



August 8, 2016

Office of the Compliance Advisor Ombudsman (CAO)

COMPLIANCE INVESTIGATION REPORT

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

Complaint 01

CAO Investigation of IFC's Environmental and Social Performance in relation to its Investment in Lomé Container Terminal (LCT), Togo

Office of the Compliance Advisor Ombudsman for the
International Finance Corporation (IFC) and the
Multilateral Investment Guarantee Agency (MIGA),
Members of the World Bank Group

About CAO

CAO's mission is to serve as a fair, trusted, and effective independent recourse mechanism and to improve the environmental and social accountability of IFC and MIGA.

CAO (Office of the Compliance Advisor Ombudsman) is an independent post that reports directly to the President of the World Bank Group. CAO reviews complaints from communities affected by development projects undertaken by the two private sector arms of the World Bank Group, the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA).

CAO's compliance function oversees investigations of IFC/MIGA's environmental and social performance, particularly in relation to sensitive projects, to ensure compliance with policies, standards, guidelines, procedures, and conditions for IFC/MIGA involvement, with the goal of improving IFC/MIGA environmental and social performance.

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

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Executive Summary

This report provides the findings of the Compliance Advisor/Ombudsman (CAO) investigation of IFC's investment in Lomé Container Terminal (LCT) in Togo. LCT was awarded a concession by the Government of Togo to develop, construct and operate a greenfield transshipment container terminal within the Port of Lomé in Togo. Construction works started in 2012 and the terminal has been operational since October 2014.

IFC approved an investment in LCT in January 2011. IFC initially invested € 82.5 million for its own account, and mobilized an additional € 142.5 million from other lenders. A follow-on investment of € 10 million was approved in August 2015.

In March 2015, a complaint was lodged with CAO by the “Collectif des personnes victimes d'érosion côtière” (Collective of victims of coastal erosion), representing a group of settlers living to the east of the port who claim to be negatively impacted by the project. The complainants allege that the project is contributing to an acceleration of coastal erosion impacting their communities. Issues related to the project's Environmental and Social Impact Assessment (ESIA) are also raised. The complainants also state that they are not satisfied with the outcomes of meetings they had with the World Bank office in Lomé in 2014.

Historical background

Togo has had a coastal erosion issue for several decades. This phenomenon has been acknowledged as a direct consequence of several factors, including major infrastructure developments between 1960 and 1967, such as the Akosombo dam in Ghana and the Port of Lomé, which have led to profound changes to the sedimentary dynamics in the Gulf of Guinea. Impacts can be seen from the eastern coast of Ghana to Benin, including along the entire coast of Togo. Other factors such as exceptional natural events and climate change, as well as the specific geomorphology of the coast, are acknowledged as contributing to coastal erosion. In the past decade, the Government of Togo has developed a national approach to address the issue of coastal erosion.

As part of the construction of the new Port of Lomé which took place between 1964 and 1967, a 1.7 km long breakwater was constructed in the ocean. This breakwater has considerably affected sedimentary transport along the coast, forming a sand accumulation zone to the west of the port, and leading to coastal erosion to the east. This erosion zone stretches out on approximately 40 km to the east of the port.

A number of studies acknowledge that coastal erosion represents a major threat to vulnerable coastal communities, and more generally to the economic development of the country. The coast is occupied by communities that have been settling there for decades, but this population is rapidly growing within an area that is limited in size. This growth of coastal populations has been accelerated by important migrations from inland areas to coastal villages and towns.

Compliance Investigation Methodology

From January to May 2016, the CAO investigation team, including CAO staff and independent experts, reviewed IFC's documentation of the investment, gathered information through interviews with IFC staff with direct knowledge and/or responsibilities for the project, and gathered information during a field visit to Lomé, Togo. Interviews were conducted both in-person and by phone. Relevant secondary material was gathered using internet searches, or provided by some

of the interviewees. CAO also commissioned an independent technical review of project documentation relating to coastal erosion, including the project ESIA.

As noted in the Terms of Reference for this investigation, CAO aims at answering the following specific investigation questions:

- Was IFC's review of community consultation around the ESIA process adequate, particularly as relates to the communities represented by the complainants?
- 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?

Summary of CAO's Analysis and Findings

IFC's E&S Appraisal of the Project

- Review of the client's E&S Assessment

CAO notes that IFC's E&S review did not identify coastal erosion as an E&S risk of the project, although the ESIA: (a) acknowledges a potential impact of the project on erosion during construction, and (b) describes the history of coastal erosion since the port was constructed in the 1960s. Acknowledging that erosion has been a long-standing issue in the region, CAO finds that IFC did not consider "significant historical social or environmental impacts associated with the project," and did not "work with [the client] to determine possible remediation measures" as required by the 2006 Sustainability Policy (para. 13).

Further, CAO finds that PS1 requirements in relation to cumulative impact assessment were applicable and should have been addressed expressly in IFC's E&S review. During the process of identifying environmental and social risks and impacts, a cumulative impact assessment would have (a) recognized that the project may contribute to cumulative impacts on valued environmental and social components on which other existing or future developments may also have detrimental effects; and (b) avoided and/or minimized these impacts to the greatest extent possible. This process would have been undertaken in consultation with affected communities and stakeholders, and led to the development of plans to manage cumulative impacts, appropriate monitoring indicators, and effective supervision mechanisms.

CAO also notes 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. Rather, IFC relied on the consultancy's international presence and its past experience with the Port of Lomé. On this basis, and considering the results of the technical review of the ESIA commissioned by CAO as part of this investigation, CAO finds that IFC did not assure itself that the ESIA represented an "adequate, accurate and objective presentation of the issues, prepared by qualified and experienced persons," as required by PS1 (para. 7).

Considering these shortcomings, CAO finds that IFC's pre-investment E&S review of the project was not compliant with the requirements of the 2006 Sustainability Policy.

- Disclosure and Consultation

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

the direct area of influence of the project (1.5 km to the east of the port), and the broader area of influence, as per the definition provided in the ESIA. While IFC's documentation reports that availability of project documentation was advertised in a local newspaper, CAO finds this insufficient to provide assurance of compliance with PS1 requirements for disclosure to and consultation with affected communities. In particular, it does not meet the requirement for consultation to be "undertaken in a manner that is inclusive and culturally appropriate" (para. 21).

CAO finds that the lack of consultation and disclosure of information to communities living within the area of influence, did not meet IFC's PS1 requirement to ensure that the consultation process is undertaken with communities that "may be subject to risks or adverse impacts from a project ... in a manner that provides the affected communities with opportunities to express their views on project risks, impacts, and mitigation measures, and allows the client to consider and respond to them" (para. 21). IFC's view, as expressed to CAO, was that consultation with these communities was not necessary because no significant impacts were expected to the east of the port. However, CAO finds that consultation was required with communities located within the area of influence to the east of the port, whether or not significant impacts were expected.

- Action Plan

CAO notes that the ESIA describes mitigation measures to be taken, including measures that aimed at mitigating the impacts of construction activities on coastal erosion to the east of the port. Despite potential negative impacts and mitigation measures identified in the ESIA, the Action Plan agreed between IFC and its client did not include actions in relation to the mitigation and monitoring of coastal erosion risks. As these mitigation measures were not included in the SESAP, the issue of coastal erosion was not included in the client's E&S reporting to IFC, nor in IFC's monitoring of the project. In this context, it is unclear whether the erosion mitigation measures recommended in the ESIA were implemented or their effectiveness monitored.

CAO finds IFC to be non-compliant with the requirement to ensure that an Action Plan "describe[s] the actions necessary to implement the various sets of mitigation measures or corrective actions to be undertaken" including a timeline for their implementation, as required by PS1 (para. 16). CAO further finds that, as a consequence of the absence of consultation with potentially affected communities living in the erosion zone, IFC did not ensure that the client developed an Action Plan that "reflect[ed] the outcomes of consultation on social and environmental risks and adverse impacts and the proposed measures and actions to address these" (*Ibid.*). Finally, CAO finds 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 (PS1, paras. 16 & 26).

IFC's Supervision of the Project

CAO notes that IFC's supervision activities throughout the life of the project have focused on the client's development and implementation of the RAPs for market gardeners and sand miners, and the client's management of biodiversity issues (turtle and mangrove management plans). This is due to the fact that coastal erosion was not considered as a potential impact by IFC at the time of appraisal.

CAO acknowledges that IFC and its client agreed on actions regarding the project's impacts on coastal erosion in February 2016. However, CAO finds these actions insufficient in a number of respects.

First, these agreed actions do not represent a timely response to the issues, coming more than three years after the commencement of construction, and more than two years after IFC became aware of concerns regarding the project's impacts on coastal erosion.

