



DECEMBER 2024

Compliance Appraisal of IFC Projects Africa Oil and Delonex Energy, Kenya

IFC Projects #36699 and #33557

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.

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:

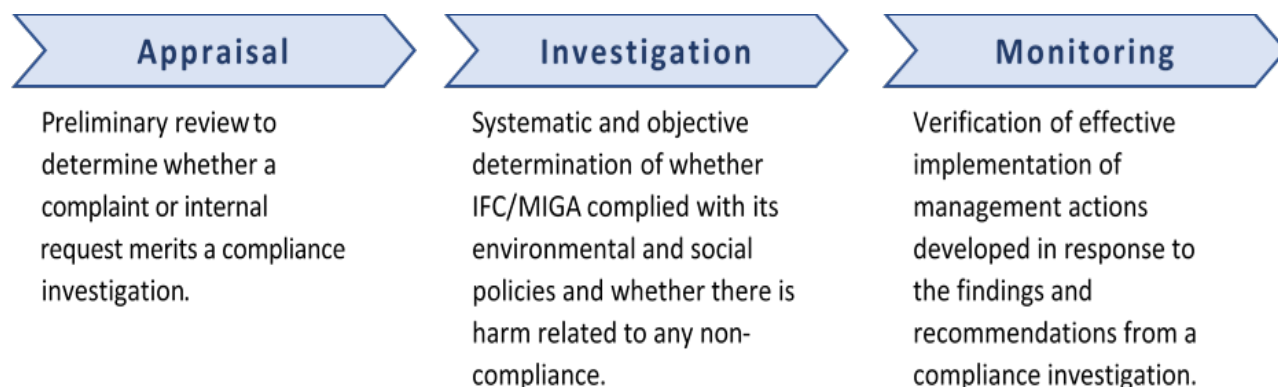


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Acronyms

Acronym	Definition
AOC	Africa Oil Corp
BCS	Broad Community Support
CAO	Office of the Compliance Advisor Ombudsman (IFC and MIGA)
CAO Policy	IFC/MIGA Independent Accountability Mechanism (CAO) Policy
Delonex	Delonex Energy UK Limited
E&S	Environmental and Social
ESAP	Environmental and Social Action Plan
ESDD	Environmental and Social Due Diligence
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
FPIC	Free, Prior, and Informed Consent
GBV	Gender-based Violence
ICP	Informed Consultation and Participation
IFC	International Finance Corporation
IMG	Independent Monitoring Group
JCAP	Justice and Corporate Accountability Project
KVCO	Kerio Valley Community Organization
MIGA	Multilateral Investment Guarantee Agency
PS	Performance Standards (IFC, 2012)
PS1	Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts
PS2	Performance Standard 2: Labor and Working Conditions
PS3	Performance Standard 3: Resource Efficiency and Pollution Prevention
PS4	Performance Standard 4: Community Health, Safety, and Security
PS5	Performance Standard 5: Land Acquisition and Involuntary Resettlement
PS6	Performance Standard 6: Biodiversity Conservation and Sustainable Management of Living Natural Resource
PS7	Performance Standard 7: Indigenous Peoples
PS8	Performance Standard 8: Cultural Heritage
SEP	Stakeholder Engagement Plan
SII	Summary of Investment Information
SSA	Site-Specific Assessment
Tullow	Tullow Kenya B.V.

Executive Summary

This report documents CAO's preliminary compliance review of a 2019 complaint about IFC's support to oil exploration companies Africa Oil Corp (AOC) and Delonex Energy UK Limited (Delonex). The complaint raised concerns about inadequate environmental and social (E&S) risk management resulting in harm to communities in the Kerio Valley, Kenya. *As set out in this appraisal report, CAO concludes that the complaint about IFC's Africa Oil and Delonex Energy projects does not merit a CAO compliance investigation.*

Context and IFC Projects

IFC made an equity investment of up to US\$60 million in Delonex in 2013 (IFC Project #33557) to support the acquisition, exploration, and development of Delonex's assets in its East and Central Africa portfolio, targeting opportunities driven by oil and gas exploration. In 2015, Delonex acquired working interest in Block 12A and in February 2018 took over as the operator from Tullow Kenya B.V. (Tullow), who had operated in Block 12A since 2010. In 2015, IFC made a \$50 million equity investment in AOC (IFC Project #36699) to support its oil and gas exploration activities primarily in Blocks 10BB and 13T in Kenya, and to provide working capital. Since 2010, AOC and Tullow held joint interests in six blocks in the Turkana Rift Basin, including Blocks 12A, 10BB, and 13T. IFC categorized both the Delonex and AOC projects as having potentially significant adverse environmental and/or social risks and impacts (Category A) and triggered all Performance Standards (PS).

Both AOC (via Tullow) and Delonex conducted exploration activities in Block 12A, a geographic area of 15,390 km² that spans parts of the counties of, among others, Baringo, Elgeyo Marakwet, and West Pokot, Kenya.

IFC exited from Delonex in June 2022 and retains a nominal equity interest in AOC.

The Complaint

In August 2019, CAO received a complaint from the Kerio Valley Community Organization (KVCO) on behalf of 140 community members from Baringo, Elgeyo Marakwet, and West Pokot counties in northern Kenya. In addition to KVCO, the complainants were supported by the Justice and Corporate Accountability Project (JCAP), a legal clinic based in Canada. The complaint raised concerns about the oil exploration activities of AOC and Delonex in Block 12A. Specifically, the complainants raised concerns relating to lack of information and stakeholder consultation; failure to address relevant project risks; breach of the IFC Sustainability Framework; and impacts on land, livelihoods, and the environment. Additional clarifications on complaint issues were made during CAO's assessment, including in relation to working conditions; community health, safety and security; informed consultation and participation; specific requirements relating to Indigenous communities; and cultural heritage.

In opting for a CAO dispute resolution process, the complainants, Delonex, and Tullow (in its capacity as observer) participated in CAO capacity building sessions and bilateral meetings between November 2020 and April 2021, and in an initial joint session facilitated by CAO in May 2021. AOC opted not to participate, explaining it had never operated Block 12A.

Tullow withdrew from the CAO-led dispute resolution process in November 2021. The process continued with Delonex and the complainants until August 2022, at which time the complainants decided to withdraw from the process. The complaint was subsequently transferred to CAO's compliance function for an appraisal in March 2023.

IFC Management Response

The IFC Management Response to the complaint acknowledges that the issues raised in the complaint are serious, and states that IFC complied with its E&S policies, including conducting the necessary due diligence and supervision relating to client compliance with IFC Performance Standards (PS). In this regard, IFC Management considers that there are no preliminary indications of non-compliance and that the appraisal criteria for CAO to initiate a compliance investigation are not met.

IFC states that, based on its due diligence and supervision of both clients throughout its investments, Delonex and AOC/Tullow implemented their E&S management systems and procedures in accordance with the PS regarding consultations with communities, establishing and managing a grievance mechanism, restoring land temporarily impacted as a result of the exploration activities, assessing impacts and providing compensation, and prioritizing employment for local communities. IFC highlights that no activities have been conducted in Block 12A since 2018 by Delonex or AOC/Tullow, and the companies have relinquished their interests in the block.

CAO did not receive a response from Delonex or AOC for consideration in this compliance appraisal.

CAO Analysis

According to the CAO Policy, the purpose of the compliance appraisal process is to determine whether a complaint merits an investigation by applying three criteria: a) whether there are preliminary indications of Harm or potential Harm; b) whether there are preliminary indications that IFC/MIGA may not have complied with its E&S Policies; and c) whether the alleged harm is plausibly linked to the potential non-compliance.

Based on an initial review of available information, CAO's appraisal concludes that the complaint meets the three criteria:

- a). There are preliminary indications of harm** to the complainants in relation to the concerns raised. Public studies, project documentation, and information provided by complainants lend sufficient plausibility and credibility to the complainants' allegations of harm. This includes, for example, information on alleged adverse impacts of oil exploration occurring in blocks neighboring 12A — including Blocks 10BB and 13T, in which AOC also held working interests — at the time AOC and Delonex were engaging in exploration activities in Block 12A. Additionally, project documentation cites notable challenges in relation to stakeholder engagement and compensation for land access and use, providing a basis to conclude the harm alleged in relation to these issues may have occurred.

- b). There are preliminary indications that IFC may not have complied with its E&S Policies,** specifically its responsibility to review and supervise the application of the Performance Standards by the clients to the operations of Block 12A. IFC supported the exploration activities in Block 12A between 2015 (when it took an equity position in AOC, which was a non-operating partner of the block) and 2022 (when Delonex sold its stake in the block). During 2015-2018, activities were carried out by a consortium of investors of which one – Tullow, followed by Delonex – took the lead as operator. In this context, available information and documentation suggests there may have been gaps in IFC’s E&S appraisal and supervision in relation to both investments.
- c). The alleged harm to the complainants is plausibly linked to IFC’s potential non-compliance,** based on CAO’s review of available documentation and information in consideration of the issues raised in the complaint. CAO has outstanding substantive questions regarding IFC’s compliance with its obligations under the Sustainability Policy, sufficient to satisfy the CAO Policy criterion for preliminary indications of potential IFC non-compliance. IFC actions and omissions in its E&S due diligence relating to its investments in AOC and Delonex, subject to further review during an investigation, could have resulted in unmitigated impacts in Block 12A consistent with allegations in the complaint. Consequently, CAO considers a plausible link is sufficiently established for the purposes of this appraisal.

Decision and Next Steps

IFC has exited from one of the two projects relevant in this appraisal, Delonex Energy. In accordance with paragraph 92a of the CAO Policy, CAO must consider whether an investigation would provide particular value in terms of accountability, learning, or remedial action despite IFC’s exit. While CAO acknowledges the seriousness of the harms alleged by the complainants, CAO is of the view that an investigation in this case would not provide particular value in terms of accountability and learning given the World Bank Group’s commitment to cease financing of upstream oil and gas projects as of 2019. CAO also notes the absence of a clear path for remedial action given IFC’s exit from Delonex and AOC’s exit from Block 12A and Kenya.

At the same time, CAO notes that local populations continue to highlight questions and concerns regarding continuing oil and gas exploration in Block 12A, including reports of recent evictions in the block. IFC could consider using its good offices to host a platform for engagement on these issues with all relevant stakeholders.

On the basis of the considerations under paragraph 92a of the CAO Policy, CAO will proceed to close this case.

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

1. Introduction

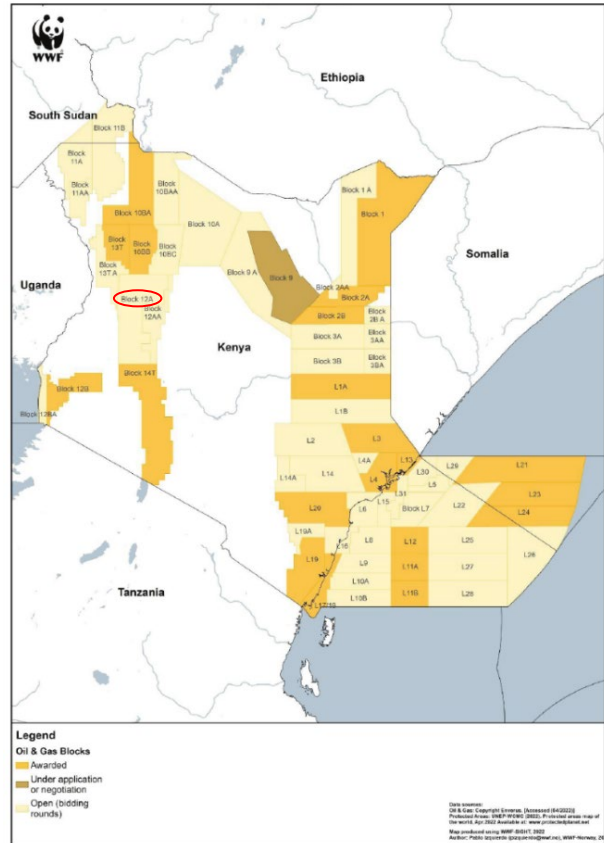
This section provides an overview of two IFC projects, Delonex Energy (IFC Project #33557) and Africa Oil (IFC Project #36699), and specifically operations linked to Block 12A, a 15,340 km² piece of land that spans parts of the counties of, among others, Baringo, Elgeyo Marakwet, and West Pokot, Kenya, where the CAO complainants live (see Figure 1). It then describes the scope and methodology for CAO’s compliance appraisal.

a). Overview of IFC Investments

In September 2013, IFC made a 10 percent equity investment of up to US\$60m into Delonex Energy UK Limited (Delonex) to fund: (i) set-up costs; (ii) the acquisition of oil and gas assets; and (iii) the early development of such oil and gas assets.¹ IFC classified the environmental and social (E&S) risks and impacts of its investment in Delonex as Category A, defined as “business activities with potential significant adverse environmental or social risks and/or impacts that are diverse, irreversible, or unprecedented.”² This was “due to the likelihood that potentially significant and diverse impacts could be associated with some of Delonex activities.”³ IFC clarified in its Environmental and Social Review Summary (ESRS) that “all Performance Standards are applicable to this investment.”⁴

In August 2015, IFC invested up to US\$50m as equity to fund oil and gas exploration and appraisal activities of Africa Oil Corp. (AOC), primarily in Blocks 10BB and 13T, and general working capital requirements in Kenya.⁵ IFC classified the investment as Category A and triggered all eight Performance Standards (PS)

Figure 1: Location of Block 12A, Kenya



Source: WWF Kenya (2023) “[Protected and Environmentally Sensitive Areas at Threat from Oil and Gas Development in Kenya](#)”

¹ IFC. Delonex Energy, Summary of Investment Information (SII). Available at: <https://bit.ly/delonexenergySII>.

² IFC Sustainability Policy, para. 40.

³ IFC. Delonex Energy, Environmental and Social Review Summary (ESRS). Available at: <https://bit.ly/delonexenergyESRS>.

⁴ Ibid. Due to the limited information on the areas of operations at the time of appraisal, IFC only specified mitigation measures for PS 1 and 2 in the ESRS and PS 1, 2, 4, 5, and 7 in the Environmental and Social Action Plan (ESAP).

⁵ IFC. Africa Oil, SII. Available at: <https://bit.ly/africaoilSII>. The SII provides: “Africa Oil has a diversified shareholder base with only a single investor holding more than 10%. Helios Investment Partners LLP, a private equity fund, has recently become the largest shareholder following the closing of their investment in May 2015, with a 12.4% equity interest in Africa Oil.”

