from the construction of the spur groyne, and the project has not been shown to have caused such impacts. IFC agrees with CAO that local communities could have been consulted on erosion issues and possible solutions given that the potential for minor erosion impacts for a short period post construction of the spur groyne was not entirely excluded, even if it never materialized.

IFC further explained that it does not agree with CAO's statement that there is a causal link between the project and erosion. It asserted that no such link has been established by either the project ESIA or subsequent independent technical reports commissioned respectively by IFC or CAO. IFC states that, for this reason, it takes a different view from CAO as to any obligations of the project under PS1 with respect to erosion impacts.

Finally, IFC indicated that it recognized there was an opportunity to make systems level changes, such as updating the EHS Guidelines for Ports, Harbors and Terminals with a new section which provides useful guidance in relation to the assessment of project impacts on coastal processes and land erosion, as well as commitments to use technical expertise in other projects where coastal erosion may be an issue. IFC further indicated that IFC and its client are committed to being part of a multi-stakeholder process to find solutions to the problem of coastal erosion.

**CAO Monitoring:**

CAO monitoring reports were issued in March 2018, April 2019 and August 2021. A fourth monitoring report is expected in calendar year 2023. CAO's monitoring reports acknowledge IFC efforts to address issues of coastal erosion at the systems level. However, CAO indicates that it has not found that complainants' concerns have been addressed in accordance with IFC requirements. Of particular concern, CAO highlights that erosion impacts associated with the project due to its reliance on the Port of Lomé infrastructure continue to affect complainants. In order to resolve this issue in accordance with IFC requirements, CAO asserts that it will be necessary for IFC to work with LCT to determine possible remediation measures. CAO further notes that it will be necessary for IFC to ensure completion of the outstanding assessment of project erosion impacts in accordance with PS1 and that this includes the requirement to consult with affected communities based on prior disclosure of assessment reports as well as any associated action plans.

In summary, CAO is of the view that IFC must:

- Assure completion of the outstanding assessment of project erosion impacts in accordance with PS1: a) project contribution to erosion; b) impact assessment; c) consultation with communities;
- Comply with disclosure requirements related to E&S information including: (a) the final version of the coastal erosion study of April 2020, (b) any revised version of the coastal erosion study, and (c) the updated ESAP (following PS1 2006, paras. 20 & 26);
- Determine possible remediation measures to address erosion impacts associated with the project.

## Appendix 4: Additional Appraisal Considerations

The CAO Policy<sup>1</sup> provides for the compliance appraisal to take into account additional considerations, as outlined in the table below.

CAO Policy provision	Analysis for this case
For any project or sub-project where an IFC/MIGA exit has occurred at the time CAO completes its compliance appraisal, whether an investigation would provide particular value in terms of accountability, learning, or remedial action despite an IFC/MIGA exit (para. 92a).	Not applicable.
The relevance of any concluded, pending or ongoing judicial or non-judicial proceeding regarding the subject matter of the complaint (para. 92b).	Not applicable.
Whether Management has clearly demonstrated that it dealt appropriately with the issues raised by the Complainant or in the internal request and followed E&S Policies or whether Management acknowledged that it did not comply with relevant E&S Policies (para. 92c).	IFC has worked with its client to commission a study on the causes of coastal erosion to the east of the Port of Lomé. To date, the study has not been disclosed and IFC has not committed to ensuring that an assessment is conducted of the impacts of the project's contribution to coastal erosion or worked with the client on a remedial action plan. Consequently, CAO does not consider that Management has demonstrated that it has dealt appropriately with the issues raised in the complaint.
Whether Management has provided a statement of specific remedial actions, and whether, in CAO's judgment after considering the Complainant's views, these proposed remedial actions substantively address the matters raised by the Complainant (para. 92d).	Not applicable.

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<sup>1</sup> CAO Policy, paras. 92-93.

In relation to a project or sub-project that has already been the subject of a compliance investigation, CAO may: (a) close the complaint; (b) merge the complaint with the earlier compliance process, if still open, and the complaint is substantially related to the same issues as the earlier compliance process; or (c) initiate a new compliance investigation only where the complaint raises new issues or new evidence is available (para. 93).

CAO has concluded that the issues in LCT-01 and this complaint are substantially related and consequently this complaint will be merged into the compliance monitoring process for LCT-01.