Second, while welcoming the agreement between the client and an academic institution to fund research on coastal erosion, CAO finds that the MoU does not provide sufficient assurance that the analysis will meet the requirement for environmental assessment by the client under PS1 (paras 4ff). CAO also notes that there is no timeline for the production of this research.

Third, the agreed actions do not specify the need for consultation and disclosure required by PS1 (paras 20ff).

Fourth, IFC has not sought assurance that the revised Action Plan has been developed following consultation with, or disclosed to affected communities as required by PS1. Similarly, the revised Action Plan lacks a mechanism for external reporting (paras. 16 & 26).

Fifth, IFC's decision to rely on the Government and Port Authority of Lomé (PAL) to handle the concerns raised by the complainants was not supported by an appropriate assessment of their commitment or capacity to address the issues. It also lacked a framework for monitoring or follow up that would provide feedback on whether concerns regarding project related impacts were being addressed.

In this context, CAO finds that IFC has not assured itself that the client is responding "to community concerns about the project" or engaging in consultation "on an ongoing basis as risks and impacts arise", as per the requirements of PS1 (paras. 21 & 23). Further, CAO finds that IFC has not provided advice which would bring the client back into compliance as per the Sustainability Policy (para. 26).

Conclusion and Observations

CAO has identified a number of non-compliances in IFC's appraisal and supervision of the LCT project, particularly as relates to: (a) the identification and management of potential risks and impacts of the project on coastal erosion, and (b) stakeholder engagement around these issues.

While IFC and its client agreed on actions relevant to the analysis of the project's impact on coastal erosion in February 2016, CAO finds that these agreed actions do not fully reflect the requirements of the Performance Standards for environmental assessment and community engagement.

While acknowledging that the project is not solely or primarily responsible for coastal erosion in the area to the east of the port, CAO finds that further environmental and social assessment is required to provide assurance of compliance with the IFC Performance Standards. To the extent that social or environmental impacts of the project are confirmed through the assessment process, the Performance Standards provide for the development of measures to mitigate impacts. In relation to community engagement, CAO acknowledges the role that actors other than the IFC client may play in conducting consultations with affected communities. At the same time, IFC has a residual obligation to ensure that community engagement in relation to project impacts meets Performance Standard requirements.

In light of the non-compliance findings contained in this report, CAO will keep this investigation open for monitoring, and will issue a monitoring report no later than a year after publication of this investigation. CAO will monitor the situation until actions taken by IFC assure CAO that IFC is addressing the non-compliances. As part of this monitoring, CAO will review and verify whether IFC ensures that the client's agreed actions regarding the project's impacts on coastal erosion, included in the February 2016 Action Plan, are being implemented in accordance with the Performance Standards.

Overview of CAO's Compliance Process

CAO's approach to its compliance mandate is set out in its Operational Guidelines (March 2013).

When CAO receives an eligible complaint, it first undergoes an assessment to determine how it should respond. If CAO's compliance function is triggered, CAO will conduct an appraisal of IFC's/MIGA's involvement in the project, and determine if an investigation is warranted. CAO's compliance function can also be triggered by the World Bank Group President, the CAO Vice President or senior management of IFC/MIGA.

CAO compliance investigations focus on IFC/MIGA, and how IFC/MIGA assured itself of a project's E&S performance. The purpose of a CAO Compliance investigation is to ensure compliance with policies, standards, guidelines, procedures, and conditions for IFC/MIGA involvement, and thereby improve the institution's E&S performance.

In the context of a CAO compliance investigation, at issue is whether:

- the actual E&S outcomes of a project are consistent with or contrary to the desired effect of the IFC/MIGA policy provisions; or
- a failure by IFC/MIGA to address E&S issues as part of the appraisal or supervision resulted in outcomes contrary to the desired effect of the policy provisions.

In many cases, in assessing the performance of a project and implementation of measures to meet relevant requirements, it is necessary to review the actions of the IFC client and verify outcomes in the field.

CAO has no authority with respect to judicial processes. CAO is neither a court of appeal nor a legal enforcement mechanism, nor is CAO a substitute for international court systems or court systems in host countries.

Upon finalizing a compliance investigation, IFC/MIGA is given 20 working days to prepare a public response. The compliance investigation report, together with any response from IFC/MIGA is then sent to the World Bank Group President for clearance, after which it is made public on CAO's website (www.cao-ombudsman.org).

In cases where IFC/MIGA is found to be out of compliance, CAO keeps the investigation open and monitors the situation until actions taken by IFC/MIGA assure CAO that IFC/MIGA is addressing the non-compliance. CAO will then close the compliance investigation.

I. Background to IFC's Investment in Lomé Container Terminal

IFC's Roles and Objectives

As set out in IFC's Sustainability Policy, "Central to IFC's development mission are its efforts to carry out its investment operations and advisory services in a manner that "do no harm" to people or the environment. Negative impacts should be avoided where possible, and if these impacts are unavoidable, they should be reduced, mitigated or compensated for appropriately. In particular, IFC is committed 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. IFC believes the client's regular engagement with local communities about matters that directly affect them plays an important role in avoiding or reducing harm to people and the environment."¹

The Sustainability Policy further describes IFC client's roles and responsibilities. In particular, it states that "in its operations, IFC expects clients to manage the social and environmental risks and impacts of their projects. This entails the client's assessment of these risks and impacts, and implementation of measures to meet the requirements of the Performance Standards. An important component of the client's management of its social and environmental performance is the client's engagement with the affected communities through disclosure of relevant project information, consultation, and informed participation."²

Investment

According to IFC's Summary of Proposed Investment³ (SPI), Lomé Container Terminal SA (LCT or the client), a locally incorporated company, was awarded a 35 year concession by the Government of Togo, with an optional 10 year extension, to develop, construct and operate a greenfield transshipment container terminal within the Port of Lomé in Togo.

Construction works for the project included:⁴

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

A map of the project's key features is presented in Annex 1. Construction works started in 2012 and the terminal has been operational since October 2014. Further expansion of the terminal, south of the newly constructed port basin, including an extension of the spur groin to 600 meters, is envisaged in the longer term.

According to IFC, LCT is held by a joint-venture between Global Terminal Limited (GTL) and China Merchants Holding International (CMHI). GTL is wholly-owned by Terminal Investment Limited (TIL). The terminal is jointly operated by TIL and CMHI.

The project was estimated to cost € 324 million, of which € 225 million was to be financed with senior debt. IFC initially invested € 82.5 million for its own account, and mobilized the balance of

¹ IFC Policy on Social and Environmental Sustainability, para. 8, April 2006

² IFC Policy on Social and Environmental Sustainability, para. 10, April 2006

³ IFC, Summary of Proposed Investment, Togo LCT, November 2010 - <http://goo.gl/q66sDI>

⁴ IFC, Environmental and Social Review Summary, Togo LCT, November 2010 - <http://goo.gl/tyTvwo>

€ 142.5 million from other lenders.⁵ The project was classified as Category ‘A’.⁶ A follow-on investment of € 10 million for IFC’s own account was approved in August 2015 to contribute to the financing of additional equipment.

II. Background to the CAO Compliance Investigation

The Complaint and CAO Assessment

In March 2015, a complaint was lodged with CAO by the “Collectif des personnes victimes d’érosion côtière” (Collective of victims of coastal erosion, “the Collective”), a group of settlers living to the east of the port who claim to be negatively impacted by the project.⁷ The complainants allege that the project is contributing to an acceleration of coastal erosion impacting their communities. Issues related to the project’s Environmental and Social Impact Assessment (ESIA) are also raised. The complainants also state that they are not satisfied with the outcomes of meetings they had with the World Bank office in Lomé in 2014.

A CAO assessment of the complaint, completed in August 2015,⁸ 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;
- Further, the complainants state that they were never identified as affected communities in the ESIA of the project, that they were not consulted and information was not disclosed to them.

The CAO assessment also documents the client’s view that there is no indication that the project is the cause of the erosion, or of the acceleration of the erosion that is presented by the complainants.

Historical background

Coastal erosion in Togo

Togo has had a coastal erosion issue for several decades, which has led to a significant receding of the coastline.

This phenomenon has been acknowledged as a direct consequence of several factors, including major infrastructure developments between 1960 and 1967, such as hydroelectric projects (e.g. the Akosombo dam on the Volta River in Ghana) and the construction of the Port of Lomé, which have led to profound changes to the sedimentary dynamics in the Gulf of Guinea. Impacts can be seen from the eastern coast of Ghana to Benin, including along the entire coast of Togo. Due to

⁵ IFC, Press Release, January 9, 2013 - <http://goo.gl/SbWOiK>

⁶ According to IFC’s Sustainability Framework, Category A projects are those with potential significant adverse social or environmental risks and/or impacts that are diverse, irreversible or unprecedented.