“due to the likelihood that potentially significant and diverse impacts could be associated with the exploration and development activities.”⁶

At the time of IFC’s investment in August 2015, AOC held a 20% working interest⁷ in Block 12A. The remainder of the working interest was held by Marathon Oil (15%) and Tullow Kenya B.V. (Tullow) (65%), an energy company with a focus oil and gas development in Africa.⁸ At the time, Tullow served as the operator for Block 12A under a joint operating agreement with AOC.⁹ Tullow was an existing IFC client through a project in Ghana, but IFC had no direct exposure to any Kenya oil and gas exploration activities via Tullow. IFC considered Tullow to be a long-term strategic partner. IFC noted that Tullow valued IFC’s E&S contributions and was supportive of an IFC investment in AOC, and would cooperate to satisfy IFC’s PS.

Between 2015 and 2019, when Delonex acquired 100% of the working interests in Block 12A, the working interests continued to shift (see Figure 2). In September 2015, Delonex acquired a 25% working interest in Block 12A from Tullow.¹⁰ Subsequently, in February 2016, Delonex acquired Marathon Oil’s 15% working interest in Block 12A. When AOC withdrew from Block 12A in March 2017, Delonex and Tullow each acquired 10% of AOC’s 20% working interest, bringing Delonex and Tullow’s working interest in Block 12A to 50% each. In February 2018, Delonex took over as operator from Tullow and acquired an additional 10% working interest from Tullow shortly thereafter, for a total of 60% working interest in the block (with Tullow continuing to hold 40%). In June 2019, Tullow exited Block 12A, selling its interest to Delonex.

Delonex exited Block 12A, and Kenya, in February 2022.¹¹ IFC sold its equity in Delonex in June 2022. In May 2023, AOC announced its intention to close its operations in Kenya before the end of 2023. IFC continues to hold equity in AOC as of the date of this appraisal. AOC’s website suggests the company no longer has an operational presence in Kenya.¹²

A full project and complaint timeline is included as Appendix 1 to this report.

⁶ IFC. Africa Oil, ESRS. Available at: <https://bit.ly/africaoilESRS>.

⁷ “Working interest” is a term for a type of investment in oil and gas drilling operations in which the investor is directly liable for a portion of the ongoing costs associated with exploration, drilling, and production.” See, for example, <https://bit.ly/41Plpm7>.

⁸ Tullow. About Us. Available at: <https://bit.ly/4gsjlEV>.

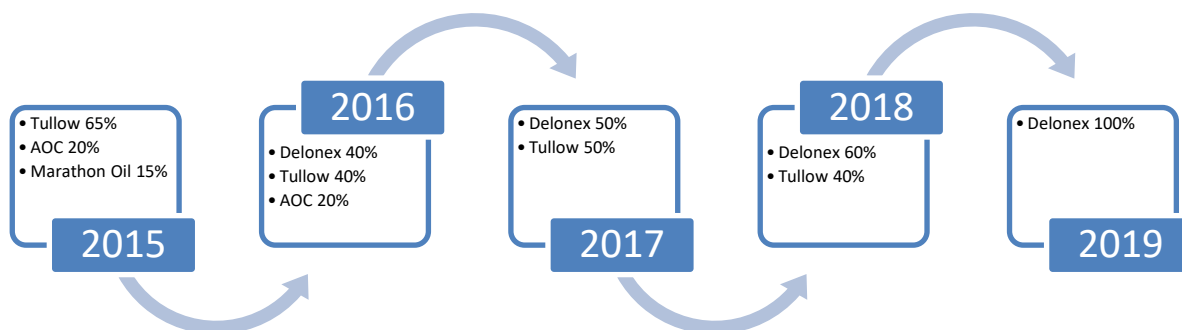
⁹ The joint operating agreement (“12A/13T Farmout Agreement”) was signed on December 9, 2010.

¹⁰ CAO Assessment Report notes that Delonex had working interests in Block 12A from September 2015, and the acquisition was formally approved by the Government of Kenya in January 2016. See CAO. October 2020. CAO Assessment Report. Available at: <https://bit.ly/3DpuVIG>.

¹¹ CAO. March 2023. CAO Dispute Resolution Conclusion Report. Available at: <https://bit.ly/409LeMg>. Note, while Delonex Kenya was dissolved in July 2021, the parent company Delonex Energy UK Limited is still operating from London.

¹² AOC. Operations Overview. Available at: <https://bit.ly/3Dtfdk>.

Figure 2. Block 12A working interests 2015-2019



b). Compliance Appraisal Scope and Methodology

The scope of this compliance appraisal¹³ is limited to issues raised in the complaint (attached as Appendix 2), CAO's [Assessment Report](#), and clarifications provided by complainants during the compliance appraisal. 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:

- Documentation related to the complaint, including the complaint, CAO's Assessment Report, CAO's [Dispute Resolution Conclusion Report](#), and IFC's Management Response (attached as Appendix 3 to this report);
- IFC and client documentation related to the implementation of project E&S requirements;
- Relevant media and other publicly available documentation; and
- Information gathered through communications with the complainants, IFC project team, and E&S technical advisors, as well as subject matter experts and researchers.

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

2. Complaint

In August 2019, CAO received a complaint (attached as Appendix 2) filed by approximately 140 community members from the Baringo, Elgeyo Marakwet, and West Pokot counties (the complainants). The complaint was supported by the Kerio Valley Community Organization (KVCO), a Kenyan civil society organization, and the Justice and Corporate Accountability Project (JCAP), a

¹³ CAO. June 28, 2021. IFC/MIGA Independent Accountability Mechanism (CAO) Policy, para. 88. Available at: <https://bit.ly/caopolicy>.

Canada-based legal clinic. The complaint raised concerns about the environmental and social (E&S) impacts of oil exploration activities conducted in Block 12A in Kenya. The complainants stated that they came to CAO for redress after their intensive engagements with the exploration companies from April 2015 did not result in tangible redress and/or enhanced E&S performance. At the time the complaint was filed, IFC had two active projects related to Block 12A — Delonex Energy and Africa Oil.

CAO process relating to the complaint

In September 2019, CAO determined that the complaint met its eligibility criteria.¹⁴ During CAO's assessment, Delonex and the complainants agreed to pursue a dispute resolution process facilitated by CAO. AOC decided against participation in this process because it had exited Block 12A before CAO received the complaint and had never been involved as an operator in the block.¹⁵ At the recommendation of the parties, CAO established contact with the former operator of Block 12A, Tullow, which was not an IFC client for the project at that time. The complainants, Delonex, and Tullow (in its capacity as observer) participated in capacity building sessions and bilateral meetings between November 2020 and April 2021, and in an initial joint session facilitated by CAO in May 2021. Tullow withdrew from the process in November 2021. The process continued with Delonex and the complainants until August 2022, when the complainants asked CAO to end the dispute resolution process and transfer the case to CAO's compliance function in accordance with the CAO Policy, due to a perceived lack of progress and limited trust.¹⁶

Complaint issues

The complaint raised concerns regarding the oil exploration activities that occurred in Block 12A between 2014 and 2018, in particular the seismic survey¹⁷ and exploratory drilling in the southern part of the block between 2014 and 2016 (while Tullow was operator) and the seismic survey in

¹⁴ Ibid., para.37.

¹⁵ CAO. March 2023. CAO Dispute Resolution Conclusion Report.

¹⁶ Ibid.

¹⁷ A seismic survey is a method used to investigate the subsurface structure of an area using sound waves. It is the primary tool utilized during the exploration of hydrocarbons in both onshore (land) and offshore (marine or lake) areas. The survey is based on the principles of reflection seismology, which is used to acquire and generate seismic data relating to the structure of the subsurface. By analyzing the time, it takes for the seismic waves to reflect off subsurface formations and return to the surface, formations can be mapped and potential oil or gas deposits identified. A 2D seismic survey provides a cross-section of the subsurface geology by collecting data along a single line, while a 3D seismic survey captures a full volumetric image of the subsurface by collecting data across a grid of lines, offering a much more detailed and accurate picture of geological structures. See Stryde, "A guide to land seismic survey design". Available at: <https://bit.ly/49Ufnm1>. 2D seismic is often used for initial reconnaissance of frontier or unexplored areas. 3D seismic is often used in areas where hydrocarbons are already known to be present and where greater resolution and better imaging of subsurface geologic features is needed. See also Lundin Group (2019), "What is the difference between 2D and 3D Seismic". Available at: <https://bit.ly/3PaKYq8>. Onshore survey projects could result in various adverse impacts on physiography and geology, soil, air quality, surface and groundwater resources, water quality, terrestrial environment (habitats of wildlife, flora, and fauna), land resources, archaeological, historical and cultural sites (e.g., damage of buildings and cultural sites), visual aesthetics, noise and vibration (disturbance to humans, animals and livestock, causing health and safety risks), solid and liquid wastes, security, and public safety. See Tullow, June 2011, Environmental Impact Assessment Project Report for the proposed oil and gas seismic survey project in Block 10BA. Available at: <https://bit.ly/3BKmJfk>.

the northern part of the block in 2018 (while Delonex was operator). The complaint raises a range of concerns, including lack of information and stakeholder consultation; failure to address relevant project risks; breaches of the IFC Sustainability Framework; and impacts on land, livelihoods, health, and the environment. Additional clarifications on complaint issues were made during CAO's assessment¹⁸ and this compliance appraisal, including in relation to working conditions; community health, safety and security; requirements relating to Indigenous communities; and cultural heritage. The following information supplements the views described in the complaint and the CAO Assessment Report:

- **Personal security concerns:** Community members expressed fears of retaliation from government authorities for raising concerns about oil exploration in the block. They informed CAO that, during the mediation process, a request for the names of members of KVCO was made through the national government structure, and that the inquiry was made on behalf of one of the companies. This raised concerns because, during the mediation process, representatives of Delonex kept requesting the names of the complainants.
- **Engagement by Tullow and Delonex with community:** Complainants asserted that, contrary to the information provided by the companies to CAO, the experience at the community level was that “consultation” happened through the government-appointed chiefs, and community members were not consulted but rather informed what the companies and government officials had agreed upon. Complainants indicated that they cannot confirm how many meetings took place, but community experience with Tullow and Delonex was that information flowed in one direction with no follow-up on concerns.
- **Consultation for access and use of land, and grievance mechanism:** Complainants reiterated their view that there was no meaningful consultation by Tullow or Delonex at the community level or consent to access and use land. The individual complaints described to CAO during the assessment show that, if a formal grievance process existed, it was not known or did not work. Complainants indicated they were never provided a copy of Delonex's grievance process during the CAO-led mediation, which lasted almost two years. Complainants described one incident in which Delonex first refused to pay compensation to an individual farmer; upon further protest, Delonex agreed to pay but that the farmer was not to tell others.
- **Sexual exploitation and abuse and other forms of gender-based violence:** Some complainants described situations which suggest the occurrence of sexual assault, sexual harassment, and other forms of gender-based violence (GBV) by employees carrying out exploration activities in the southern part of Block 12A. These situations are stated as involving women and girls, and in some cases social disruptions. Supplementary information provided by complainants describes a specific, violent incident of sexual assault after which the survivor was compensated, although no criminal charges were laid. A female complainant representative followed up on allegations of GBV, but no women

¹⁸ CAO. October 2020. CAO Assessment Report.

wanted to pursue the issue further.

- **Identification, recognition, and implementation of adequate safeguards for Indigenous Peoples:** The complainants assert that directly affected communities in Block 12A fulfill the criteria of Indigenous Peoples set out in IFC Performance Standard 7 and other relevant international instruments. The complainants assert that the main tribe in this area are Kalenjin but that this is a generalized classification that was developed in the 19th century to encompass a number of sub-tribes that are quite distinct. The four main sub-tribes in the area are Pokot, Marakwet, Keiyo, and Tugen, and within each are sub-groups. According to the complainants, while the official languages of Kenya are English and Kiswahili, most people in the communities affected by the companies' activities communicate in the language of their sub-group and do not necessarily understand either language or each other. Consequently, according to complainants, to the extent that there was consultation, Tullow and Delonex consulted through the local, unelected chiefs in the communities in English or Kiswahili – mediums of communication inappropriate for impacted community members. This resulted in a lack of consent for accessing of affected communities' land and gaps in opportunities for benefits-sharing, which should have been made available given the rights of the communities as Indigenous Peoples.

3. Summary of IFC Response

The IFC Management Response (attached as Appendix 3), provides background on its equity investments with Delonex and AOC, as well as the various owners and operators of Block 12A during the timeframe IFC held its investments. IFC asserts its compliance with E&S policies and provides justification relating to each of the issues raised by the complainants cited in the CAO assessment report.

IFC acknowledges that the issues raised in the complaint are serious. IFC states that it complied with its E&S policies, including conducting the necessary E&S due diligence and supervision on client compliance with the Performance Standards in relation to the Delonex Energy and Africa Oil investments. IFC asserts that its clients implemented their E&S management systems and procedures in accordance with the PSs with respect to consultations with communities; establishing and managing a grievance mechanism; restoring land temporarily impacted as a result of the seismic surveys; assessing impacts and providing compensation; and prioritizing employment for local communities. This, according to IFC, is based on due diligence and supervision of both clients throughout the investments.

IFC response relating to Africa Oil project

In the context of its 2015 investment in AOC, IFC explains it reviewed the 2014 Environmental and Social Impact Assessment Project Report for Tullow Kenya B.V exploratory drilling in Block 12A (2014 ESIA)¹⁹ for the proposed exploratory drilling activities and engaged with the communities in Block 12A as part of E&S due diligence; closely supervised and found satisfactory

¹⁹ Tullow. 2014. Environmental and Social Impact Assessment (ESIA) for proposed Exploration Drilling in Block 12A, Onshore of Kenya (2014) by Tullow. Available at: <https://bit.ly/4iOEwTq>.

AOC/Tullow's implementation of their E&S management procedures, particularly in relation to land access, compensation, and grievance mechanism; and assessed AOC/Tullow's community engagement approach and consultations undertaken, finding them to be in accordance with IFC PSs. IFC notes that the first well (Cheptuket-1) was drilled in early 2016 in Elgeyo Marakwet County, which was then plugged and the site returned to the landowners in late 2016. IFC did not observe any further activities in Block 12A during its supervision. According to IFC, AOC successfully completed the Environmental and Social Action Plan (ESAP) items. In March 2017, AOC withdrew from the block and sold its interests to Delonex.

