



CAO PROGRESS REPORT – Togo/Togo LCT-02/Lomé

This report summarizes the progress of the CAO dispute resolution process in relation to the second complaint regarding Lomé Container Terminal (LCT), IFC project #29197 in Lomé, Togo.

February 26, 2019

BACKGROUND

The Complaint

A complaint was submitted to CAO in February 2018 by a local organization representing communities impacted by a major port development in Togo supported by IFC.

Lomé Container Terminal (LCT), an IFC client, was awarded a 35-year concession by the Government of Togo to develop, construct, and operate a greenfield transshipment container terminal within the Port of Lomé. According to IFC disclosures, IFC provided senior debt financing to the project of €85.5 million (about US\$100 million) for its own account and mobilized €170 million (about \$200 million) from other lenders. The project is classified by IFC as Category A, which indicates the potential for significant adverse environmental and social risks.

The complaint filed to CAO by *Mouvement Martin Luther King – La voix des sans voix (MMLK)*¹ was signed by six individuals representing the following community groups: market gardeners; women sand collectors; sand loaders; caterers; and lashing-men.² The complainants allege that LCT has not respected its commitments in relation to the project's Resettlement Action Plan (RAP). Some of the groups allege that the execution of the RAP did not respect the environmental and social frameworks of the World Bank Group, African Development Bank, or other national and international legal frameworks, including the Togolese Constitution and the Universal Declaration of Human Rights

(UDHR). The complainants further claim that the project has impoverished surrounding communities, and raise concerns regarding ambient pollution and health impacts to sand diggers,³ who worked on the site. The complaint also raises labor concerns regarding hiring practices, dismissals, and wages of lashing-men, who were hired by a subcontractor to conduct work for LCT.

CAO ASSESSMENT

CAO's assessment of the complaint involved a review of project documents and meetings with relevant stakeholders including the complainants and their representatives, LCT representatives, the IFC project team, and the Port Authority of Togo (PAL).

Subsequently, the community members and company agreed to try to resolve the issues collaboratively through a CAO dispute resolution process. CAO released an Assessment Report in August 2018 documenting the assessment process and next steps.

DISPUTE RESOLUTION PROCESS

As parties had expressed their desire to explore the dispute resolution function of the CAO, CAO commenced capacity building with all parties from August 20-24, 2018. One week prior, it came to CAO's attention that one of the five complainant groups, the lashing-men, had filed a legal claim

¹ MMLK is an association governed by the 1901 law whose purpose is to defend, protect and promote human rights in Togo, Africa and the world.

² Lashing-men are manual skilled dock workers who attach containers on ships.

³ Those who work essentially digging sand from the beach to put it into containers that will be carried mainly for construction purposes.

against Lomé Container Terminal (LCT) and Marine Lashing Services (MLS) in court. CAO facilitated discussions about the possible impacts that the court case could have on the mediation process moving forward with all the complainants. CAO also held bilateral meetings with the lashing-men on the matter. The committee representing all the lashing-men remained willing to try to resolve the issues through mediation with LCT. LCT has acknowledged the lashing men's decision to launch judicial proceedings. Accordingly, in LCT's view, the lashing men's issues need to be addressed and resolved within the judicial framework.

While the complainants' representatives of all five groups expressed that their ideal solution would be for all of the five complainant groups to go to mediation, the other four groups decided, in consultation with the lashing-men, that they would go ahead with the CAO dispute resolution process without the lashing-men. A joint meeting was held on September 6, 2018 between LCT and the four complainant groups where the parties confirmed their commitment to move forward with mediation without the lashing-men

The lashing men have, however, split since this decision was made by LCT to only address the issue of lashing men within the judicial framework. One hundred and two (102) members of the group have sent an official request to their lawyer to remove their names from the court case filed by the group against LCT and MLS. Their lawyer officially submitted this request to the courts at the end of December 2018. In addition, by mutual agreement of both MMLK and the lashing men, MMLK will no longer represent the lashing men that have withdrawn from the court proceedings as this pertains to the complaint lodged with CAO.

Those requesting to withdraw from the case claim that they took this action because, when they filed their case in court it was only against MLS, and other members of the group did not consult them in advance when the decision was taken to include LCT in the case. They have been made to understand that it is no longer possible to change the current case so that it is only against MLS and does not include LCT. As such, this group of lashing men requested that their names be removed from the complaint in court in the

hope that LCT would consider an amicable resolution to their issue.

For the purposes of the CAO process, all lashing men continue to be considered as part of the complaint. Pending any decision by the parties to handle the lashing men issue otherwise, this issue will be transferred to CAO Compliance on conclusion of the dispute resolution process. In addition, the group of lashing men that have withdrawn their case from court have informed CAO that they would like to also withdraw their complaint from the CAO process altogether because they have nothing against LCT.

As per CAO Operational Guidelines, complaint issues that are not resolved by agreement between the parties will be transferred to CAO's Compliance function upon conclusion of the dispute resolution process.

Other documentation relevant to this case is available on the CAO website: www.cao-ombudsman.org