⁷ Complaint lodged with CAO by the “Collectif des personnes victimes d’érosion côtière”, March 2015 - <http://goo.gl/A4rBX4>

⁸ CAO Assessment Report, Togo LCT-01, August 2015 - <http://goo.gl/QfIIBZ>

the current from west to east prevailing along the Togolese coast, which drains an important volume of sediments from the Volta River, two opposite morphodynamic behaviors arise. To the west of the Port of Lomé, an area of sedimentary accumulation is formed, while a considerable phenomenon of coastal erosion appears to the east of the port. Other factors such as exceptional natural events and climate change, as well as the specific geomorphology of the coast, are acknowledged as contributing to coastal erosion.⁹

Literature about the phenomenon of coastal erosion describes significant social and environmental impacts it has had, including:

- Loss of human settlements (coastal villages);
- Loss of land, plantations, and coastal infrastructure (roads, houses, hotels, etc.);
- Loss of socio-economic infrastructure and disruption of economic activities, such as fishing.¹⁰

Since major impacts due to coastal erosion were recorded in the 1980s, the Government of Togo has implemented measures in several areas of the coast, such as the construction of breakwaters to protect infrastructure and locations of economic interest that were immediately threatened (e.g. wharf of Kpémé and town of Aného).¹¹

In the past decade, the Government of Togo has developed a national approach to address the issue of coastal erosion. In particular, the fight against coastal erosion has been formally acknowledged as a priority in national strategic documents; laws to protect the coast; regulations in relation to environmental and social impact assessments; regulations in relation to environmental audits; regulations in relation to sand mining activities on the Togolese coast.

The Ministry of Environment, Government of Togo, is responsible for implementing a National Program of Fight against Coastal Erosion, which was developed in 2007. The primary objectives of the program are to protect sectors that are threatened by coastal erosion, and to monitor and evaluate the consequences of coastal erosion.¹²

The Port of Lomé

As shown on Figure 1 below, as part of the construction of the new Port of Lomé which took place between 1964 and 1967, a 1.7 km long breakwater was constructed in the ocean. This breakwater has considerably affected sedimentary transport along the coast, forming a sand accumulation zone to the west of the port, and leading to coastal erosion to the east.¹³ This erosion zone stretches out on approximately 40 km to the east of the port. At the time when the Port of Lomé was being designed, serious impacts on coastal erosion were expected, and the decision to move forward with the construction of the port was taken in knowledge of this.¹⁴ The port is administered by the Port Authority of Lomé (PAL), a state-owned enterprise.

⁹ Lomé Container Terminal, ESIA, September 29, 2010 - <http://goo.gl/vfsqX4>

¹⁰ Source: Georges Rossi, Coastal erosion and man's behavioral response in Togo, Bulletin de l'Association de géographes français, Volume 68, No. 3

¹¹ *Ibid*

¹² Lomé Container Terminal, ESIA, September 29, 2010 - <http://goo.gl/vfsqX4>

¹³ *Ibid*

¹⁴ *Ibid*

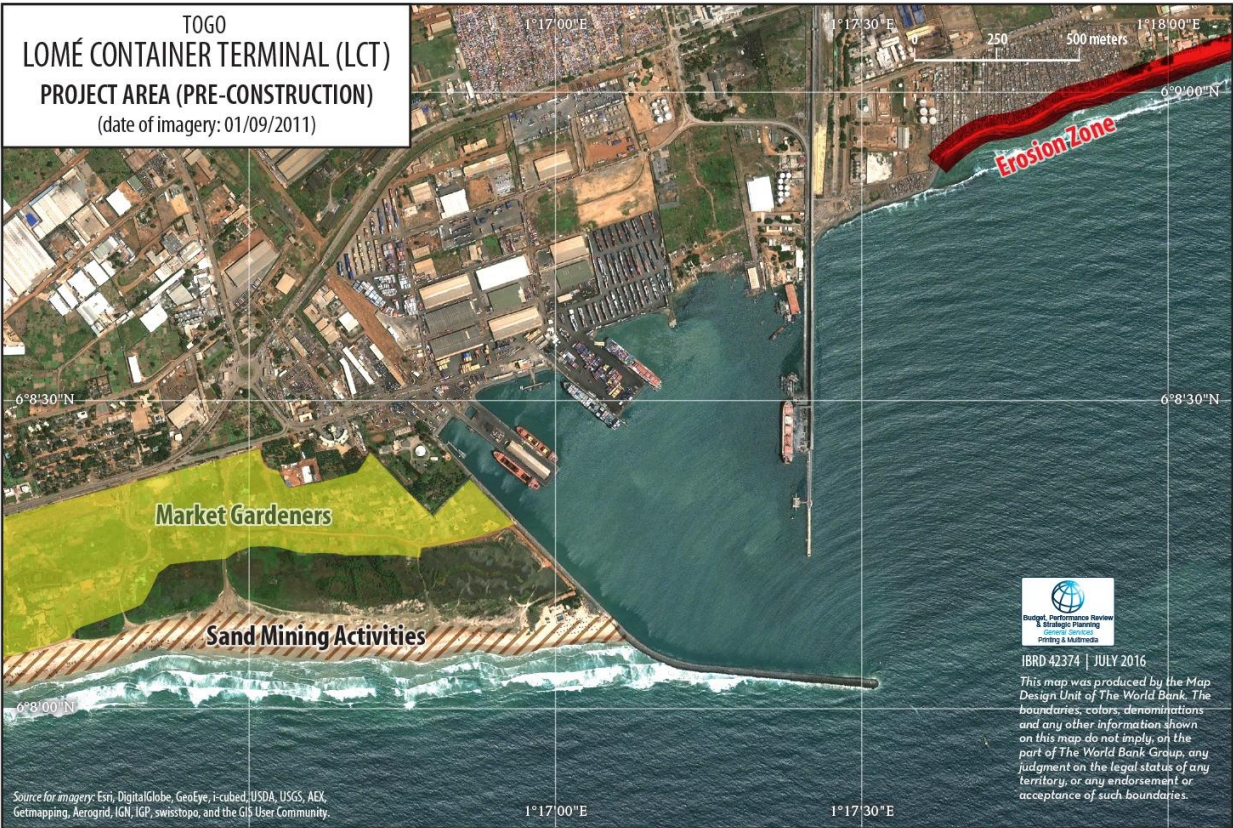


Figure 1 – Map of the port of Lomé before LCT project (source: World Bank Group)

Characterization of the communities living to the east of the port

Coastal areas in Togo comprise more than 2.5 million inhabitants, i.e. 42% of the total population, including more than 1.7 million inhabitants living in the prefectures of Golfe and Lacs, which together cover the erosion zone located to the east of the Port of Lomé.¹⁵ Communities living in this area typically work in secondary or tertiary sectors (commerce, industries, public administration), but also live on agriculture and fishing activities, which are predominant activities for populations living on the coast.¹⁶

A number of studies acknowledge that coastal erosion represents a major threat to vulnerable coastal communities, and more generally to the economic development of the country. For these reasons, it also creates social tensions within the communities, which consider that they have been left to their fate.¹⁷ The coast is occupied by communities that have been settling there for decades, but this population is rapidly growing within an area that is limited in size. This growth of coastal populations has been accelerated by important migrations from inland areas to coastal villages and towns.¹⁸

¹⁵ Source: World Bank
¹⁶ Source: Inros Lackner, 2014
¹⁷ *Ibid*
¹⁸ *Ibid*

Investigation Terms of Reference

In November 2015, CAO released a compliance appraisal report in relation to the complaint.¹⁹ CAO has identified questions as to the adequacy of IFC's E&S review and supervision of the project, and has thus decided to conduct a compliance investigation of IFC's E&S performance in relation to this investment.

In January 2016, CAO published Terms of Reference (ToR) for this compliance investigation (see Annex 3). The ToR 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. It will also consider whether IFC's Policy and Performance Standards on Environmental and Social Sustainability and Policy on Disclosure of Information as applied to this project provide an adequate level of protection.

The ToR further note the following specific investigation questions:

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

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

In considering the adequacy of IFC's E&S performance in relation to this investment, CAO does not determine performance with the benefit of hindsight. Rather, the standard for each requirement reviewed is whether IFC's actions were based on reasonable professional judgment and care in the application of the relevant policies, in the context of contemporaneously available sources of information and considering the evolution of the project.

Compliance Investigation Methodology

From January to May 2016, the CAO investigation team, including CAO staff and independent experts, reviewed IFC's documentation of the investment, gathered information through interviews with IFC staff with direct knowledge and/or responsibilities for the project, and gathered information during a field visit to Lomé, Togo.

The CAO team met with:

- The IFC project team;
- Client management and staff;
- Members of the Collective and other representatives of communities affected by coastal erosion;
- Representatives of the Ministry of Environment and the National Agency for Environmental Management (ANGE);
- Independent experts who have knowledge of the project and of the issue of coastal erosion in Togo more generally.