Regarding the specific concerns raised by complainants pertaining to the activities of AOC/Tullow in the southern part of Block 12A, IFC asserts the following:

- **Issues relating to stakeholder engagement, grievance mechanism and local content.** IFC explains that it found the consultation process for the 2014 ESIA, disclosure of E&S information, and Tullow's community grievance mechanism were in accordance with PS requirements. IFC asserts that corporate social responsibility programs and benefits were provided in communities in Block 12A and that, during consultations with the communities, AOC/Tullow emphasized that exploratory drilling could not guarantee oil discovery. IFC explains that there were fewer employment opportunities than expected because exploration did not result in active wells, but that AOC/Tullow continued to facilitate access to employment by the local communities in other areas of its operations.
- **Issues relating to working conditions.** IFC indicates that occupational health and safety procedures, as well as a labor grievance mechanism, were in place, in accordance with the PSs.
- **Issues relating to impacts on community health and water, safety and security.** IFC explains that water use and quality were monitored per AOC/Tullow procedures and in accordance with the PSs. Water consumption was monitored and no impacts to other users were identified. Regarding allegations of GBV, IFC highlights that Tullow had a clear policy of no tolerance for sexual harassment and retaliation, and that IFC was not made aware by AOC/Tullow of any complaints of gender-based violence in Block 12A, when it engaged with communities, or based on the documentation it reviewed.
- **Issues relating to land access, compensation, and risks to land titles.** IFC explains that it found AOC/Tullow's land access procedures in relation to Block 12A to be in accordance with PS requirements. According to IFC, they contained clear procedures for assessing E&S impacts on land; conducting consultations with the affected people as well as with community leaders, particularly when community land was at issue; and a clear approach for seeking community consent to access the land temporarily. IFC explains that it found no evidence of threats to community members in relation to AOC/Tullow accessing the land when reviewing the grievance logs or minutes of community meetings, nor was it made aware of any when engaging with the company. Regarding risks to land titles, IFC reviewed the land access procedure and its implementation. According to IFC, AOC/Tullow implemented a compensation framework that integrated the role of the Kenya National Land Commission in valuing affected assets and the requirements of PS5.

- **Issues relating to impacts of seismic surveys on land, structures and sacred sites, and restoration works.** According to IFC, community participation was a key component throughout the process of assessing impacts due to seismic surveys and mitigating temporary impacts on land and crops (usually about one month's duration) through compensation. Land was restored and handed back when the seismic surveys were concluded. Sacred sites were avoided as per an informational pamphlet distributed to communities.

IFC response relating to Delonex Energy project

IFC indicates that it conducted E&S due diligence related to its intended investment in Delonex, and prepared an ESRS and ESAP for disclosure. As Delonex did not hold any assets at the time, IFC's E&S due diligence focused on Delonex's corporate E&S management systems. The agreed ESAP required Delonex to develop corporate E&S policies and procedures to guide the E&S due diligence for each potential asset to be acquired in the future and manage it in accordance with IFC's PS. Based on IFC's supervision throughout its investment, IFC states that Delonex implemented its E&S policies and procedures in accordance with the PS. Prior to Delonex becoming operator of Block 12A, IFC explains it reviewed a 2017 Block 12A Site-Specific Assessment for its seismic surveys and found it to be in compliance with PS requirements. IFC asserts that it supervised the implementation of Delonex's E&S management procedures, including grievances received from communities. IFC also states that it assessed and supervised Delonex's stakeholder engagement activities and found them in line with PS1. It also reviewed Delonex's harmonized compensation rates across all three counties and implementation of the compensation process and found these to be in accordance with PS5. IFC notes that Delonex ceased all activities in Block 12A as of Oct 2018. Delonex relinquished this asset in February 2022 and IFC exited Delonex in June 2022. According to IFC, all ESAP items were completed by Delonex by the time of IFC's exit.

Regarding the specific concerns raised by complainants pertaining to the activities of Delonex in the northern part of Block 12A (2018), IFC asserts the following:

- **Issues relating to stakeholder engagement and local content.** According to IFC, Delonex's stakeholder engagement was in accordance with the PSs as shown following a review of project-related documentation and by direct engagement with community members during IFC's site visit in July 2018. IFC notes that Delonex conducted numerous community engagements in the counties of Baringo, Elgeyo Marakwet, and West Pokot to explain the seismic surveys, and additional engagements were conducted with affected persons along each of the seismic lines. IFC indicates that Delonex recruited three experienced Community Liaison Officers who previously worked with communities in Block 12A through Tullow and spoke the local language. Regarding concerns raised about local benefits, IFC states that the three affected county governments agreed with Delonex to facilitate access to employment and business opportunities for communities in proportion to the level of seismic surveys being conducted in each of the three counties as part of the "benefit sharing agreement".
- **Issues relating to working conditions.** According to IFC, the seismic survey contractor was required to adhere to and implement Delonex's policies and standards on health and safety and working conditions, which were in accordance with IFC PSs, and Delonex maintained

close supervision of the contractor.

- **Issues relating to community security and use of water.** IFC notes that Delonex used soluble explosives – in accordance with Kenya’s Ministry of Mining regulations – and observed Delonex’s audit of the contractor during a supervision visit. Groundwater boreholes were used with the relevant government approvals and consumption was monitored to track potential impacts.
- **Issues relating to compensation for access to land.** IFC states that Delonex met the requirements of PS5 in compensating for and mitigating impacts related to temporary land access. IFC reviewed Delonex’s supervision of the contractor and the latter’s implementation of the site-specific standards and found them satisfactory. IFC notes it reviewed samples of Permit to Access forms allowing Delonex temporary land access, which were signed by the landowner in coordination with village elders and chiefs. According to IFC, Delonex hired a local accredited valuer to review the compensation rates in the impacted areas and that Delonex took the highest crop compensation rates as the benchmark, which was in accordance with PS5 requirements. IFC states it reviewed a sample of compensation agreements, amounts paid, and details of the affected community members during a supervision visit.
- **Issues relating to impacts of seismic surveys on land and restoration works.** IFC reviewed Delonex’s record keeping of valuation assessments, land georeferencing, compensation, and restoration for the affected communities and found they were in line with IFC requirements.

4. Client Statement

CAO did not receive a statement from AOC or Delonex for consideration in this compliance appraisal. The perspectives of AOC, Delonex, and Tullow, as previously expressed to CAO, are outlined in CAO’s Assessment Report.

5. CAO Analysis

This section summarizes CAO’s analysis of the complaint, based on research, document review, and meetings conducted in April–July 2023, and whether the CAO Policy criteria for triggering an investigation are met.²⁰ These criteria are:

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

CAO’s analysis relating to additional appraisal criteria set out in the CAO Policy is also included.

²⁰ CAO. June 28, 2021. CAO Policy, para. 91.

Based on the analysis below, CAO finds that the complaint regarding IFC's Delonex Energy and Africa Oil projects meets the criteria for a compliance investigation under para. 91 of the CAO policy but does not meet the additional criterion set out in para. 92a. CAO will proceed to close the case.

a) Analysis of Preliminary Indications of Harm

A CAO compliance appraisal is required to consider whether a complaint raises “preliminary indications of Harm or potential Harm.”²¹ In this case, CAO finds that there are preliminary indications of harm to the complainants resulting from the oil exploration activities carried out in Block 12A between 2015 and 2018 involving IFC's clients, AOC and Delonex.

As detailed above, the complaint raises concerns relating to stakeholder engagement, grievance mechanism and local content; working conditions; water pollution and land impacts; community safety and security, including in relation to health, water availability, and GBV; economic displacement and risks to land tenure; restoration of land; informed consultation and participation and other rights of Indigenous Peoples; and cultural heritage. The following information supports a determination of preliminary indications of harm to complainants regarding the issues raised:

- CAO reviewed documentation relating to Tullow's activities in Block 12A as well as IFC's Africa Oil and Delonex Energy projects. Environmental and social impact assessments (ESIAs) prepared for the 2013-2014 seismic survey,²² the 2016 exploratory drilling,²³ and 2018 seismic survey,²⁴ among other documents, mention E&S risks and impacts that corroborate the plausibility of the issues and concerns raised in the complaint. For example, the importance of, and challenges in relation to stakeholder engagement are recognized, and IFC pre-investment review documentation for the Africa Oil project notes the vulnerability and marginalization of communities in the region as well as their lack of prior exposure to the oil and gas industry, resulting in challenges for a stakeholder engagement strategy. Specifically noted is the need to manage expectations relating to job opportunities. Additionally, an E&S recommendation included in the Tullow 12A Site-Specific Assessment Final Report issued in November 2017 (2017 SSA) notes the need for the operator's team to consistently disseminate information and receive relevant feedback from local communities to preempt unwarranted misunderstanding. By this time, Tullow had been engaged in operations in the area since 2010.²⁵ Similarly, the ESIAs describe potential risks and impacts regarding vegetation disturbance and soil erosion, water contamination

²¹ Ibid.

²² Tullow. September 2011. Environmental Impact Assessment Project Report for Proposed Oil and Gas Seismic Project in Block 12A: Parts of Turkana East, East Pokot, Marakwet West, Baringo Central, Marigat, Keiyo South, Baringo North, Mogotio and Samburu Districts by Tullow Kenya B.V. Available at: <https://bit.ly/4097p5A>. This EIA occurred before IFC took equity in AOC in 2015.

²³ Tullow. 2014. ESIA for proposed Exploration Drilling in Block 12A, Onshore of Kenya.

²⁴ Tullow. November 2017. 12A Site-Specific Assessment Final Report (12A SSA). CAO was unable to find this document online.

²⁵ Tullow entered Block 12A in late 2010 when AOC reduced its working interest and operatorship. The Tullow Farmout Agreement was signed on September 1, 2010, by AOC and Tullow. The 2011 EIA preparation started in February 2011 by appointing the EIA team, and the EIA was completed in November 2011.

and health impacts from chemical spills, and the use of explosives during exploration activities, lending plausibility to the complainants' allegations.

- CAO reviewed available literature on observed adverse impacts to communities of oil exploration taking place in the vicinity of Block 12A — including Blocks 10BB and 13T, in which AOC also held working interests — at the time AOC and Delonex were engaging in exploration activities in Block 12A.^{26,27} This information provides a basis for understanding and preliminarily validating the complaint issues. For example, a qualitative baseline assessment based on four months of field research in Turkana County (where Block 10BB, 13T, and part of 12A are located), presents findings of the perceived community impacts of oil exploration.²⁸ The responses point to three high priority issues, including economic concerns (e.g., local employment and benefit sharing), inadequate consultation of local communities²⁹, and increased insecurity and vulnerability³⁰. Concerns about land (land use and ownership, displacement, compensation, and restoration); environmental impacts of oil exploration and production on land and water, contamination of water and associated impacts on health; access to food and water; and impacts to culture and vulnerable groups, including the safety of women and girls in light of the incoming workforce and the establishment of worker camps, are also captured. Another study reviews specific rights of Indigenous Peoples and assesses the application of Free, Prior, and Informed Consent (FPIC) by Tullow in Turkana County, Kenya, concluding that while Tullow's community engagement process had improved since 2015, Tullow and AOC were not yet achieving their FPIC obligations.³¹
- The 2014 ESIA for Block 12A describes the presence of six groups of Indigenous Peoples in the block, including the Keiyo, Marakwet, Tugen, Pokots, Ichumus, and Turkana people in Elgeyo Marakwet and Baringo counties, and notes that PS7 was relevant for the anticipated exploration activities.³² However, available documentation and information does not indicate that IFC or its clients fully considered whether or how to implement PS7 requirements. For example, while the ESRS requires the application of FPIC to the Turkana

²⁶ Cordaid. August 2015. Oil Exploration in Kenya: Success Requires Consultation. Available at: <https://bit.ly/4fwHR6z>.

²⁷ Oxfam. November 2017. Testing Community Consent: Tullow Oil Project in Kenya. Available at: <https://bit.ly/41PD39s>. See also [Oxfam](#) research generally.

²⁸ Cordaid. August 2015. Oil Exploration in Kenya: Success Requires Consultation.

²⁹ Specifically, this includes concerns related to the consultation process, involvement of local leaders, limited technical and organizational capacity for consultation, the role of company representatives in consultation, information-sharing, low level of trust, grievance mechanism, the poor quality of engagement agreements, corruption, conflict related to consultation, and lack of clarity over roles and representation. See Cordaid. August 2015. Oil Exploration in Kenya: Success Requires Consultation, pp.30-31.

³⁰ Increased insecurity is attributed to the fact that the volunteer security force, Kenya Police Reservists, are protecting oil company assets rather than fulfilling their original mandate to protect the communities, leaving communities more vulnerable to attacks from neighboring tribes. In addition, there is a perception that insecurity will increase over time as a result of loss of land access and use, disputes over boundary demarcation, inter-community tensions caused by limited job and business opportunities, community displacement, an influx of outsiders, and the proliferation of small arms throughout the population. See Cordaid. August 2015. Oil Exploration in Kenya: Success Requires Consultation, pp.32.

³¹ Oxfam. November 2017. Testing Community Consent: Tullow Oil Project in Kenya. See also [Oxfam](#) research generally.

³² Tullow. 2014. ESIA for proposed Exploration Drilling in Block 12A, Onshore of Kenya, pp. 68 and 106.

people in Turkana County, it does not consider the impact of exploration, appraisal, and development activities on the other groups of Indigenous Peoples described in the ESIA. Adverse impacts to these communities could have occurred in the absence of relevant considerations, such as ensuring the informed consent and participation, and FPIC where applicable, of Indigenous Peoples.

- The complexity of the land tenure system in Kenya is detailed in E&S documentation (e.g., the 2014 ESIA, 2017 SSA, and Delonex’s March 2018 Stakeholder Engagement Plan). Land documentation prepared for the drilling of the first well pad in Block 12A, Cheptuket-1, indicated challenges with identifying and assuring proper documentation to demonstrate ownership of land parcels. Given such challenges in relation to land ownership, CAO considers the complainants’ claims of harm relating to land (absence of consent and adequacy of compensation) as plausible.
- CAO also reviewed copies of letters exchanged between the complainant representative and Tullow regarding efforts to address community concerns, including regarding meetings held among them between 2015-2017. The letters offer information of a contemporaneous nature and a basis for concluding that community concerns about, for example, a lack of consultation and information regarding the ongoing exploration activities, are credible. Similarly, as set out in the complaint, the complainant representative (KVCO) indicated that it conducted five community meetings with approximately 50 community members per meeting in December 2018. According to the complaint, the attendees included Chiefs, elders, women, and non-governmental organizations. A persistent theme at each meeting was the communities’ dissatisfaction with the information they had received from the exploration companies. Community members expressed their concerns of remaining uninformed about the companies’ actions, plans, and how they would be affected.³³ An inadequate stakeholder engagement mechanism could result in the communities living with these fears due to the lack of information about the management of E&S risks and impacts during oil exploration activities.

b) Analysis of Preliminary Indications of IFC Non-Compliance

A CAO compliance appraisal must also consider whether there are “preliminary indications that IFC/MIGA may not have complied with its E&S Policies.”³⁴ The discussion below begins with an overview of IFC’s obligations for environmental and social due diligence (ESDD) and supervision, followed by CAO’s preliminary analysis of IFC’s actions, which supports CAO’s conclusion that this criterion is met.

³³ The social baseline conducted for the 2017 SSA for Block 12A also reflects the communities’ fears with regard to oil exploration, including resettlement of local people to pave the way for oil exploration activities, non-compensation for use of land and damage to property, erosion of local culture, environmental pollution and degradation, land conflicts, and miscarriages by livestock due to negative effects of the oil exploration activities. The 2017 SSA echoes community concerns shared by the complainants in the complaint to CAO and in the letters they exchanged with Tullow.

³⁴ CAO. June 28, 2021. CAO Policy, para. 91.

Overview of IFC's obligations under its E&S policies

In accordance with the IFC Sustainability Policy, IFC is required to conduct ESDD to assess whether an investment and its outcomes will be consistent with the objectives of the IFC Performance Standards – that is, that the project's risks and impacts to the environment and local communities are avoided, mitigated, and managed.³⁵ IFC's ESDD includes reviewing the client's assessments of E&S risks, and ensuring that those risks are adequately identified and appropriate mitigation plans are in place. The Sustainability Policy requires that IFC's ESDD be commensurate with the nature, scale, and stage of the business activity, and with the level of E&S risks and impacts.³⁶ Where third parties are involved, IFC must review its client's identification of third party risks, and determine whether such risks are manageable, and if so under what conditions, so as to create outcomes consistent with the PS. Certain risks may require IFC to refrain from supporting the proposed activity.³⁷

IFC is also required to implement a program of supervision for business activities with E&S risks and/or impacts in accordance with the requirements of IFC's Environmental and Social Review Procedures (ESRP).³⁸ IFC is to review a client's implementation performance, as reported in Annual Monitoring Reports (or independent monitoring reviews)³⁹ and ESAP updates against the E&S conditions for investment and the client's commitments, and where relevant, identify and review opportunities for further improving client E&S performance. If changed business activity circumstances might result in altered or adverse E&S impacts, IFC is to work with the client to address them.⁴⁰ If the client fails to comply with its E&S commitments, as expressed in the E&S conditions for investment, IFC is to work with the client to bring it back into compliance to the extent feasible, and if the client fails to re-establish compliance, exercise remedies as appropriate.⁴¹

CAO Preliminary Compliance Analysis

i. The period of AOC's investment in Block 12A once an active IFC project (July 2015-March 2017)

AOC entered the East African market through acquisitions of blocks in Kenya in 2008, and subsequently acquired seven blocks in Kenya and Ethiopia, including acquisition of 100% interest in Block 12A, Kenya in February 2010. In late 2010, AOC reduced its working interest and operatorship and brought Tullow into six blocks in the Turkana Rift Basin as operating partner (five blocks in Kenya, including Block 12A, and one in Ethiopia). Under the December 1, 2010 12A/13T Farmout Agreement between AOC and Tullow, AOC assigned to Tullow 50% interest in, and operatorship of, Block 12A. IFC's 2015 ESRS for the project indicated that for the purposes of E&S review, the seven blocks in which AOC held interests were divided into "operated assets"

³⁵ IFC Sustainability Policy, para. 7; IFC Performance Standards Overview.

³⁶ IFC Sustainability Policy, para. 26.

³⁷ IFC Sustainability Policy, para. 23.

³⁸ IFC Sustainability Policy, para. 45.

³⁹ As described in IFC Environmental and Social Review Procedures (ESRP) 2.8.

⁴⁰ IFC Sustainability Policy, para. 45.

⁴¹ Ibid.

(Rift Valley Basin in Ethiopia and Block 9 in Kenya) and “non-operated assets” (10A, 10BB, 12A, 13T in Kenya and South Omo in Ethiopia). These blocks covered 170,000 km² of which 100,000 were “non-operated assets”.⁴² When IFC’s AOC investment was approved by the Board in July 2015, AOC held a 20% working interest of the non-operated asset Block 12A, Tullow held 65%, and Marathon Oil held 15%.

- ***Management of third party risks***

The Sustainability Policy requires IFC to, as part of its due diligence, review a client’s identification of third-party risks and determine whether such risks are manageable, and if so under what conditions, so as to create outcomes consistent with the PS.⁴³

Tullow was the operator of Block 12A from 2010-2018. During the 2015 pre-investment ESDD for its investment in AOC, IFC recognized that its client had limited ability to manage E&S risks because it was not the operator of several assets, including Block 12A, indicating AOC’s reliance on Tullow as operator and Tullow’s capacity and commitment to implement the IFC PS. IFC Management’s approval of the investment in AOC was “contingent on contractual obligations on the operator [Tullow] in respect of IFC’s E&S and policy provisions.” As such, Tullow, is considered a Third Party under the Sustainability Policy in relation to AOC.⁴⁴ In the context of this appraisal, IFC confirmed to CAO that it had no direct contractual agreement with Tullow, and that IFC documentation included language obliging AOC to operate in accordance with IFC’s Performance Standards, which extended to any joint operating partners, consistent with PS1.⁴⁵ However, IFC has not provided information indicating that AOC’s contractual relationship with Tullow required compliance with the IFC PS. While IFC judged Tullow’s capacity and commitment to implement the IFC PS as adequate, **the absence of evidence of a contractual obligation upon Tullow to comply with the PS raises questions regarding IFC’s compliance with its Sustainability Policy obligation to require clients to apply the Performance Standards to projects.**

- ***IFC’s review of stakeholder engagement in relation to Block 12A, including requirements for Informed Consultation and Participation (ICP) and determination of Broad Community Support (BCS)***

The Sustainability Policy requires that IFC’s ESDD be commensurate with the nature, scale, and stage of the business activity, and with the level of environmental and social risks and impacts.⁴⁶

⁴² IFC. Africa Oil, ESRS.

⁴³ IFC Sustainability Policy, para. 23.

⁴⁴ The IFC Sustainability Policy, para 23., states that “A third party may be a government agency in a regulator capacity or contract party, a contractor or primary supplier with whom the business activity has a substantial involvement, or an operator of an associated facility (as defined in Performance Standard 1.”

⁴⁵ The guidance note for PS1 specifies that: “A contractual arrangement with a supplier, on the other hand, is an example of a situation where the client may have contractual, financial, and, therefore, operational leverage enabling a level of control to be exerted that should directly influence how the supplier performs with respect to related impacts and their avoidance, prevention, minimization, mitigation, or compensation.”

⁴⁶ IFC Sustainability Policy, para. 26.

As part of the review of E&S risks and impacts of a proposed investment, IFC uses a process of E&S categorization to reflect the magnitude of risks and impacts.⁴⁷ Further, IFC is required to review community engagement undertaken by the client and/or any third party, if IFC's engagement occurs after the business activity is conceived.⁴⁸ In cases where the business activity to be financed is likely to generate potential significant adverse impacts on communities or is likely to generate potential adverse impacts on Indigenous Peoples, IFC requires clients to engage in a process of ICP. In such cases, through its own investigation, IFC will determine whether the client's community engagement is one that involves ICP and enables the participation of the affected communities, leading to BCS for the business activity.^{49,50} Where a proposed business activity triggers the PS7 requirement of FPIC of Indigenous Peoples, IFC will undertake an in-depth review of the process conducted by the client as part of its E&S due diligence.⁵¹

IFC categorized the Africa Oil project as Category A "due to the likelihood that potentially significant and diverse impacts could be associated with the exploration and development activities of the project," stating that in addition to the risks and impacts associated with seismic and exploration work, "there has also been due consideration of risks inherent in the oil & gas sector and in the context of the project's geographic setting."⁵² IFC applied all eight Performance Standards to the Project.⁵³

According to the project's ESRS, in April 2015, IFC conducted an appraisal site visit to operated and non-operated assets in Kenya and Ethiopia. The ESRS states that during this site visit the team held meetings with communities, local officials, and AOC and Tullow personnel. IFC indicated in the ESRS that based on its interactions with stakeholders in Kenya, it had comfort that Tullow's engagement took stakeholders' views into consideration. The ESRS also states that the team reviewed Environmental and Social Impact Assessments (ESIAs), AOC and Tullow's Environmental and Social Policies, stakeholder management plans, and specialized studies. The ESRS notes that for all the seismic and drilling exploration activities related to AOC's non-operated assets, the operator had prepared a site-specific ESIA with appropriate Environmental Management Plans in accordance with the 2012 IFC Performance Standards and Good International Industry Practices. Regarding Block 12A, the ESRS notes the first well would be drilled in 2015, and that stakeholder engagement was managed by Tullow and had been extensive.⁵⁴

⁴⁷ IFC Sustainability Policy, para. 40.

⁴⁸ IFC Sustainability Policy, para. 27.

⁴⁹ IFC Sustainability Policy, para. 30.

⁵⁰ While not introduced until 2016, IFC's Environmental and Social Review Procedures (ESRP) 13 recognizes particular challenges with stakeholder engagement in phased development projects, stating: "Management of stakeholder expectations is very important for phased development projects. Local communities may confuse preliminary studies with the development itself. Consequently, active engagement will be required to explain the nature of the early works, the phased development and potential outcomes. During appraisal, specialists should ensure that a Stakeholder Engagement Plan in accordance with PS1 is in place; or if not, appropriate steps are taken to put one in place."

⁵¹ IFC Sustainability Policy, para. 31.

⁵² IFC. Africa Oil, ESRS.

⁵³ Ibid.

⁵⁴ Some of the information drawn for this discussion was taken from the ESRS cleared for disclosure, as some of the relevant links in the ESRS on IFC's disclosure website are not functioning.

The ESRS also indicates that the project may have impacts on Indigenous Peoples related to land use and natural resources, and accordingly applied Performance Standard 7 on Indigenous Peoples. The ESRS states that the Turkana people, who predominantly inhabit the project affected Turkana County in Kenya, are identified by the Constitution of Kenya (2010) as a “marginalized group.” The ESRS indicates that the company “will apply the principle of Free Prior Informed Consent (FPIC) to proposed exploration, appraisal and development activities if they result in adverse impacts on lands and natural resources that are traditionally owned and/or under customary use by peoples, including the Turkana group in Kenya, who meet the criteria in PS7 and where the circumstances under PS7 paras. 13-17 apply”. The ESRS notes that for the midstream and downstream components, the project would implement its applicability assessment tool to determine whether affected groups (other than Turkana) meet the PS7 criteria. For all affected groups that meet PS7 criteria, the standard would apply.

Regarding ICP and BCS, the ESRS states that AOC’s Stakeholder Engagement Plans (SEP) will include the requisite process for ICP with affected communities for circumstances that do not trigger FPIC, and that ICP principles are already part of the consultation procedures implemented during current exploration and appraisal phase. The SEPs were also to include specific details of the FPIC process and circumstances in which it would apply. The ESRS indicates that BCS is not applicable to this project but provides no further explanation.

An Environmental and Social Action Plan (ESAP) was agreed with AOC to address the gaps identified in the context of IFC’s ESDD. The ESAP required the development of SEPs for AOC’s Kenya and Ethiopia activities per the requirements of PS1.⁵⁵ As part of the FPIC process, the ESAP required that the negotiation process between the company and affected communities and the evidence of agreement between the parties was to be documented.

IFC’s Management Response to this complaint describes IFC’s review in connection with its AOC investment, and Block 12A in particular, including a review of the ESIA prepared by Tullow in 2014 for exploratory drilling in Block 12A;⁵⁶ IFC’s due diligence site visit to Block 12A; IFC’s engagement with communities, civil society and government representatives in Block 12A; and Tullow’s information dissemination practices. IFC indicated that Tullow’s activities and the 2014 ESIA were carried out in accordance with the IFC PS.

Despite IFC’s statements that it had adequate assurance of PS alignment, CAO has questions as to the adequacy of IFC’s due diligence relating to Tullow’s stakeholder engagement process with Block 12A communities and whether such process was commensurate to risk for a category A project. IFC’s pre-approval documentation for its AOC investment highlighted the vulnerability and marginalization of communities in the region as well as their lack of prior exposure to the oil and gas industry, resulting in challenges for a stakeholder engagement strategy. Specifically noted is the need to manage expectations relating to job opportunities. In particular, CAO notes that:

- IFC was aware during its due diligence that KVCO had raised concerns with Tullow

⁵⁵ IFC. Africa Oil, ESRS.

⁵⁶ Tullow. 2014. ESIA for proposed Exploration Drilling in Block 12A, Onshore of Kenya.

starting in late 2014, overlapping with IFC's ESDD for the AOC project in early to mid 2015 and project approval in July 2015. KVCO hosted three community meetings in Block 12A in March 2015, and a meeting was held between KVCO and Tullow in June 2015. In correspondence to Tullow, KVCO wrote that community members had expressed frustration and anxiety about the limited scope of consultations conducted by Tullow because they were not getting adequate or clear information or were not given a meaningful opportunity to have their concerns considered. IFC has shared with CAO that concerns raised by KVCO with Tullow were part of IFC's due diligence at that time. Based on the information available, CAO cannot conclude that IFC's determination of the adequacy of Tullow's stakeholder engagement, per PS1 requirements, was appropriate.

- The 2014 ESIA, reviewed by IFC as part of its due diligence, indicates that six groups of Indigenous Peoples are present in Block 12A, and that PS7 was relevant to the project in undertaking informed consultation and participation of the Indigenous populations in relation to the project, respect for the culture of Indigenous communities, and distribution of opportunities to local/Indigenous communities.⁵⁷ However, IFC's E&S due diligence documentation focuses exclusively on the applicability of PS7 and FPIC to the Turkana group, remaining silent on the stakeholder engagement approach with other Indigenous groups identified in the 2014 ESIA.

In summary, available information raises questions as to the adequacy of IFC's review of Tullow's stakeholder engagement process relating to Block 12A, and whether requirements for ICP and BCS should have applied, in line with Sustainability Policy requirements, considering that the investment was considered to have potentially significant and diverse impacts, there were indications that Indigenous Peoples resided in the block, and IFC was aware of community concerns regarding limited stakeholder consultations.

- ***IFC's assessment of mitigation measures developed for identified risks and impacts***

Under the Sustainability Policy, IFC is required to review the client's identification of risks and impacts of the project (PS1, paras. 7-8) and corresponding mitigation measures (PS1, para. 15). Where gaps with the relevant IFC requirements are identified, IFC requires the client to commit to supplementary actions in the form of an ESAP.⁵⁸

Tullow completed an ESIA for exploratory drilling in Block 12A in 2014.⁵⁹ According to the independent monitoring group (IMG) for IFC's Africa Oil project, "[a] block-wide ESIA was undertaken for Block 12A drilling operations in 2014. At that stage the well site had not been selected and therefore identification of risks, assessment of impacts and development of

⁵⁷ Tullow. 2014. ESIA for proposed Exploration Drilling in Block 12A, Onshore of Kenya, pp. 68 and 109. Questions relating to impacts to Indigenous Peoples are also cited in the records of consultations in Appendix 8 Issues and Response Report.