CAO did not meet with representatives of the Port Authority of Lomé (PAL). A meeting was requested but representatives were not available at the time of CAO's visit.

Interviews were conducted both in-person and by phone. Relevant secondary material was gathered using internet searches. Secondary materials were also provided by some of the interviewees.

¹⁹ CAO Compliance Appraisal Report, Togo LCT-01, November 2015 - <http://goo.gl/hKDgF2>

CAO also commissioned an independent technical review of project documentation relating to coastal erosion, including the project ESIA.

Applicable IFC Policy and Performance Standards

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

The PS establish standards that the IFC client is expected to meet throughout the life of IFC's investment. Clients are also required to comply with applicable aspects of national law.²⁰

IFC implements the commitments set out in the Sustainability Policy through its Environmental and Social Review Procedures (ESRP), which are updated periodically. The LCT investment was approved under ESRP version 4.0²¹ and supervised under the subsequent updated versions of the ESRP.

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

²⁰ IFC Policy on Social and Environmental Sustainability, Introduction, April 2006

²¹ IFC Environmental and Social Review Procedures, version 4.0, August 2009

III. Analysis of IFC's Environmental and Social Appraisal of the Project

At the pre-investment stage, IFC reviews the E&S risks and impacts of a proposed investment and agrees with the client on measures to mitigate these risks in accordance with the Performance Standards. For the purpose of this compliance investigation, a key question is **whether IFC's review of the client's E&S assessment and community consultation around the ESIA process was adequate.**

Pre-Investment Requirements

E&S Review Requirements

As required by the Sustainability Policy, IFC's E&S review should be "appropriate to the nature and scale of the project, and commensurate with the level of the E&S risks and impacts" (para. 13). In conducting the E&S review, IFC is expected to give adequate consideration to the "E&S risks and impacts ... as assessed by the client" and "the commitment and capacity of the client to manage these expected impacts". IFC should ensure that the "client's E&S assessment meet[s] the requirements of PS1", and if not, IFC is expected to require the client to undertake or commission additional assessment(s) (para. 15).

IFC should consider "significant historical social or environmental impacts associated with the project, including those caused by others", and "work with its client to determine possible remediation measures" (para. 13). IFC also considers the client's "track record" in relation to E&S issues.²² A central principle of the Sustainability Policy is that "IFC does not finance new business activity that cannot be expected to meet the Performance Standards over a reasonable period of time" (para. 17).

Performance Standard 1 requires that the client's E&S assessment is "adequate, accurate and objective" and prepared by "appropriately qualified and experienced persons" (para. 7). Relevant to the issues raised in the complaints, PS1 further requires the E&S assessment to analyze risks and impacts "in the context of the project's area of influence, [particularly] areas potentially impacted by cumulative impacts from further planned development of the project, any existing project or condition, and other project-related developments that are realistically defined at the time the E&S assessment is undertaken" (para. 5).

Disclosure and Consultation Requirements

According to the 2006 Policy on Disclosure of Information, an Environmental and Social Review Summary (ESRS) must be disclosed 60 days prior to consideration by the IFC Board for category 'A' projects. Along with the ESRS, IFC must "make available electronic copies of, and where available, web links to any relevant social and environmental impact assessment documents prepared by or on behalf of the client, including the Action Plan" (para. 13(a)).

PS1 further states that "where the client has undertaken a process of E&S Assessment, the client will publicly disclose the Assessment document. If communities may be affected by risks or adverse impacts from the project, the client will provide such communities with access to information on the purpose, nature and scale of the project, the duration of proposed project activities, and any risks to and potential impacts on such communities. For projects with adverse social or environmental impacts, disclosure should occur early in the E&S Assessment process and in any event before the project construction commences, and on an ongoing basis" (PS1 para. 20).

²² ESRP 3, para.3.2.3, version 1, April 2006.

The client is required to consult with communities who “may be subject to risks or adverse impacts from [the] project”. “Effective consultation” should be “based on the prior disclosure of relevant and adequate information, including draft documents and plans”, and “begin early in the E&S assessment process”. The process of consultation should be undertaken “in a manner that provides the affected communities with opportunities to express their views on project risks, impacts, and mitigation measures, and allows the client to consider and respond to them”. PS1 further states that this process should be “undertaken in a manner that is inclusive and culturally appropriate” and tailored to the language preferences, decision making structures and needs of disadvantaged and vulnerable groups (PS1 para. 21).

Action Plan Requirements

PS1 states that “where the client identifies specific mitigation measures and actions necessary for the project ... to meet the requirements of PS 1 through 8, the client will prepare an Action Plan”. The Action Plan should “describe the actions necessary to implement the various sets of mitigation measures or corrective actions to be undertaken”. It should also be “disclosed to the affected communities ... and describe the schedule and mechanism for external reporting on the client’s implementation of the Action Plan” (PS1 para. 16).²³

IFC’s E&S Appraisal of the Project

IFC’s early review of the project in January 2010 was based on a draft version of the Environmental and Social Impact Assessment (ESIA) prepared by an external consultant for the client. The early review identified a range of E&S risks and impacts, including land acquisition and potential economic and/or physical displacement. Other risks included waste management, hazardous materials, occupational health and safety, noise, dust and air emissions. IFC’s early assessment also noted that the cumulative impacts of the construction and operation of the project along with other ports investments in the region would have to be further assessed. IFC’s early E&S assessment of the project did not mention risks or impacts in relation to coastal erosion.

Subsequent IFC documentation in May and September 2010 underscores that market gardeners and sand miners operating in the area of the project would be displaced, and noted that the client was preparing resettlement action plans (RAP) for these two groups.

A revised version of the ESIA²⁴ was completed by the external consultant in September 2010. This was submitted by the client to the Government of Togo and approved leading to the grant of a Certificate of Environmental Compliance (“Certificat de Conformité Environnementale”) for the project in October 2010. In addition to the construction of the container facility within the existing Port of Lomé, the project as described in the ESIA includes the construction of a 300-meter spur groin, the filling of an area of coastline adjacent to the port, and the dredging of the port basin and access channel.

The ESIA describes the project’s area of influence. It identifies a 1.5 km zone around the project site as the directly impacted area. It further describes broader areas that could be socio-economically or physically impacted by the project, including transportation ways, sand mining sites along the coast, and the erosion zone to the east of the port.

The ESIA provides a detailed historical description of coastal erosion since the Port of Lomé was built in the 1960s, and analyzes the potential impacts of the project on the evolution of coastal erosion in the area located to the east of the project site (where the complainants are located). Relevant for the purposes of this investigation, the ESIA states that:

²³ See also PS1, para. 26.

²⁴ Lomé Container Terminal, ESIA, September 29, 2010 - <http://goo.gl/vfsqX4>

- Initial studies made before the construction of the Port of Lomé in the 1960s showed that it would have an important impact on coastal erosion.
- The selection of an alternative site for the project would cause more erosion than the chosen site.
- Consultation meetings were held with market gardeners and sand miners affected by the project.
- A slight exacerbation of coastal erosion could not be excluded immediately after the construction of the spur groin.
- Impacts on coastal erosion during the operation phase were not expected.
- As part of the Environmental and Social Management Plan (ESMP), construction activities, such as the dumping of demolition materials and dredged sediments in the erosion zone, were identified as measures which could mitigate erosion risks.
- It was recommended that the efficacy of these measures be monitored.

IFC reported to CAO that during its pre-investment E&S due diligence, the team looked at the sections of the ESIA related to coastal erosion, and considered that the project was not expected to have negative impacts on erosion. As a result, an impact on coastal erosion was not documented as a risk in IFC's E&S review.

More generally, IFC reported that at due diligence stage, its practice is to rely on a project's ESIA. In this case, IFC noted that the ESIA was prepared by an internationally recognized firm, and that it considered it to be of sufficient quality to raise the key project risks with proposed mitigation measures. CAO notes that in conducting its E&S review of the project, IFC did not engage with the consultants who prepared the ESIA, nor did it assess the qualifications and experience of the consultants, or the methodology used to assess coastal erosion impact.

IFC carried out an E&S appraisal visit to the project site in October 2010. The purpose of the visit was to meet with project-affected communities. IFC met with a range of stakeholders, including government officials and other relevant public and private entities, but did not meet with communities other than market gardeners. IFC's documentation reports that the IFC team was not able to meet with sand miners. IFC reported to CAO that it did not meet with communities living to the east of the port, and did not plan to do so at the time, as the focus of its due diligence was on the two groups that were expected to be significantly impacted as defined in the ESIA.

On November 2, 2010, IFC disclosed a Summary of Proposed Investment (SPI)²⁵ and an Environmental and Social Review Summary (ESRS)²⁶ for the project. The information disclosed shows that the project was categorized as 'A', meaning that it had potential significant adverse social or environmental risks and/or impacts that are diverse, irreversible or unprecedented.²⁷ The rationale for this categorization emphasizes 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.

As relevant to the issues considered in this compliance investigation, the ESRS states that the draft ESIA, completed in February 2010, was comprehensive, included a consultation process with project-affected people, and proposed steps to mitigate potential environmental and social impacts. It also noted that the final ESIA was in the process of being revised following input from the public consultation and would then be resubmitted to the Ministry of Environment. CAO notes that at the time of disclosure of the ESRS, the final ESIA had already been finalized and approved by the Ministry of Environment. However, according to the ESRS, IFC based its review of the

²⁵ IFC, Summary of Proposed Investment, Togo LCT, November 2010 - <http://goo.gl/q66sDI>

²⁶ IFC, Environmental and Social Review Summary, Togo LCT, November 2010 - <http://goo.gl/tyTvwo>

²⁷ IFC Policy on Social and Environmental Sustainability, para. 18, April 2006

project on a previous version of the ESIA from February 2010. The ESRS does not mention the issue of coastal erosion.

Along with the ESRS, IFC disclosed the project's ESIA dated September 2010, the RAPs for sand miners and market gardeners, and a Supplemental Environmental and Social Action Plan (SESAP) to the ESIA. Among the requirements included in the disclosed SESAP,²⁸ the client was expected to develop an E&S Management System (ESMS) using the action plan drawn from the ESIA as a base. The client was also expected to develop a community engagement plan and a grievance mechanism as part of its ESMS, for each stage of the project. These actions were to be completed before IFC's first disbursement.

IFC's documentation reports that the client had published an announcement in a local newspaper in December 2010, advertising the availability of IFC's ESRS and the project ESIA at LCT's headquarters for a period of thirty days. CAO notes that the project ESIA documents consultations with specific groups, in particular with sand miners and market gardeners, but does not mention broader consultation in the erosion zone.

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

CAO's Assessment of IFC's Performance

Review of the client's E&S Assessment

CAO notes that IFC's E&S review did not identify coastal erosion as an E&S risk of the project, although the ESIA: (a) acknowledges a potential impact of the project on erosion during construction, and (b) describes the history of coastal erosion since the port was constructed in the 1960s. Acknowledging that erosion has been a long-standing issue in the region, CAO finds that IFC did not consider "significant historical social or environmental impacts associated with the project," and did not "work with [the client] to determine possible remediation measures" as required by the 2006 Sustainability Policy (para. 13).

Further, CAO finds that PS1 requirements in relation to cumulative impact assessment were applicable and should have been addressed expressly in IFC's E&S review. During the process of identifying environmental and social risks and impacts, a cumulative impact assessment would have (a) recognized that the project may contribute to cumulative impacts on valued environmental and social components on which other existing or future developments may also have detrimental effects; and (b) avoided and/or minimized these impacts to the greatest extent possible. This process would have been undertaken in consultation with affected communities and stakeholders, and led to the development of plans to manage cumulative impacts, appropriate monitoring indicators, and effective supervision mechanisms.²⁹

CAO also notes 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. Rather, IFC relied on the consultancy's international presence and its past experience with the Port of Lomé. Further, the technical review of the ESIA against good international industry practice commissioned by CAO, noted that the ESIA does not include a quantified estimate of the

²⁸ Supplemental Environmental and Social Action Plan to the ESIA - <http://goo.gl/rPp6iZ>

²⁹ IFC, Good Practice Handbook: Cumulative Impact Assessment and Management: Guidance for the Private Sector in Emerging Markets, August 2013 - <http://goo.gl/yS15MS>

impact of the spur groin on coastal erosion to the east of the port, and concluded that a number of aspects in relation to coastal erosion were insufficiently analyzed and/or documented (including the characteristics of the dredged materials that were supposed to be used for the replenishment of the coast, and the effectiveness of this as a mitigation measure). Considering the above factors, CAO finds that IFC did not assure itself that the ESIA represented an “adequate, accurate and objective presentation of the issues, prepared by qualified and experienced persons,” as required by PS1 (para. 7).

Considering these shortcomings, CAO finds that IFC’s E&S review of the project was not compliant with the requirements of the 2006 Sustainability Policy. In particular, IFC’s review was not appropriate to the nature and scale of the project, and was not commensurate with the level of E&S risks and impacts (para. 13). Further, CAO finds that additional assessment of the erosion risk posed by the project was required under the Sustainability Policy (2006, para. 15).

Disclosure and Consultation

CAO notes that IFC’s review of the client’s disclosure and consultation focused on the two groups that were economically and/or physically displaced by the project (sand miners and market gardeners). IFC did not assure itself that information was disseminated by the client to other potentially affected communities in a manner that met the requirements of PS1. Although the ESIA identified potential impacts on erosion during the construction phase, IFC did not ensure that the client’s consultation activities covered potentially affected communities living in the erosion zone to the east of the port. This despite the fact that these groups were located within the direct area of influence of the project (1.5 km to the east of the port), and the broader area of influence, as per the definition provided in the ESIA. While IFC’s documentation reports that availability of project documentation was advertised in a local newspaper, CAO finds this insufficient to provide assurance of compliance with PS1 requirements for disclosure to and consultation with affected communities. In particular, it does not meet the requirement for consultation to be “undertaken in a manner that is inclusive and culturally appropriate” (para. 21).

CAO finds that the lack of consultation and disclosure of information to communities living within the area of influence, did not meet IFC’s PS1 requirement to ensure that the consultation process is undertaken with communities that “may be subject to risks or adverse impacts from a project ... in a manner that provides the affected communities with opportunities to express their views on project risks, impacts, and mitigation measures, and allows the client to consider and respond to them” (para. 21). IFC’s view, as expressed to CAO, was that consultation with these communities was not necessary because no significant impacts were expected to the east of the port. However, CAO finds that consultation was required with communities located within the area of influence to the east of the port, whether or not significant impacts were expected. Because the ESIA noted potential impacts on coastal erosion during the construction phase, this issue should have been further analyzed, and effective consultation and disclosure of information to potentially affected communities should have been required.

Action Plan

CAO notes that the ESIA describes mitigation measures to be taken, including measures that aimed at mitigating the impacts of construction activities on coastal erosion to the east of the port. Despite potential negative impacts and mitigation measures identified in the ESIA, the Action Plan agreed between IFC and its client did not include actions in relation to the mitigation and monitoring of coastal erosion risks. As these mitigation measures were not included in the SESAP, the issue of coastal erosion was not included in the client’s E&S reporting to IFC, nor in IFC’s monitoring of the project. In this context, it is unclear to CAO whether the measures recommended in the ESIA were implemented or their effectiveness monitored.

Therefore, CAO finds IFC to be non-compliant with the requirement to ensure that an Action Plan “describe[s] the actions necessary to implement the various sets of mitigation measures or corrective actions to be undertaken” including a timeline for their implementation, as required by PS1 (para. 16). CAO further finds that, as a consequence of the absence of consultation with potentially affected communities living in the erosion zone, IFC did not ensure that the client developed an Action Plan that “reflect[ed] the outcomes of consultation on social and environmental risks and adverse impacts and the proposed measures and actions to address these” (*Ibid.*). Finally, CAO finds 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 (PS1, paras. 16 & 26).

IV. Analysis of IFC’s Environmental and Social Supervision of the Project

Once a 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 applicable policies and standards. For the purpose of this compliance investigation, a key question is **whether IFC’s supervision of the client’s monitoring of coastal erosion risks during and post construction met these requirements, in particular after becoming aware of the complainants’ concerns.**

Supervision Requirements

IFC is required to monitor its client’s E&S performance throughout the life of the investment. As set out in the ESRP, “the purpose of E&S supervision is to develop and retain the information needed to assess the status of compliance with the Performance Standards (PS), general and sector-specific Environmental Health and Safety (EHS) Guidelines, and the Environmental and Social Action Plan (ESAP or Action Plan)”.³⁰

The 2006 Sustainability Policy states that if a client fails to comply with its E&S commitments as expressed in the Action Plan or legal agreement, IFC is committed to “work with the client to bring it back into compliance to the extent feasible, and if the client fails to reestablish compliance, exercise remedies when appropriate” (para. 26).

PS1 requires IFC to ensure that its client “monitors and measures the effectiveness of [its] management programs, ... use[s] dynamic mechanisms, such as inspections and audits, where relevant, ... [and adjusts] monitoring ... according to performance experience and feedback” (para. 24).

Further, a client is required to “respond to community concerns related to the project” (PS1, para. 23). If the client anticipates ongoing risks to or adverse impacts on affected communities, the client is required to establish a grievance mechanism (*Ibid.*). The “grievance mechanism “should be scaled to the risks and adverse impacts of the project”, and “address concerns promptly, using an understandable and transparent process that is culturally appropriate and readily accessible to all segments of the affected communities” (*Ibid.*).