⁵⁸ IFC Sustainability Policy, para. 28.

⁵⁹ Tullow. 2014. ESIA for proposed Exploration Drilling in Block 12A, Onshore of Kenya.

mitigation measures were generic in nature.”⁶⁰ According to IFC’s Management Response prepared for this appraisal, IFC reviewed the 2014 ESIA as part of its 2015 due diligence process and found it to be in accordance with the PSs.

Based on a review of available information, CAO has questions regarding whether IFC had adequate assurance that all risks and impacts of the Block 12A operations had been identified, or that measures adopted by the client for identified risks and impacts regarding land issues were adequate.

As detailed above in this report, CAO has questions regarding Tullow’s stakeholder engagement process, which could have resulted in gaps in the identification of risks and impacts to people and the environment, as highlighted in the complaint subject to this appraisal.

Further, the complaint raised concerns regarding land issues in connection with the project. CAO reviewed relevant sections of the 2014 ESIA, which note the evolving land tenure arrangements in the Kerio Valley, from pre-colonial traditional communal land ownership to private ownership. The ESIA states that the proportion of landowners with title deeds was 52.2% in Elgeyo Marakwet County and 30% in Baringo County, reflecting that a high percentage of private land owners were still awaiting demarcation and title deeds from the Government in both counties.⁶¹ IFC’s pre-investment review documentation for the Africa Oil project recognized the complexity of the land tenure system in the region. However, based on a preliminary review of available documentation and information, CAO cannot conclude that adequate measures were developed that would address the risks identified, per PS5 requirements. Specifically:

- The AOC project ESRS highlights that in Kenya, landowners are identified using cadastral records available from the County government’s Land Registry. However, related project documentation points to gaps in identifying and compensating landowners, including the case of landowners who had not collected title documents for their land from the registry.
- The applicable standards and procedures for the management of land issues for the exploration activity during this period are unclear. According to IFC, the drilling operations were guided by the Environmental and Social Management Plan (ESMP) in the 2014 ESIA. The ESMP (pp. 184-186) outlines several mitigation measures for land use impacts. A 2017 IFC supervision document for the AOC project mentions that IFC had provided comments on an early version of Tullow’s Land Access Framework. The latest version IFC saw was dated April 2016 and it was unclear whether this document had since been finalized. IFC recommended that AOC check the status of this document and obtain the latest version. Additionally, as discussed later in this report, Delonex raised concerns regarding Tullow’s lack of a Land Management Standard during the period it was operator at the time they assumed operatorship of Block 12A in 2018.
- Available information does not indicate that IFC had requisite assurance that the compensation provided to relevant Block 12A community members for access and

⁶⁰ Independent Monitoring Group (IMG). September 12, 2016. Second HSEC Monitoring Review Africa Oil Corporation. Available at: <https://bit.ly/4a8WaNX>.

⁶¹ Tullow. 2014. ESIA for proposed Exploration Drilling in Block 12A, Onshore of Kenya, p.116.

impacts to their land met the requirements of PS5. For example, records of compensation for impacts to land in connection with construction of the Cheptuket-1 well do not confirm that rates were paid at replacement value, as required by PS5.⁶² Further, in an early IFC supervision document for the AOC investment, there is little mention of IFC's review of the compensation process, and IFC indicated AOC's E&S performance as satisfactory during this period. It is also not clear on what basis this assessment was made as the IFC supervision report also states that IFC was in the process of reviewing the Land Access/Acquisition Framework required in the ESAP. Finally, concerns about Tullow's approach to compensation and land related matters during this period were noted by Delonex at the time they assumed operatorship of Block 12A in 2018.

- Available documentation also raises questions as to the adequacy of IFC's review of the granting of land access, given allegations that the operation relied on elected authorities and elders, whom the complainants assert did not necessarily have the community members' consent.
- Finally, while IFC asserts that the Block 12A operations had grievance mechanism in place to address land related complaints, available information does not provide evidence of implementation per PS5 requirements.⁶³

The absence of clarity around the explicit measures to address land related risks and impacts to local populations raises questions regarding IFC's review of AOC's identification of risks and impacts of the activities in Block 12A under PS1 (para. 7), per Sustainability Policy requirements for ESDD.⁶⁴

- ***IFC supervision activities relating to the Africa Oil project***

Under the Sustainability Policy, IFC is required to supervise the E&S performance of a client, which may include independent monitoring reviews, and where concerns are identified, to work with the client to re-establish compliance with the Performance Standards.⁶⁵

According to IFC's Management Response to this complaint, "[t]hroughout the period of its investment and by 2017, AOC successfully completed the ESAP items. IFC monitored AOC's ESAP implementation and broader E&S performance at the corporate and asset levels in accordance with IFC's Policy on Environmental and Social Sustainability, and provided support where needed."⁶⁶

⁶² Records provided by IFC for the purposes of this CAO compliance process.

⁶³ Available information does not provide clarity regarding Tullow and/or AOC's implementation of an effective grievance mechanism in Block 12A. The 2014 ESIA indicates that Tullow will establish a GM (see p. 39). The Environmental and Social Management System (ESMS) for AOC indicates there was a grievance mechanism for the project in Kenya and the ESAP required the development by AOC of a grievance mechanism and procedure. December 2015 and July 2016 IFC supervision documents indicate that, while there is a grievance mechanism, its effectiveness could not be confirmed. Further, according to letters sent by KVCO, they did not have access to the ESIA (until after the works had been completed) and they raised questions about the GM, which according to the documentation, went unanswered.

⁶⁴ IFC Sustainability Policy, para. 28.

⁶⁵ IFC Sustainability Policy, para. 45.

⁶⁶ IFC. April 3, 2023. IFC Management Response, Appendix 2.

IFC's supervision of its AOC investment involved an independent monitoring group (IMG).⁶⁷ The IMG conducted site visits and produced public reports that reported on AOC's operated and non-operated assets, including Block 12A, from December 2015 to March 2017.⁶⁸ However, the IMG reports do not capture information regarding compliance with relevant standards, including the IFC Performance Standards, on an individual asset basis. Accordingly, AOC's E&S performance in Block 12A vis-à-vis the PS is not clearly documented. A similar approach is taken in relation to reporting on ESAP item progress, including the development of management plans, which are not asset specific and focus on later phases of exploration including AOC's assets in Blocks 10BB and 13T (i.e., the South Lokichar field development).⁶⁹ IFC's supervision reports during this period similarly do not detail the client's E&S performance in relation to any specific asset, including Block 12A. There is no information about what management plans govern the exploration activities in Block 12A.

In sum, the manner in which monitoring information is captured in supervision documentation raises questions about IFC's ability to adequately supervise the E&S performance by its client and Tullow in Block 12A, per SP requirements.

ii. The period of Delonex's investment in Block 12A (January 2016-February 2022)

At that time of IFC's equity investment in 2013, Delonex held no assets and ESDD had been conducted at the corporate level. IFC categorized the project as high risk (Category A) due to the likelihood that potentially significant and diverse impacts that could be associated with some of Delonex's activities. In response to measures outlined in the ESAP, Delonex committed that their activities would meet the requirements of the IFC PS.⁷⁰

• ESDD and ESAP requirements upon asset acquisition

The Sustainability Policy specifies that where IFC invests in a pre-development phase of a business activity or the use of proceeds is not specified during ESDD, IFC will complete its environmental and social due diligence after Board approval on the basis of relevant environmental and social documentation as well as evidence of consultation, where required, provided by the client once the footprint and risks and/or impacts are better understood. The outcome of the due diligence will inform IFC's decisions going forward.⁷¹

⁶⁷ In 2015, Environmental Resources Management (ERM), a multinational consultancy firm, was commissioned by AOC and IFC to act as an Independent Monitoring Group (IMG) and carry out independent review and monitoring of Health, Safety, Environment and Community (HSEC) aspects associated with AOC's activities of oil and gas exploration, appraisal and development in Kenya and Ethiopia in connection with IFC Project #36699. ERM prepared 11 HSEC Monitoring Review reports from January 2016 to December 2022, which are published on AOC's website. See Africa Oil Corp. Independent HSEC Audit Reports. Available at: <https://bit.ly/406PlmS>.

⁶⁸ IFC accompanied the IMG on its site visits to Block 12A in December 2015 and July 2016.

⁶⁹ Africa Oil Corp. Independent HSEC Audit Reports. Available at: <https://bit.ly/406PlmS>. For example, when reporting the progress in developing the Stakeholder Engagement Plans (SEP) under ESAP 2.1, the IMG report discussed AOC's and Tullow's Stakeholder Engagement Plan Framework without mentioning any site-specific information.

⁷⁰ IFC. Delonex Energy, ESRS.

⁷¹ IFC Sustainability Policy, para. 43.

The ESAP for IFC’s Delonex Energy project recognized that the company’s assets were undefined at the time of investment and specified a requirement to “conduct an audit of prospective assets against Delonex policies and standards, IFC Performance Standards and [good international industry practice] to determine areas of concern and identify necessary mitigations (that may include further impact assessments) to ensure compliance with relevant requirements.”⁷²

A June 2015 IFC supervision document notes that assets in Kenya were in the pipeline for Delonex, mentioning a preliminary initial assessment which indicated that issues around land, security, and Indigenous Peoples were to be taken into account. Delonex acquired a working interest in Block 12A in September 2015 (which was formalized in January 2016).⁷³ In June 2017, Delonex emailed IFC with a written technical update regarding Block 12A operations, noting that, at the due diligence stage and prior to acquisition of an interest in Block 12A, an exercise was carried out to ensure there was no gap between Tullow’s standards (the block operator) and Delonex’s corporate standards.

Available information does not indicate that an audit pertaining to Delonex’s acquisition of Block 12A, consistent with project ESAP requirements, was conducted, and/or whether IFC carried out any E&S review connected with the acquisition and worked with the client to address any issues that may have been identified.⁷⁴

Post-approval ESDD that accompanied the acquisition of an interest in Block 12A by Delonex could have served as an opportunity for IFC to verify that management of the asset was in compliance with the PS in relation to management of third party risks (i.e., Tullow’s role as operator), the identification of all risks and impacts, and the adequacy of stakeholder engagement and a community grievance mechanism, particularly in the lead up to the 2018 seismic survey. By early 2016, KVCO and Tullow had been exchanging communications regarding Block 12A community concerns for well over a year (since late 2014), with KVCO-led community meetings taking place in March 2015 and a meeting with Tullow in June 2015. Communications continued, with another meeting between KVCO and Tullow held in November 2016.

The lack of substantiation of IFC’s timely review pertaining to Delonex’s acquisition of the Block 12A asset, or subsequent engagement by IFC on stakeholder concerns, raises questions regarding IFC’s compliance with its Sustainability Policy requirements for post-approval ESDD and regarding IFC’s E&S performance in relation to its Delonex investment.

- ***Changed circumstances during supervision***

Under the Sustainability Policy, as part of supervision, IFC is to work with its client to address any altered or adverse E&S impacts that might result from changed business activity circumstances, in

⁷² IFC. Delonex Energy, ESRS.

⁷³ CAO. October 2020. CAO Assessment Report, notes that Delonex had working interests in Block 12A from September 2015, but the acquisition was only formally approved by the Government of Kenya in January 2016.

⁷⁴ In a response to questions posed by CAO, IFC indicated that its review of Delonex’s acquisition was part of the 2017 SSA for the proposed seismic survey and site visit done in July 2019 [sic], and that the area was known prior to Delonex operating it as Tullow had conducted an initial ESIA in 2016. CAO notes that the 2017 SSA was conducted two years after Delonex farmed in to Block 12A.

order to re-establish compliance with E&S requirements.⁷⁵

During 2017-2018, several key changes occurred in Block 12A. These changes are further detailed below. In summary, in this timeframe:

- In March 2017, AOC exited the block, ending the period of independent monitoring for that asset.
- At the same time, the 2017 SSA was being developed in preparation for the 2018 seismic survey, while community members – via KVCO and a law firm – were persistently raising concerns related to anticipated exploration activities with Tullow.
- In February 2018, Delonex took over as operator of the block from Tullow, noting deficiencies in Tullow’s E&S performance to IFC. Delonex sought to expedite the seismic survey, carrying it out within a few months despite recognizing land permitting challenges.

IFC conducted annual reviews of Delonex’s E&S performance from the time of its investment in 2013. A 2016 IFC supervision document notes that Delonex had acquired an interest in Block 12A and that the Cheptuket-1 well had been drilled in the block that year. The document also states that Delonex needed to have a systematic way to monitor operations in the block and ensure compliance with the PS given indications that such responsibilities were being delegated to Tullow. A 2017 supervision document notes, with regard to Block 12A, that further seismic exploration was planned for 2017-18. The document also repeats the text from 2016 about the need to assure monitoring and PS compliance due to the indications that these responsibilities were being delegated to Tullow. AOC exited Block 12A as of March 2017, and consequently from that time Block 12A was no longer monitored by IMG or IFC in relation to the AOC project.⁷⁶ Monitoring of activities in the block occurred through IFC’s supervision of its investment in Delonex, though substantial supervision activities only occurred in mid-2018, over a year after IMG monitoring ceased.

A June 2017 technical update from Delonex to IFC states that Delonex sought to ensure that Tullow adhered to its policies and standards, and volunteered support on related documents where practicable. Also noted was that the IMG’s findings relating to Block 12A had been addressed by Tullow, and that Delonex was satisfied by the working practices of Tullow and comfortable that they were a principled operator in relation to E&S matters.

Available documentation suggests ongoing activities in the block during 2017, including Tullow’s preparation of a site-specific assessment for a further seismic survey – the 2017 SSA. That assessment was completed in November 2017. Additionally, communications between affected community members primarily through KVCO and Tullow continued. The letters described the community’s persistent concerns about, among other things, gaps and delays in information sharing regarding Tullow’s exploration and production activities and anticipated new

⁷⁵ IFC Sustainability Policy, para. 45.

⁷⁶ IMG. March 23, 2017. Third HSEC Monitoring Review Africa Oil Corporation, pp. 2-3. Available at: <https://bit.ly/4gO621E>.

developments in Block 12A.⁷⁷

In February 2018, about the time that Delonex took over as Block 12A operator from Tullow, Delonex wrote to IFC indicating that it had reviewed Tullow's prior performance in the block and that, as operator, they would make certain changes to address the shortcomings they had identified (such as land related matters, for example, the absence of a detailed Land Management Standard for previous seismic activities in Block 12A, inadequate processes of gaining temporary land access permitting and land restoration after the completion of work, and out of date compensation rates). Delonex also indicated in that communication that it planned to fast track the seismic exploration program.