PS1 further requires that consultation be “carried out on an ongoing basis as risks and impacts arise” (para. 21). In this regard, it requires the client to “disclose periodic reports that describe progress with implementation of the Action Plan on issues that involve ongoing risk to or impacts

³⁰ ESRP 6, para.1, version 5, August 16, 2010.

on affected communities, and on issues that the consultation process or grievance mechanism has identified as of concern to those communities” (para. 26).

IFC’s E&S Supervision of the Project

IFC’s supervision of its investment in LCT commenced in 2011 and is documented in annual reviews of the client’s monitoring reports, and supervision site visits.

In March 2011, IFC conducted a site visit to assist the African Development Bank (AfDB) in their appraisal of the project as a future lender. IFC’s documentation reports that AfDB was expected to look at broader impacts of the project, including on fishermen and coastal erosion. There is no indication in the information disclosed by AfDB that such a review was conducted.

In 2011 and 2012, IFC had numerous interactions with the client regarding the implementation of the SESAP, particularly as relates to actions that were to be implemented prior to IFC’s first disbursement. These actions included the development of an ESMS; the implementation of an enhanced Environmental and Social Management Plan (ESMP); the selection of an independent consultant to carry out a semi-annual verification of the implementation of the client’s E&S requirements; several updates and enhancements of the RAPs for market gardeners and sand miners; and the development of a turtle and mangrove management plan.

Following a site visit in March 2012, IFC reported that public authorities involved in the E&S monitoring of the project were facing a number of challenges, including in terms of budget and capacity. IFC thus noted that the lenders would have to rely on their own supervision missions, information provided by the client, and E&S monitoring by the client’s external consultant, to manage the project’s E&S performance.

In November 2012, IFC reported that the conditions of first disbursement for the loan were met, and disbursement was made in December 2012. Eight subsequent disbursements were made in 2013, 2014, 2015, and 2016.

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

Following a supervision visit in November 2013, IFC notified the client that the issue of coastal erosion had been raised, and asked if it had any documentation or information in relation to this issue. In response, IFC was informed that the client had previously met a delegation from the World Bank regarding this issue, and that several studies were or would be conducted in relation to coastal erosion in the region. No specific action was reported by IFC following this exchange.

In May 2014, IFC conducted a supervision visit, following which it reported that the client’s development of a Stakeholder Engagement Plan (SEP) and a Community Development Plan (CDP) were well overdue and needed to be developed.

In 2014, following receipt of several complaint letters by the World Bank office in Togo from the Collective (in March, August, and September 2014), and meetings between the Collective and World Bank staff in Lomé, the World Bank notified IFC of these complaints.

In October 2014, the IFC Country Manager sent a letter to the complainants to explain the LCT project and the ESIA process that was conducted. The Country Manager also sent a letter to the

Ministry of Public Works, which is responsible for port infrastructure, to request a meeting in order to discuss this issue.

In November 2014, IFC held several meetings in Lomé with representatives of the World Bank, the Government, the Port Authority of Lomé (PAL), Togolese public agencies and other lenders. Neither the client nor the complainants attended these meetings. IFC's documentation in relation to these meetings does not make a judgement on the merits of the complaints received from the Collective, but reports that it was agreed that any future complaints should be directed to the Ministry of Environment and the PAL for action, and not to the World Bank or IFC. IFC reported to CAO that complaints related to coastal erosion *per se* should be sent to the Ministry of Environment, while complaints related more specifically to the Port of Lomé should be sent to the PAL. IFC did not meet with the complainants or the communities they represent, as it was agreed with the Government that IFC should not have to handle these complaints. According to IFC, this decision was justified by the fact that coastal erosion is a regional problem that cannot be managed by a single stakeholder, such as the IFC client, and that erosion has not yet been shown to be caused by the project.

IFC states that during the same visit, the client brought to its attention a study conducted by an external consultant for the Ministry of Environment, identifying measures in the short, medium and long term to fight coastal erosion. This study mentions the construction of the LCT project, and describes the impacts induced by the construction of the 300-meter spur groin. In particular, it states that the construction of the spur groin has resulted in an increase of the erosion phenomenon to the east of the port, as sediments accumulate to the west of the port. It further notes that sediments will move towards the erosion zone only once the sand has accumulated to the end of the spur groin. In this context, it concludes that protection measures are necessary in the short term to avoid a continuous loss of land to the east of the port.

Following this visit, IFC recommended that LCT start looking at different options to better assess the contribution of the 300-meter spur groin on coastal erosion. IFC advised CAO that the client did not take action after this recommendation was made.

A follow-on investment of € 10 million was approved in August 2015 to fund additional equipment for the port, such as additional cranes, tractors, chassis, and container handlers.

Starting from April 2015, in the context of a potential project of extension of the spur groin to 600 meters, IFC had discussions with the client to include an assessment of the impact on coastal erosion as part of the ToR for the ESIA for the extension. IFC reported to CAO that the client agreed with this recommendation and expected to have a strong consultation component to ensure the quality of the upcoming ESIA.

During a supervision visit in November 2015, IFC asked the client to enter into a partnership with a competent institution in order to assess the impacts of the existing spur groin since construction to date.

In February 2016, IFC and the client agreed upon an updated version of the SESAP. In particular, two items were added for immediate action. Before further disbursement, the client was required to:

- Engage with academic institutions and/or other agencies to better assess the contribution of the spur groin on coastal erosion (e.g. graduate student);
- Integrate in the Terms of Reference (ToR) of the ESIA for the future spur groin expansion a robust assessment of the impact on coastal erosion, including cumulative impacts. These ToR should be acceptable to IFC.

At the time of writing, IFC reported to CAO that the client was in the process of engaging with a local academic institution to support research on coastal erosion. It further reported that it had had several interactions with the client in the past year regarding the ToR for the new ESIA for a potential extension of the spur groin, specifically in relation to the coastal erosion issue. However, the expansion project being on hold, IFC noted that this SESAP item should not impede disbursement. Considering the latter and that the client had signed a Memorandum of Understanding (MoU) with a Togolese academic institution to support research on the historical impacts of the port, the impacts of the spur groin since it was constructed, and cumulative impacts of other infrastructure developments, IFC cleared these two items in May 2016 prior to the final disbursement of the additional facility to the client.

CAO's Assessment of IFC's Performance

CAO notes that IFC's supervision activities throughout the life of the project have focused on the client's development and implementation of the RAPs for market gardeners and sand miners, and the client's management of biodiversity issues (turtle and mangrove management plans). This is due to the fact that coastal erosion was not considered as a potential impact by IFC at the time of appraisal.

CAO acknowledges that IFC and its client agreed on actions regarding the project's impacts on coastal erosion in February 2016. However, CAO finds these actions insufficient to fully bring the client back into compliance, in a number of respects.

First, these agreed actions do not represent a timely response to the issues, coming more than three years after the commencement of construction, and more than two years after IFC became aware of concerns regarding the project's impacts on coastal erosion.

Second, while welcoming the agreement between the client and an academic institution to fund research on coastal erosion, CAO finds that the MoU does not provide sufficient assurance that the analysis will meet the requirement for environmental assessment by the client under PS1 (paras 4ff). CAO also notes that there is no timeline for the production of this research.

Third, the agreed actions do not specify the need for consultation and disclosure required by PS1 (paras 20ff).

Fourth, IFC has not sought assurance that the revised Action Plan has been developed following consultation with, or disclosed to affected communities as required by PS1. Similarly, the revised Action Plan lacks a mechanism for external reporting (paras. 16 & 26).

Fifth, IFC's decision to rely on the Government and PAL to handle the concerns raised by the complainants was not supported by an appropriate assessment of their commitment or capacity to address the issues. It also lacked a framework for monitoring or follow up that would provide feedback on whether concerns regarding project related impacts were being addressed.

In this context, CAO finds that IFC has not assured itself that the client is responding "to community concerns about the project" or engaging in consultation "on an ongoing basis as risks and impacts arise", as per the requirements of PS1 (paras. 21 & 23). Further, CAO finds that IFC has not provided advice which would bring the client back into compliance as per the Sustainability Policy (para. 26).

V. Conclusion and Observations

CAO has identified a number of non-compliances in IFC's appraisal and supervision of the LCT project, particularly as relates to: (a) the identification and management of potential risks and impacts of the project on coastal erosion, and (b) stakeholder engagement around these issues.

Commencing in the pre-investment phase, CAO finds that IFC's E&S review was not appropriate to the nature and scale of the project, or commensurate with the level of the E&S risks and impacts. In particular, CAO finds that IFC did not give adequate consideration to the potential of the project to contribute to coastal erosion, although this was flagged as a risk in the ESIA and noted as a long-standing issue in relation to the port. As a consequence, IFC did not ensure that potentially affected communities living in the erosion zone were included in disclosure and consultation activities as required by PS1.

Further, in relation to the project's potential impact on coastal erosion, CAO finds that IFC did not assure itself that the client met the requirement under PS1 to produce an E&S assessment that was "adequate, accurate and objective", and prepared by "appropriately qualified and experienced persons". IFC is also found to be non-compliant with requirements ensure that the client prepared an Action Plan that described necessary mitigation measures or corrective actions to be undertaken, and that reflected the outcomes of a consultation process.

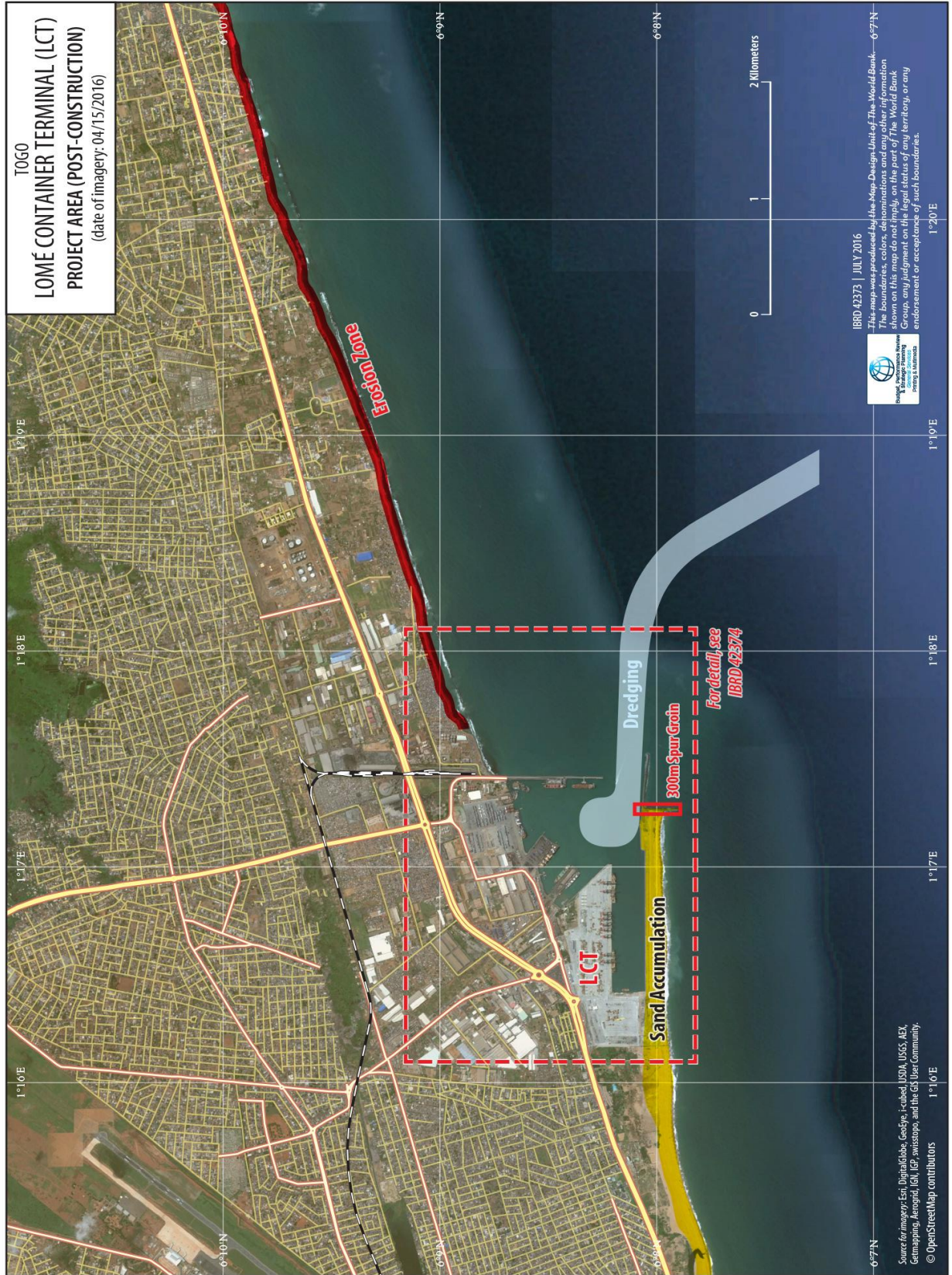
Considering IFC's supervision of the project, CAO finds that IFC has not ensured a timely response to the issues raised by the complainants. IFC's decision to rely on the third parties to handle this type of complaints was not accompanied by an analysis of the commitment and capacity of other stakeholders to address these concerns. Nor was it accompanied by the required assessment of the project's contribution to the phenomenon of coastal erosion.

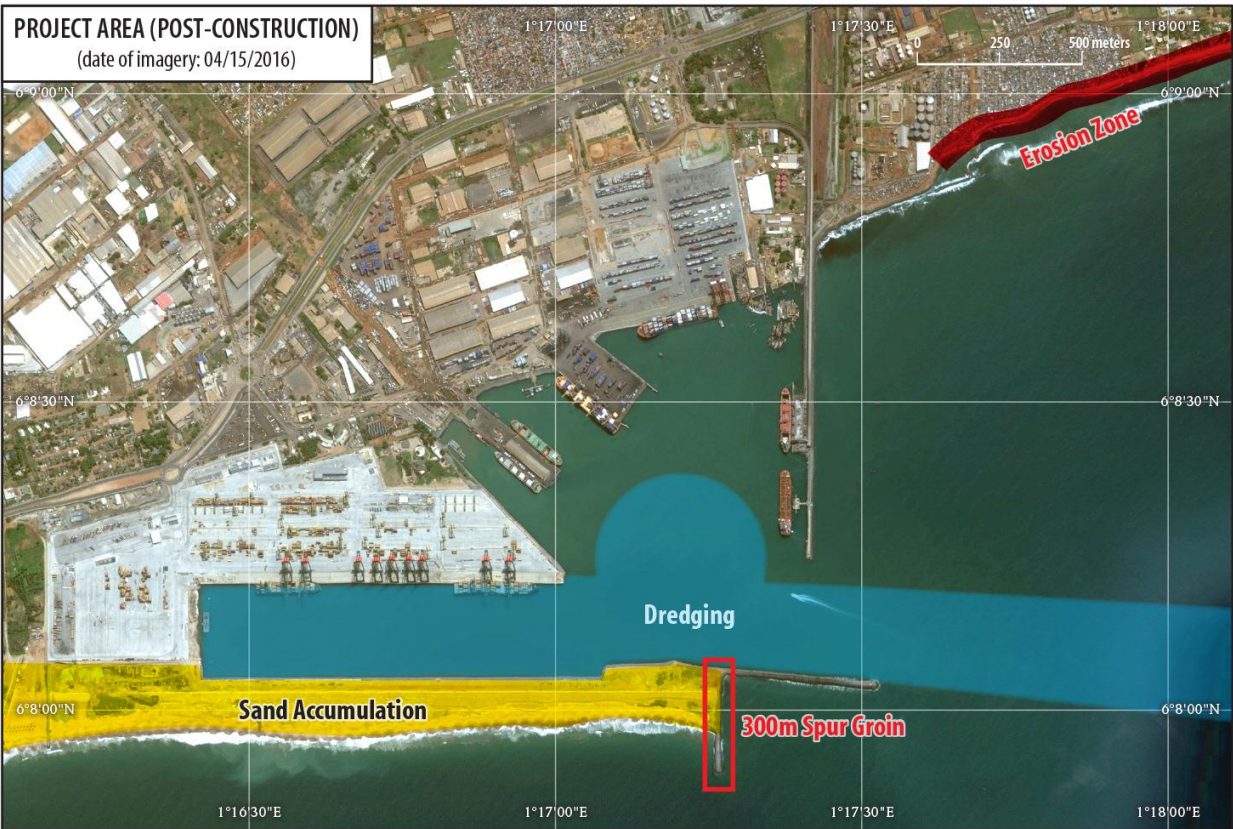
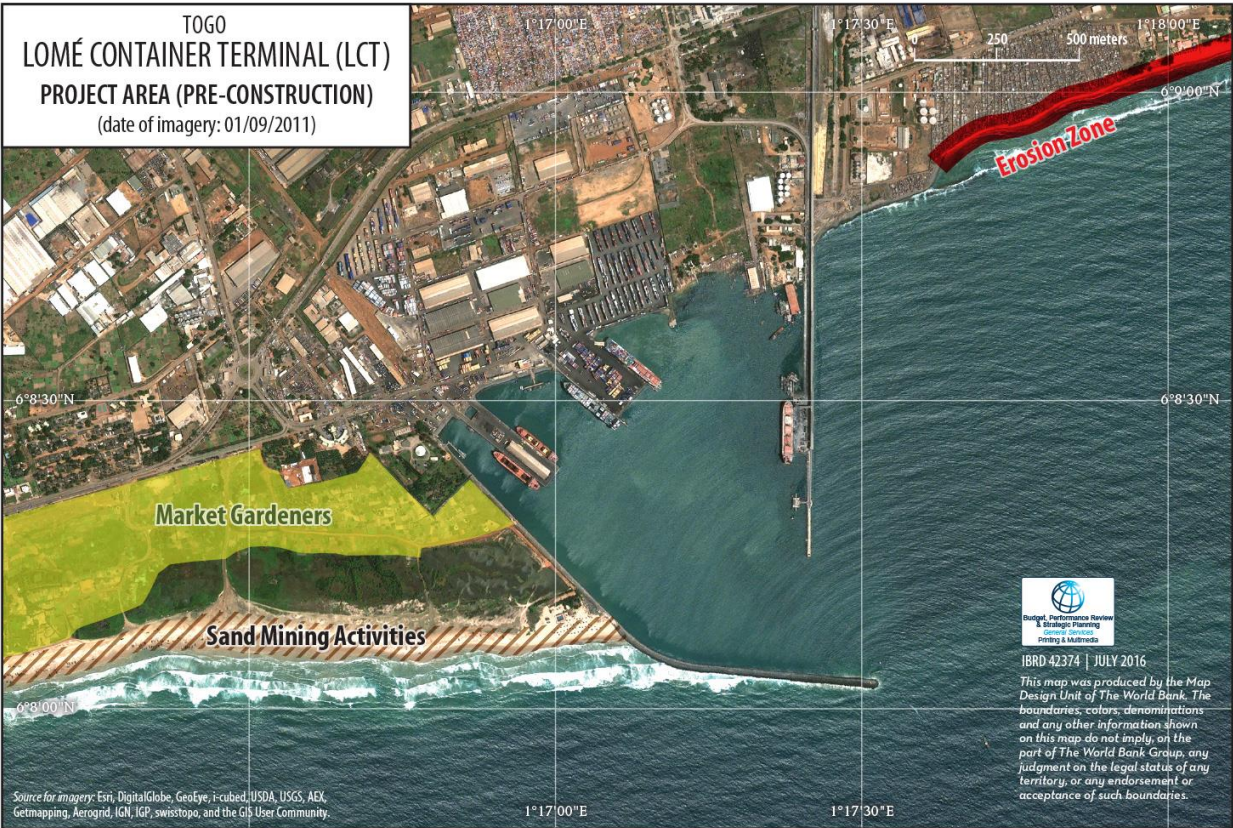
While IFC and its client agreed on actions relevant to the analysis of the project's impact on coastal erosion in February 2016, CAO finds that these agreed actions do not fully reflect the requirements of the Performance Standards for environmental assessment and community engagement.