According to the record of a call in March 2018, IFC noted Delonex's written February update and indicated that land management should be revised to address inconsistencies, and that site-specific resettlement and compensation procedures for Block 12A, including a site-specific stakeholder engagement and grievance mechanism, were under development. The call summary notes key recommendations including that Delonex must have a stronger oversight on contractor's activities and ensure E&S requirements are fully followed through by contractors. Delonex was strongly advised not to delegate key E&S responsibilities to contractors, including the functions and management of the resettlement/compensation process, stakeholder engagement, and security. Finally, the summary mentions that Delonex should build on the E&S work done by Tullow/AOC on Block 12A and request all relevant documents and comments provided by IFC on E&S documents, including on land acquisition, compensation, and resettlement procedures.

According to an internal Delonex technical update, Delonex held town halls in the three communities in which the seismic survey would take place in March 2018, started land permitting and valuation in early April, and started line clearance and shot hole drilling⁷⁸ in mid-April. In late May the explosives were delivered and secured, and pre-loading began in early June.

The same internal technical update also notes that identification and permitting of correct landowners and users was a key challenge, and that the company was working with community liaison officers and gaining good cooperation from chiefs and elders for identifying landowners and property boundaries. At that time, 1,562 landowners had been identified with 1,472 Permits for Temporary Access fully signed.

The first explosion for the seismic survey operation took place on June 18, 2018. IFC conducted

⁷⁷ Per the complaint submitted to CAO in August 2019, from April 2015 to September 2017, KVCO and Alston and Bird LLP sent nine letters by email to Tullow on behalf of community members to raise concerns regarding Tullow's oil exploration in the Kerio Valley.

⁷⁸ A typical seismic program involves various phases: planning and design, obtaining permits, clearing lines, surveying the land, drilling shot holes, laying out geophones, shooting and recording, and clean-up and closure. The phase of clearing lines refers to create seismic lines, which are narrow corridors used to transport and deploy geophysical survey equipment. Seismic lines (historically up to 10 m wide and now down to 1.75–3 m), traversing forests, tundra, uplands, and peatlands, are a major feature of the ecological footprint of oil and gas exploration. A series of shot holes 6–20 m deep are drilled along the seismic line, which generate seismic waves by detonating explosives or by truck-mounted surface vibrators (also known as vibroseis), which create seismic waves by vibrating a heavy plate on the ground surface. See Anna D., Matthew P., and Guillermo C. February 2018. Seismic lines in the boreal and arctic ecosystems of North America: environmental impacts, challenges, and opportunities. Environmental Reviews. Available at: <https://bit.ly/41J73r>.

a site visit to Block 12A in July 2018 as part of its 2017-2018 annual monitoring exercise for its Delonex investment, indicating that the activities were carried out consistent with the PS including in relation to stakeholder engagement, compensation for land, and benefit-sharing.

Based on the above, available information indicates that IFC's engagement with Delonex during 2017-2018 consisted of reviewing two emails, holding one telephone call, and conducting a site visit after the seismic survey had already begun. **This level of supervision raises questions regarding the adequacy of IFC's oversight per Sustainability Policy requirements relating to supervision responsibilities when there are changed circumstances.**⁷⁹

- ***Reporting back to affected communities***

As part of its client oversight responsibilities under the Sustainability Policy,⁸⁰ IFC reviews the client's implementation of requirements for ongoing reporting to affected communities, set out in PS1 (para. 36). This includes periodic reports to affected communities that describe progress with implementation of the project action plans on issues that involve ongoing risks or impacts on affected communities, and on issues that the consultation process or the grievance mechanism have identified as a concern to those communities. The frequency of these reports will be proportionate to the concerns of affected communities but not less than annually.

The 2017 SSA captures community expectations from eight divisions in the project affected area.⁸¹ While some expectations were specific to some divisions, the eight divisions also expressed shared positive expectations, including employment opportunities; comprehensive and fair compensation for land; opportunities for bursaries and scholarships; provision of water to communities; and investments in construction of infrastructure schools, hospitals and roads. Meanwhile, communities expressed concerns regarding resettlement, non-compensation, fear of loss of local culture, environmental pollution and degradation, land conflicts, and livestock miscarriages due to negative effects of oil exploration activities. As a result, the 2017 SSA recommends the implementation of the proposed seismic survey works on the basis of close management of community expectations before, during, and after project implementation.⁸²

According to an internal Delonex Block 12A social review, three initial county level Town Hall engagements were undertaken in early March 2018 at Baringo, Elgeyo Marakwet and West Pokot counties, during which Delonex emphasized that its arrival gave the opportunity for exploration to recommence after a long period of inactivity and no news. According to the report, communities and county leadership overall welcomed and supported the project and remain hopeful that Delonex will soon return and finally discover oil.

Seismic operations ended in Block 12A in October 2018. According to the complaint, in December

⁷⁹ IFC Sustainability Policy, para. 45.

⁸⁰ Ibid.

⁸¹ Per the 2017 SSA, the eight divisions include Tot and Tunyo divisions of Elgeyo Marakwet; Sigor and Chesogon divisions of West Pokot; Koloa and Ngoron divisions of Baringo East; and Bartabwa and Barwesa divisions of North Baringo.

⁸² Tullow. November 2017. 12A SSA, p.42. CAO was unable to find this document online.

2018, KVCO conducted five community meetings with approximately 50 community members per meeting. A persistent theme at each meeting was the communities' dissatisfaction with the information they had received about the exploration activities. Community members are reported as stating that they felt completely in the dark about what the companies were doing, what they were planning on doing, and how those activities would affect the communities.

In May 2020, Delonex reported in project monitoring reports, which CAO understands were provided to IFC that "upon review of the seismic interpretation in block 12A, it has been decided that no further geological survey to take place." As reported in the CAO Dispute Resolution Conclusion Report, the first joint meeting between the complainants and Delonex was convened in May 2021, where the complainants highlighted their wish for information-sharing relating to Delonex's future operations in Block 12A. As requested by the complainants, IFC conducted an information-sharing session in May 2022 regarding the IFC Performance Standards related to stakeholder engagement and grievance mechanism. The second joint meeting was convened in June 2022. During that meeting, Delonex disclosed that they had exited Kenya (in February 2022) and no longer held a license to operate in Block 12A.⁸³

In summary, available information does not indicate that IFC assured itself that Delonex updated Block 12A communities on the disappointing seismic findings and that exploration activities would end in the block. **The absence of information regarding follow-up with the affected communities regarding the status of exploration in Block 12A raises questions regarding IFC's supervision of Delonex per Sustainability Policy requirements.**

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

A CAO compliance appraisal must consider whether "the alleged Harm is plausibly linked to the potential non-compliance."⁸⁴ In considering the relationship between potential non-compliance and alleged harm, CAO does not require evidence of causation or contribution.

In this case, CAO concludes that the alleged harms to the complainants are plausibly linked to potential non-compliance in IFC's application of its E&S standards to AOC and Delonex. In reaching this conclusion, CAO took the following considerations into account:

- The preliminary indications of Harm identified in this compliance appraisal are the types of issues that IFC's Sustainability Framework seeks to avoid, mitigate, and compensate by applying Performance Standards to projects. The complainants raised concerns relating to lack of information and stakeholder consultation; impacts on land, livelihoods, and the environment; working conditions; community health, safety and security; informed consultation and participation; requirements relating to Indigenous communities; and cultural heritage as a result of the activities of IFC clients AOC and Delonex in Block 12A. These concerns are consistent with issues commonly associated with exploratory activities. These are also all risks and impacts addressed

⁸³ CAO. March 2023. CAO Dispute Resolution Conclusion Report.

⁸⁴ CAO. June 28, 2021. CAO Policy, para.91c.

in the IFC Performance Standards.

- Available documentation suggests that there remain key questions regarding the adequacy of IFC’s review and supervision of its investments in AOC and Delonex between 2015 and 2022, including in relation to management of third party risks (in this case, Tullow as operator), assurance of identification of all risks and impacts in Block 12A, and sufficiency of supervision of activities across the block in light of the farming in and out of various investors in Block 12A over time. These potential shortcomings are plausibly linked to the harms being alleged in the complaint, as adequate IFC ESDD and supervision could have ensured that stakeholder views, including those of Indigenous Peoples, were taken into account; land use was adequately compensated; and community safety and security were appropriately addressed.

d) Additional Considerations for Compliance Appraisal

According to the CAO Policy, a CAO compliance appraisal must consider a series of additional considerations.⁸⁵ In this case, while IFC continues to have an active project with AOC, IFC exited Delonex in June 2022. Consequently, CAO must consider the following:

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.^{86,87}

In accordance with paragraph 92a of the CAO Policy, CAO has considered whether an investigation would provide particular value in terms of accountability, learning, or remedial action despite IFC’s exit from Delonex. Based on this analysis, CAO has decided to close the case for the following reasons:

- **Lack of clear justification for accountability and learning**

The World Bank Group committed to end financing of upstream oil and gas after 2019. Lessons that might be learned from a CAO investigation relating to the risks and impacts of oil exploration activities would therefore have little scope to improve IFC’s environmental and social performance. Many complaint issues are broadly relevant in the context of IFC investments, including stakeholder engagement; community health, safety and security; land acquisition; and adequacy of ESDD and supervision. However, since IFC no longer invests in the sector, a CAO investigation could only offer general principles relating to these topics, which are otherwise addressed in the context of other CAO cases and advisory products.

⁸⁵ CAO. June 28, 2021. CAO Policy, para. 92.

⁸⁶ CAO. June 28, 2021. CAO Policy, para. 92a.

⁸⁷ The CAO Policy glossary defines an IFC Exit as: “With respect to any Project, the earlier of (i) the termination of the financing, investment, or advisory relationship with the Client for such Project pursuant to the applicable Project agreements; or (ii) when the Project ceases to exist, or the Project has been dropped by IFC after Board approval.” In this case, the former applies.

- **No clear path for remedial action**

After seven years as a non-operating partner, AOC relinquished its working interest in Block 12A in early 2017. AOC also no longer has an operational presence in Kenya. Delonex ended exploration activities in October 2018, selling its interests in the block in February 2022 and exiting Kenya in the same month. IFC exited Delonex in June 2022, and it appears that Delonex no longer exists as a corporate entity.

Further, while IFC retains a nominal equity interest in AOC, given that AOC was a non-operating partner in the block from September 2015, examining the AOC investment in isolation would not enable a comprehensive and meaningful understanding of the harm to affected communities, the range and depth of IFC's actions vis-à-vis its policy requirements, the relationship between the alleged harm and potential non-compliance, and/or the potential range of recommendations and responsive actions.

These circumstances, combined with the dated alleged impacts (2011-2018), suggest little IFC leverage or pathway to facilitate remedial actions for complainants and other project affected people, should the need for remedy be determined at the conclusion of a CAO investigation.

At the same time, CAO notes that local populations continue to highlight questions and concerns regarding continuing oil and gas exploration in Block 12A, including reports of recent evictions in the block.⁸⁸ IFC could consider using its good offices to host a platform for engagement on these issues with all relevant stakeholders.

For the sake of completeness, analysis of each of the considerations under CAO Policy, para 92 is presented in Appendix 4.

6. CAO Decision and Next Steps

CAO will proceed to close this case on the basis of the considerations under paragraph 92a of the CAO Policy.

This appraisal report will be shared with the Board, the World Bank Group President, IFC management, the clients, and the complainants. CAO will also publish this appraisal report on its website.⁸⁹

⁸⁸ June 2024 complainant communication to CAO.

⁸⁹ CAO. June 28, 2021. CAO Policy, para. 106.

Appendices

Appendix 1: Project and Complaint Timeline

Year	Month	Project Milestones, Events, and Key Documents
2010	February	AOC acquires 100% interests in Block 12A.
	December	Tullow acquires a 50% operated interest in Block 12A and begins to operate pursuant to a joint operating agreement between AOC and Tullow. <i>Block 12A working interests: AOC 50%, Tullow 50%</i>
2011	September	Tullow finalizes ESIA (2011) for seismic survey of Block 12A.
2012	July	AOC sold an additional 15% to Tullow. <i>Block 12A working interests: Tullow 65%, AOC 35%</i>
	October	AOC sold 15% interest in Block 12A to Marathon Oil. <i>Block 12A working interests: Tullow 65%, AOC 20%, Marathon Oil 15%</i>
2013	Month unavailable	Tullow initiates seismic surveys in the southern part of Block 12A.
	June	IFC conducts E&S due diligence related to its intended investment in Delonex and prepares ESRS and ESAP for disclosure.
	September	IFC makes an equity investment in Delonex.
2014	January	IFC conducts site supervision visit and a Client Meeting to meet Delonex management team in London.
	Month unavailable	Seismic surveys in the Southern part of Block 12A continue, and multiple drilling prospects were identified.
	Month unavailable	AOC/Tullow finalizes ESIA (2014) for exploratory drilling in Block 12A including seismic surveys.
2015	March	KVCO conducts three community meetings in Block 12A.
	April-August	Letters and exchanges occur between Block 12A local community representatives and Tullow, with a meeting taking place in June.
	April	IFC conducts pre-appraisal site visit for AOC investment.
	August	IFC makes an equity investment in AOC.
	September	Delonex acquires a 25% working interest in Block 12A from Tullow. <i>Block 12A working interests: Delonex 25%, Tullow 40%, AOC 20%, Marathon Oil 15%</i>
	December	IFC conducts the first supervision site visit along with the IMG for the AOC investment, including Block 12A.
2016	January	First IMG report is issued.
	February	Delonex acquired Marathon Oil's 15% working interest in Block 12A. <i>Block 12A working interests: Delonex 40%, Tullow 40%, and AOC 20%</i>
	March	The first well in Block 12A, Cheptuket-1, is drilled in Elgeyo Marakwet County.
	March-December	Letters and exchanges occur between Block 12A local community representatives and Tullow, with a meeting held in November.
	July	IFC conducts the second supervision site visit along with the IMG for the AOC investment, including Block 12A.
	August-September	Full Tensiometer Gravity (FTG) survey undertaken covering areas within Turkana, Baringo, Elgeyo Marakwet, and West Pokot counties.