In conclusion, while acknowledging that the project is not solely or primarily responsible for coastal erosion in the area to the east of the port, CAO finds that further environmental and social assessment is required to provide assurance of compliance with the IFC Performance Standards. To the extent that social or environmental impacts of the project are confirmed through the assessment process, the Performance Standards provide for the development of measures to mitigate impacts. In relation to community engagement, CAO acknowledges the role that actors other than the IFC client may play in conducting consultations with affected communities. At the same time, IFC has a residual obligation to ensure that community engagement in relation to project impacts meets Performance Standard requirements.

In light of the non-compliance findings contained in this report, CAO will keep this investigation open for monitoring, and will issue a monitoring report no later than a year after publication of this investigation. CAO will monitor the situation until actions taken by IFC assure CAO that IFC is addressing the non-compliances. As part of this monitoring, CAO will review and verify whether IFC ensures that the client's agreed actions regarding the project's impacts on coastal erosion, included in the February 2016 Action Plan, are being implemented in accordance with the Performance Standards.

Annex 1: Project Maps





Annex 2: Summary of CAO Findings

CAO FINDINGS

IFC's Environmental and Social Review of the Project

Review of the client's E&S Assessment:

- IFC did not consider “significant historical social or environmental impacts associated with the project,” and did not “work with [the client] to determine possible remediation measures” (2006 Policy, para. 13).
- PS1 requirements in relation to cumulative impact assessment were applicable and should have been addressed expressly in IFC's E&S review (para. 5).
- IFC did not assure itself that the ESIA represented an “adequate, accurate and objective presentation of the issues, prepared by qualified and experienced persons” (PS1, para. 7).
- IFC's review was not appropriate to the nature and scale of the project, and was not commensurate with the level of the E&S risks and impacts (2006 Policy, para. 13). Additional assessment of the erosion risk posed by the project was required (2006 Policy, para. 15).

Disclosure and Consultation:

- IFC did not assure itself that consultation included all communities that “may be subject to risks or adverse impacts from a project” (PS1, para. 21); which would have included communities in the erosion zone identified in the ESIA.
- IFC did not assure itself that information was disseminated by the client to potentially affected communities in a manner that met the requirements of PS1 or that consultation was “undertaken in a manner that is inclusive and culturally appropriate” (paras. 20 & 21).

Action Plan:

- IFC did not ensure that Action Plan agreed with the client “described the actions necessary to implement the various sets of mitigation measures or corrective actions to be undertaken”, including a timeline for their implementation (PS1, para. 16).
- As a consequence of the absence of consultation with potentially affected communities living in the erosion zone, IFC did not ensure that the client developed an Action Plan that “reflect[ed] the outcomes of consultation on social and environmental risks and adverse impacts and the proposed measures and actions to address these” (*Ibid*).
- IFC did not assure itself that the client disclosed the Action Plan to affected communities or that it included a structure for reporting to affected communities (PS1, paras. 16 & 26).

IFC's Supervision of the Project

- Actions agreed between IFC and the client do not provide assurance that analysis of the project's impact on erosion will meet PS1 requirements for environmental assessment by the client (paras 4ff).
- Actions agreed between IFC and the client do not specify the need for consultation and disclosure with communities in the erosion zone (PS1, paras 20ff).
- IFC has not sought assurance that the revised Action Plan has been developed following consultation with, or disclosed to affected communities. Similarly, the revised Action Plan lacks a mechanism for external reporting (PS1, paras. 16 & 26).
- IFC's decision to rely on the Government and PAL to handle the concerns raised by the complainants was not supported by an appropriate assessment of their commitment or capacity to address the issues. It also lacked a framework for monitoring or follow up that would provide feedback on whether concerns regarding project related impacts were being addressed.
- IFC has not assured itself that the client is responding "to community concerns about the project" or engaging in consultation "on an ongoing basis as risks and impacts arise", as per the requirements of PS1 (paras. 21 & 23). Further, IFC has not provided advice which would bring the client back into compliance as per the Sustainability Policy (para. 26).

Annex 3: CAO Investigation Terms of Reference

January 8, 2016

[...]

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

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

[...]

Scope of the compliance investigation

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

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

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

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

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

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

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

The scope of the compliance investigation also includes developing an understanding of the immediate and underlying causes for any non-compliance identified by the CAO.³¹

[...]

³¹ Full ToR available on CAO website - <http://goo.gl/ts1kgH>

Annex 4: Abbreviations and Acronyms

| Acronym | Definition |
|----------------|---|
| ANGE | National Agency for Environmental Management |
| CAO | Office of the Compliance Advisor Ombudsman (IFC and MIGA) |
| CDP | Community Development Plan |
| CSR | Corporate Social Responsibility |
| E&S | Environmental and Social |
| EHS | Environmental, Health and Safety |
| ESIA | Environmental and Social Impact Assessment |
| ESMP | Environmental and Social Management Plan |
| ESMS | Environmental and Social Management System |
| ESRS | Environmental and Social Review Summary |
| ESRP | Environmental and Social Review Procedures |
| IFC | International Finance Corporation |
| LCT | Lomé Container Terminal |
| MOU | Memorandum of Understanding |
| PAL | Port Autonome de Lomé (Lomé Port Authority) |
| PS | Performance Standards |
| RAP | Resettlement Action Plan |
| SEP | Stakeholder Engagement Plan |
| SESAP | Supplemental Environmental and Social Action Plan |
| SPI | Summary of Proposed Investment |
| TOR | Terms of Reference |

Annex 5: Photos from CAO's Field Visit to Villages Located to the East of the Port



View of Katanga, adjacent to the port



View of Gbetseogbe, 3 km east of the port



View of Baguida, 5 km east of the port



Example of domestic protection in Avépozo, 6 km east of the port



View of Kossi Agbavi, 15 km east of the port



Exemple of protection work constructed by the communities in Kossi Agbavi