	September	Second IMG report issued.
2017	January	IMG's site visit includes Block 12A (Cheptuket).
	February-September	Letters and exchanges occur between Block 12A local community representatives and Tullow.
	March	AOC withdraws from Block 12A and sells its 20% interests to Tullow and Delonex. <i>Block 12A working interests: Delonex 50%, Tullow 50%</i>
		Third IMG report issued. Indicates that Block 12A will not be included in future reviews given that AOC will have relinquished its interests in that block as of March 31, 2017.
	May	IFC conducts the third site supervision visit focusing exclusively on AOC non-operated assets in Kenya. No indication shows Block 12A was visited as there were no activities.
	November	Tullow issues a Site-Specific Assessment final report for the proposed seismic survey focusing on the un-surveyed area in the north of Block 12A.
2018	February	Delonex assumes an additional 10% working interest and assumes operatorship of Block 12A under a farm-out agreement with Tullow. <i>Block 12A working interests: Delonex 60%, Tullow 40%</i>
	June	Seismic activities begin.
	July	IFC conducts a supervision site visit for the Delonex investment, including Block 12A.
	October	Exploration activities in Block 12A are completed.
	December	KVCO conducts five community meetings in Block 12A.
2019	June	Tullow exits Block 12A. <i>Block 12A working interests: Delonex 100%</i>
	August	KVCO files the complaint with CAO on behalf of Block 12A communities.
2020	May	Delonex finalizes Block 12A seismic data review and decides no further geological survey will take place.
	June	The exploration license for Block 12A expires.
	October	CAO's assessment report is issued, and the CAO Dispute Resolution (DR) process begins.
2021	November	Tullow withdraws from the CAO DR process.
2022	February	Delonex exits Block 12A and Kenya.
	June	IFC exits Delonex.
	August	The CAO DR process ends.
2023	March	The complaint is transferred to CAO compliance, and compliance appraisal starts.
	May	AOC withdraws from Kenya.
	August	CAO holds a virtual information session for complainant representatives.
2024	December	CAO compliance appraisal finalized.

Appendix 2: Complaint

August 6, 2019

Delivered via email: cao@worldbankgroup.org

Office of the Compliance Advisor Ombudsman
International Finance Corporation
2121 Pennsylvania Avenue
NW Washington, DC 20433
USA

Dear Sir/Madam:

RE: Block 12A in Kenya – Kerio Valley Region
Oil and Gas Exploration by Tullow Oil and Delonex Energy

The Kerio Valley Community Organisation (KVCO), on its own behalf and on behalf of the complainants named in Appendix “A” (collectively, the Complainants), submit this complaint pursuant to the Compliance Advisor Ombudsman (CAO) Operational Guidelines with respect to oil and gas exploration activities carried out in the Block 12A concession (Project) in the Kerio Valley, Kenya by Delonex Energy and Tullow Oil (Companies).

The International Finance Corporation (IFC) is contributing to the Project through its investment in Africa Oil and Delonex Energy, as further detailed below.

Summary of the Complaint

The Complainants submit that the IFC, together with its client, Delonex Energy, directly and through its operating partner, Tullow Oil, have breached the IFC Performance Standards. The Complainants submit that the Companies have breached Performance Standard 1 by failing to: (i) disclose information; (ii) engage with appropriate stakeholders; (iii) identify and address relevant risks; and (iv) carry out informed consultations with the communities of Arror, Muchukwo, Kinyach, and Barwessa (Communities) in the Kerio Valley.

The Complainants further assert that the IFC has failed to properly review, supervise and monitor the Companies’ performance in this regard. The IFC’s and the Companies’ failures to comply with the IFC Performance Standards during the exploration phase of the Project have adversely impacted the Complainants, and have the potential to result in further adverse impacts on the Communities during subsequent phases of the Project. In early March 2018, a further exploration campaign commenced in the Kerio Valley, making the lack of stakeholder engagement an ongoing, urgent issue of concern.¹

The Complainants further submit that as a result of the Companies’ failure to provide information and consult with the Communities in accordance with Performance Standard 1, there are existing, and an increased risk for further, violations of the other IFC Performance Standards, including Performance Standards 3, 4 and 5.

The Complainants request that the CAO take immediate steps to investigate the issues set out in this complaint and address the Complainants’ concerns regarding the Companies’

¹ Delonex Energy, Kenya, online: <http://www.delonexenergy.com/assets/kenya/>

lack of engagement and breaches of the Performance Standards to date. The Complainants further request that the CAO recommend to the IFC that it work with the Complainants and the Companies to develop and implement a process of engagement to ensure that the Communities are consulted with and that their concerns in relation to the Project are addressed on an ongoing basis.

I. BACKGROUND

a. The Complainants

The Complainants are residents of the Communities in the Kerio Valley. The Kerio Valley is located between the Cherangani Hills and the Tugen Hills in Kenya within the area designated by the Kenyan Government as Block 12A for the purpose of oil and gas exploration. A map of Block 12A is attached to this complaint as Appendix “B.”

KVCO is a grass-roots, non-governmental organization which provides support and advocacy to communities in the Kerio Valley. The Complainants have authorized KVCO to represent their interests for the purpose of this complaint. Attached as Appendix “A” is a copy of 140 signatures from community members in the Kerio Valley supporting KVCO in its complaint to the CAO.

For reasons of security and fear of reprisal, we ask that the names of the Complainants be kept confidential, and only be named as KVCO or the Complainants in any correspondence with the Companies and IFC Management in respect of this complaint.

The Complainants are supported by the Justice and Corporate Accountability Project (JCAP). JCAP is a volunteer-driven transnational, collaborative, community-based legal clinic based in Osgoode Hall Law School, York University and Thomson Rivers University Faculty of Law, Canada.

b. The Companies

i. Tullow Oil

Tullow Oil is a multi-national oil and gas exploration company with headquarters in London, U.K. Tullow Oil has a 40% ownership in Block 12A concession, with Tullow Oil having operatorship of the Block 12A from September 2010 to April 2018, when it transferred operatorship to Delonex Energy.²

Adjacent regions of Block 10BB and 13T are also explored or extracted by Tullow Oil in partnership with Africa Oil and Maersk.

² *Tullow Oil*, Kenya, online: <https://www.tulloil.com/operations/east-africa/kenya>.

It should also be noted that Africa Oil purchased an interest in the Block 12A from Platform Resources Inc. on February 16, 2010 and obtained financing from IFC on January 1, 2012 in the amount of \$50 million. However, as of the date of this complaint, Africa Oil no longer has a share in Block 12A.

ii. Delonex Energy

Delonex Energy is a sub-Saharan oil and gas exploration company currently active in Kenya and other countries. Delonex Energy has two major investors: the IFC and Warburg Pincus, a private equity firm. At this time, Delonex Energy has a 60% interest in the Block 12A project, entering the project in January 2016 and expanding its stake in 2018.³ Since April 2018, it has had operatorship and has been playing an active role in the exploration activities in Block 12A.⁴

Until recently, Africa Oil was also a partner in Block 12A with Tullow Oil and Delonex Energy. We understand that the IFC has provided funding to Africa Oil for its projects and explorations, as explained below.

A timeline of activities in Block 12A as well as engagement between the Companies and KVCO is attached to this complaint as Appendix "C".

II. ELIGIBILITY REQUIREMENTS

The Complainants submit that this complaint meets the CAO's eligibility requirements for the following reasons:

a. Block 12A is an IFC-financed project

The IFC has provided funding in support of the Project (oil and gas exploration activities carried out in the Block 12A concession in Kenya) since August 31, 2015, when it invested \$50 million in Africa Oil.⁵ In November 2013, the IFC became a 10% equity investor in Delonex Energy.⁶ In January 2016, Delonex Energy acquired a stake in Block 12A.⁷

Block 12A has been identified by the IFC as a "Category A" project due to the likelihood that potentially significant and diverse impacts could be associated with the exploration and development activities of the project."⁸ According to the IFC, "the investment [in Block 12A] will have impacts that must be managed in a manner consistent with the Performance Standards."⁹

b. The Companies are required to adhere to the Performance Standards and the IFC is required to ensure compliance

In the case of its direct investments, the IFC "requires its clients to apply the Performance Standards to manage environmental and social risks and impacts so that development opportunities are enhanced".¹⁰ As the holder of a 60% interest in Block 12A, Delonex Energy

³ *Delonex, Kenya, supra*, note 1.

⁴ *Tullow Oil, Kenya*, online: <https://www.tullowoil.com/operations/east-africa/kenya>.

⁵ *Africa Oil, Corporate History*, online: <http://www.africaoilcorp.com/s/corporate-history.asp?ReportID=585965>.

⁶ *IFC, Project Information Portal, Delonex Energy*, online: <https://disclosures.ifc.org/#/projectDetail/SII/33557>.

⁷ *Delonex Energy, Delonex Energy completes farm-in to Tullow Oil operated Kenya Block 12A (28 January 2016)*, online: <https://www.delonexenergy.com/2016/01/28/delonex-energy-completes-farm-tullow-oil-operated-kenya-block-12a/>.

⁸ *Africa Oil, IFC*, online: <http://www.africaoilcorp.com/i/pdf/hsec/2-IFC-Dec-2015.pdf>

⁹ *Ibid.*

¹⁰ *IFC, Performance Standards*, online:

must adhere to the Performance Standards in order to maintain financial support from the IFC.

As an operating partner, Tullow Oil is also obligated to adhere to the Performance Standards. Pursuant to the IFC Guidance Note for Performance Standard 1, “[i]f functions are outsourced to contractors or third parties, the client’s agreement with these parties should include actions and measures necessary for the parties to perform the agreement consistent with the management system and programs”.¹¹ In a similar project in Kenya, Tullow Oil accepted that its role as operating partner requires that it ensure that the day-to-day activities in relation to that project comply with the Performance Standards.¹²

For its part, the IFC must conduct appropriate environmental and social due diligence to confirm that the investment and its outcomes will be consistent with the objectives of the IFC Performance Standards – that is, that the project will not pose undue and unmitigated risks or impacts on the environmental or local communities.¹³ This due diligence includes reviewing the client’s assessments of environmental and social risks and ensuring that those risks are adequately identified and appropriate mitigation plans are in place. Where third parties, such as Tullow Oil, are involved, the IFC must review its client’s identification of third-party risks, and determine whether such risks are manageable, and if so under what conditions, so as to create outcomes consistent with the Performance Standards. Certain risks may require IFC to refrain from supporting the proposed activity.¹⁴

The IFC must also conduct regular monitoring and supervision of its investments.¹⁵ If the IFC finds that the client is failing to comply with those commitments, the IFC must work with the client to bring it back into compliance, and if the client fails to re-establish compliance, the IFC will exercise its rights and remedies, as appropriate.¹⁶

c. The Complaint relates to issues within the jurisdiction of the CAO

The Complaint relates to the Companies’ failure to engage with the Complainants, including failing to provide adequate and clear information regarding the impacts of the Project and failing to consult with the Complainants about the Project on an ongoing basis, and the IFC’s failure to ensure such obligations are satisfied as required by Performance Standard

https://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/Sustainability-At-IFC/Policies-Standards/Performance-Standards.

¹¹ *Ibid.*, paragraph 73. Performance Standard 1 further indicates that “activities and facilities that are directly owned, operated or managed (including by contractors) and that are a component of the project” remain critical. The IFC Guidance Note states that “third parties that are operators of associated facilities ... that have a particularly close relationship with the project. Because of this relationship, the client should normally have some commercial leverage on the operators of such facilities.”

¹² In November 2017, Oxfam published a report regarding a project in South Lockichar Basin in which Tullow Oil is the operating partner. According to the Oxfam report, “although the immediate contractual obligations lie with Africa Oil, Tullow Oil has accepted that its role as 50 percent owner as well as operating partner for the joint venture partnership means that it must ensure that the day-to-day activities of the overall project are in compliance with IFC requirements.” See report at *Oxfam*, Securing Communities’ Right to ‘Free Prior and Informed’ Consent in Kenya’s Extractive Sector, online: https://kenya.oxfam.org/policy_paper/securing-communities'-right-'free-prior-and-informed'-consent-kenya's-extractive-sector

¹³ IFC Sustainability Policy, online:

https://www.ifc.org/wps/wcm/connect/115482804a0255db96fbffd1a5d13d27/PS_English_2012_Full-Document.pdf?MOD=AJPERES, paras. 7, 20-21.

¹⁴ *Ibid.*, para. 23.

¹⁵ *Ibid.*, para. 45.

¹⁶ *Ibid.*, para. 24.

1 and the IFC's Sustainability Policy. These consultation failures also contribute to violations of Performance Standards 3, 4 and 5. These issues fall within the jurisdiction of the CAO pursuant to the Operational Guidelines.

III. BREACHES OF IFC PERFORMANCE STANDARDS

a. Performance Standard 1 – Assessment and Management of Environmental and Social Risks and Impacts

Performance Standard 1 requires clients to engage “directly” with affected communities and other stakeholders in a “dynamic and continuous process”. A core objective of Performance Standard 1 is to:

[P]romote and provide means for adequate engagement with Affected Communities throughout the project cycle on issues that could potentially affect them and to ensure that relevant environmental and social information is disclosed and disseminated.¹⁷

Performance Standard 1 encompasses a number of discrete requirements. The Complainants submit that the Companies have breached Performance Standard 1 by failing to: (i) disclose information; (ii) engage with appropriate stakeholders; (iii) identify and address relevant risks; and (iv) carry out informed consultations with the Communities. Further details are set out below.

i. Disclosure of Information

Performance Standard 1 requires companies to disclose relevant project information so that communities and other stakeholders can “understand the risks, impacts and opportunities of the project.”¹⁸ This includes providing information regarding: (i) the purpose, nature and scale of the project; (ii) the duration of proposed project activities; (iii) any risks to and potential impacts on such communities and relevant mitigation measures; (iv) the envisaged stakeholder engagement process, and; (v) the grievance mechanism.¹⁹ Information must be made accessible in a culturally-appropriate local language(s) and understandable to affected communities.²⁰

The Companies have breached the disclosure requirements of Performance Standard 1 by: (i) failing to provide information upon request; (ii) providing inadequate information; and (iii) failing to provide information with respect to the grievance mechanism.

First, KVCO on behalf of the Communities repeatedly requested that the Companies provide information which would enable them to understand the potential impacts of the Project on their rights and interests. In many cases, the Companies failed to provide the requested information, or provided the information only after repeated requests and significant delay. Copies of correspondence from the Complainants requesting information from the Companies is attached to this Complaint as Appendix “D.”

¹⁷ IFC, *supra*, note 10, Performance Standard 1, s.3.

¹⁸ *Ibid.*, Performance Standard 1, s.29.

¹⁹ *Ibid.*, Performance Standard 1, p. 8.

²⁰ *Ibid.*, Performance Standard 1, s. 30.

Community members have had the same difficulty as KVCO in obtaining information from the Companies. In December 2018, JCAP and KVCO conducted five community meetings with approximately 50 community members per meeting. The attendees included Chiefs, elders, women, and NGOs. A persistent theme at each meeting was the Communities' dissatisfaction with the information they had received from the Companies. Community members stated that they felt completely in the dark about what the Companies were doing, what they were planning on doing, and how those activities would affect the Communities. Simple steps such as making the 2011 Environmental and Social Impact Assessment regarding proposed seismic survey in Block 12A (2011 ESIA) and 2015 Environmental and Social Impact Assessment on exploratory drilling (2015 ESIA) available to the Communities in an easily-accessible format had not been done. Access to the 2015 ESIA was been difficult to obtain in any form. KVCO only obtained the 2015 ESIA after repeated requests to Tullow and the National Environment Management Authority (NEMA) over many months.

Second, where information was provided, the documents lacked sufficient detail to enable the Complainants to meaningfully understand and respond to potential impacts of the Project. For example, the 2015 ESIA has a number of shortcomings. First, the Project Area purports to encompass exploratory drilling in the entirety of Block 12A (an area of approximately 20,521.6km²). The 2015 ESIA does not specify the sites of exploratory wells, thereby making it impossible to identify how drilling activities will affect the area and the specific communities that reside within Block 12A.

In addition, the information provided to community members in conducting the 2015 ESIA was wholly inadequate. Appendices 3 and 4 of the 2015 ESIA contain the documents provided by Tullow to "support stakeholder engagement".²¹ These documents focus on the technical nature of drilling and are excessively general on all other aspects. At no point do they mention potential environmental risks posed by the Project.

The inadequacy of the information provided is reflected in the 2015 ESIA's summaries of the comments received at the community meetings held by the Companies from 22 September to 3 October 2014. The following are examples of comments received:

1. "During the Seismic Survey period, there was no accurate information given to the community members on Tullow proposed activities."²²
2. "Request that the community be well educated on all matters pertaining to oil and gas exploration activities to avoid issues pertaining to distortion of information".²³
3. "Inform the locals directly since the different officers tend to distort the information hence members of the community are mislead."²⁴
4. "We request to have a meeting inclusive with all the leaders within the Community and share information".²⁵
5. "Another meeting inclusive of all the stakeholders should be convened to avoid distorting of information".²⁶

²¹ 2015 Block 12 A Exploration Environmental and Social Impact Assessment (2015 ESIA), Appendix E, pp. 300 and 304.

²² *Ibid.*, p. 732.

²³ *Ibid.*, p. 690.

²⁴ *Ibid.*, p. 717.

²⁵ *Ibid.*, p. 715.

²⁶ *Ibid.*, p. 715.

6. "Sharing information of issues and concerns raised after the completion of the ESIA to all stakeholders".²⁷
7. "The community should get the right to information so that their expectations are well managed by Tullow."²⁸

This inadequacy of information provided has also been reported in the context of the 2011 ESIA. Information was presented in formats which were not easily accessible to the Communities, and additional details were not provided when requested by community members.

Similarly, the 2017 Site-Specific Assessment (2017 SSA) regarding the seismic survey for the Project does not include: (i) detailed information of the activities involved in the survey; (ii) documentation of village-level meetings or explanatory documents in local languages, or; (iii) the names, qualifications and experience of the contributors to the study, other than the members of the field survey team. Copies of the 2011 ESIA, 2015 ESIA and 2017 SSA are attached to this Complaint as Appendix "E."

Third, the Companies failed to provide the Communities with accessible information regarding the grievance mechanism for the Project. Performance Standard 1 requires clients "to ensure that grievances from Affected Communities...are responded to and managed appropriately".²⁹ During the 2015 ESIA community meetings, participants frequently raised questions about the grievance mechanism. Tullow's consistent response was to talk to the Chiefs first, as indicated in the 2015 ESIA. As will be explained below, relying solely on the Chiefs to provide information regarding the grievance mechanism and other issues related to the Project is contrary to the Performance Standards.

Delonex, which has operated the Block 12A since April 2018, has not rectified these gaps in information disclosure and therefore is continuing them, in direct violation of the IFC Performance Standards.

The IFC has failed in its due diligence obligations to ensure that the IFC Performance Standards were satisfied. Further, it is notable that the IFC itself did not disclose the relevant environmental assessments. As such, the IFC is also in breach of its information disclosure obligations (under its Access to Information Policy³⁰ and under the Performance Standards), by failing to make relevant environmental assessments for the Project available online.

ii. Stakeholder Engagement

Performance Standard 1 emphasizes the importance of engaging the appropriate stakeholders in relation to each Project:

Clients should identify the range of stakeholders that may be interested in their actions and consider how external communications might facilitate a dialog with all stakeholders...

When the stakeholder engagement process depends substantially on

²⁷ *Ibid.*, p. 713.

²⁸ *Ibid.*, p. 715.

²⁹ IFC, *supra*, note 10, Performance Standard 1, "objectives".

³⁰ IFC, Access to Information Policy, online: <https://disclosures.ifc.org/#!/accessInfoPolicy>.

community representatives, the client will make every reasonable effort to verify that such persons do in fact represent the views of Affected Communities and that they can be relied upon to faithfully communicate the results of consultations to their constituents.³¹

As detailed above, the Companies have failed to meaningfully engage and consult with KVCO. This is directly contrary to the Companies' requirement to identify and engage with a "range of stakeholders."³² The Kerio Valley consists of several distinct communities, and there is no overarching community governance body. KVCO, alongside a farmers' NGO which is partnered with KVCO, are the only community organizations that provide broad representation of the Communities. KVCO works directly with the Communities, is a trusted and respected organization, and has obtained consent from the Complainants to pursue this complaint on their behalf.³³ Most members of KVCO are from the Kerio Valley. Failing to consult with KVCO undermines the Companies' ability to effectively engage with the Communities.

In addition, contrary to the Complainants' requests for a direct process of engagement, Tullow Oil has advised that it intends to carry out engagement regarding the Project through the County Government and the Elgeyo Marakwet and Baringo County Civil Society Forum rather than with KVCO or the Communities. Correspondence from Tullow Oil setting out its position on engagement is attached to this Complaint as Appendix "F." To our knowledge, there has been only one meeting of the Elgeyo Marakwet and Baringo County Civil Society Forum since 2016.

Delonex is taking the same approach to engagement and consultation since it assumed operatorship in April 2018, and as such is continuing the violations noted above.

The Companies' heavy reliance on local Chiefs to discharge their consultation obligations, as indicated in the 2015 ESIA, also constitutes a breach of this Performance Standard.

Companies are required to "make every reasonable effort to verify that [community representatives] do in fact represent the views of Affected Communities."³⁴ Chiefs of the Communities in the Kerio Valley are appointed by the National Government of Kenya. They are not directly elected by or accountable to community members. While some Chiefs are well-respected by the Communities, others are not. The Companies were repeatedly told by community members during the meetings carried out pursuant to the 2015 ESIA that they could not rely solely on the Chiefs. Despite these concerns, Tullow Oil indicated that it intended to continue to rely on the Chiefs for engagement activities in respect of the Project.

The following reproduces some of the concerns expressed by community members with respect to relying on Chiefs and the response from Tullow:

1. Concern: "The chiefs should not make any decision on matters pertaining to the community on their own." Response: "When Tullow wants to do something they normally

³¹ IFC, *supra*, note 10, Performance Standard 1, ss. 26-27.

³² *Ibid.*

³³ See Appendix "B".

³⁴ IFC, *supra*, note 10, Performance Standard 1, ss. 26-27.

- use the chiefs to mobilize the community for barazas”.³⁵
2. Concern: “Fear among the community that the chiefs have been paid and that is why they are supportive of the project.” Response: “The issue of inequality in compensation has been noted.”³⁶
 3. Concern: “During the last seismic Tullow communicated more with the chiefs as opposed to the community leaders leading to favourism [sic] in distribution of opportunities”. Response: “Tullow will go to the community and hold barazas”.³⁷
 4. Concern: “Last time you only involved the chiefs hence need to consider the public to avoid conflict”. No response noted.³⁸
 5. Concern: “Tullow should involve the people directly not through the chiefs since they are not giving the accurate information to the mwananchi [citizens]”. No Response noted.³⁹

These concerns raised by community members should have been noted by the IFC as part of its due diligence. The IFC should have asked Delonex what the Companies had done to ensure that consultation was inclusive and meaningful. In the absence of any meaningful attempts to engage the Communities, the IFC should have undertaken appropriate remedial action to ensure compliance with Performance Standard 1. In failing to take these steps, the IFC has breached its obligations.

iii. Identification of Risks and Impacts

Performance Standard 1 requires clients to “establish and maintain a process for identifying environmental and social risks and impacts of the project.”⁴⁰ The process must “consider all relevant environmental and social risks and impacts of the project, including the issues identified in Performance Standards 2 through 8.”⁴¹ The Companies breached this requirement by failing to address the Communities’ concerns about how the Project could affect security of title to their lands.

The vast majority of people in the Kerio Valley do not have title deeds to their land.⁴² This issue places community members in the precarious position of having significant extractive operations take place on their land with no ability to prove their ownership. The Companies’ operations increase the risk of “land grabs” by wealthy and prominent persons or corporations.⁴³ These concerns are amplified by Kenya’s ongoing history of fraud and

³⁵ 2015 ESIA, *supra*, note 21, p. 703.

³⁶ *Ibid.*, p. 692.

³⁷ *Ibid.*, p. 779.

³⁸ *Ibid.*, p. 788.

³⁹ *Ibid.*, p. 831.

⁴⁰ IFC, *supra*, note 10, Performance Standard 1, s.7.

⁴¹ *Ibid.*

⁴² *Ibid.*, p. 238.

⁴³ In December 2017, for instance, the Kenyan government forcibly evicted members of the Sengwer community from their traditional lands in the Embobut Forest of Elgeyo-Marakwet County, ostensibly as part of a conservation effort. In the process, 50 homes were burned down, one community member killed, and another maimed. See: *Indigenous World 2018*, online: <https://www.iwgia.org/images/documents/indigenous-world/indigenous-world-2018.pdf> pp 466. Moreover, land grabs have also been spurred by the entry of a number of multinational corporations into the country. Events in Turkana County, home to the Kerio valley and with a population approaching a million people, are emblematic of this wider trend. Land in Turkana County is almost entirely communally owned with Kenyan citizens having no title. Only in urban areas, of what is a mostly rural county, are people given allotment letters as proof of ownership. Oil and gas explorations as well as infrastructure projects have catalyzed land disputes in the county. See: Food and Agriculture Organization, *The Community Land Rights of Women and Youth in Tana River and Turkana Counties: A Synthesis Report*, 2, online: <http://www.fao.org/3/a-i7074e.pdf>.

corruption pertaining to land ownership.⁴⁴

At the 2015 ESIA community consultations, participants repeatedly raised the issue of title insecurity. The following is a sample of some of the comments and responses received during the 2015 ESIA community consultations:

Question: “How will Tullow handle issues pertaining to compensation due to the lack of title deeds in areas where demarcation has not been done?”

No response noted.⁴⁵

Question: “How will Tullow handle issues pertaining to land title deed when conducting compensation since the majority of the locals do not have this?”

No response noted.⁴⁶

Question: “Fear that once oil is discovered, the community will not benefit for this since they lack title deeds.”

No response noted.⁴⁷

Question: “Before any commencement of the proposed drilling program, the community should be given title deeds first.”

No response noted.⁴⁸

Question: Title deeds is a must before any commencement of Tullow proposed activities.

No response noted.⁴⁹

Question: “The community should first be issued with titled deeds before drilling starts.”

Response: “Point noted but issues of title deeds is not on Tullow side; you should tal [sic] to the area MCAs, Chiefs and ward representatives.”⁵⁰

⁴⁴ According to Transparency International, the top three most corrupt sectors of Kenya are the Police, the Judiciary and Land Services. See Transparency International Kenya, *East African Bribery Index – 2017*, online: <https://tikenya.org/wp-content/uploads/2017/09/East-African-Bribery-Index-EABI-2017-1-1.pdf>. Kenya placed 149th out of 183 countries in Transparency International’s 2018 Corruption Perception Index. See: Transparency International, *Corruption Perceptions Index 2018*, online: <https://www.transparency.org/cpi2018>

⁴⁵ 2015 ESIA, *supra*, note 21, p. 686.

⁴⁶ *Ibid.*, p. 688.

⁴⁷ *Ibid.*, p. 692.

⁴⁸ *Ibid.*, p. 696.

⁴⁹ *Ibid.*, p. 696.

⁵⁰ *Ibid.*, p. 698.

Question: “The communities need title deeds before any exploration starts so that there are [sic] no conflicts in the future?”

Response: “Issues of title deeds can be handled by the county governments so I hope the ward representative and the area chiefs can handle that.”⁵¹

The failure to address tenure security is a breach of Performance Standards 1 and 5. As noted above, Performance Standard 1 requires that clients identify and address “all relevant environmental and social risks ...including the issues identified in Performance Standards 2 through 8”. Security of tenure is directly related to Performance Standard 5 – land acquisition and involuntary resettlement. This standard also guarantees protection for people occupying land without formal, traditional or recognizable usage rights.⁵² Moreover, it is clearly a risk associated with the Project. The Companies’ operations are creating a pressing need for tenure security in order to prevent fraudulent land transactions and protect rightful landowners.

It is not open to the Companies to ignore the issue of tenure and redirect the Complaints to the government. Performance Standard 1 provides that:

In the event of risks and impacts in the project’s area of influence resulting from a third party’s actions, the client will address those risks and impacts in a manner commensurate with the client’s control and influence over the third parties, and with due regard to conflict of interest.⁵³

Although the Companies are not able to issue title deeds or prevent illegal land grabs, they are uniquely positioned to work with community members and the Kenyan Government to ensure that title deeds are issued before they undertake any operations. As explained further below, economic displacement has already occurred and violations of Performance Standard 5 have already taken place. So long as exploration operations continue, without properly consulting and compensating families that hold informal land interests, the IFC and its client will further violate IFC Performance Standard 5.

iv. Informed Consultation and Participation

Performance Standard 1 requires IFC clients to “undertake a process of consultation in a manner that provides the Affected Communities with opportunities to express their views on project risks, impacts and mitigation measures.”⁵⁴ The client is required to “tailor its consultation process to the language preferences of the Affected Communities, their decision-making process, and the needs of disadvantaged or vulnerable groups.”⁵⁵ This Performance Standard recognizes that “[e]ffective consultation is a two-way process.”⁵⁶

Where a project will have “potentially significant adverse impacts on Affected Communities”

⁵¹ *Ibid.*, p. 700.

⁵² IFC, *supra*, note 10, Performance Standard 5, s. 5.

⁵³ IFC, *supra*, note 10, Performance Standard 1, s. 9.

⁵⁴ *Ibid.*, s.30.

⁵⁵ *Ibid.*, Performance Standard 1, s.30.

⁵⁶ *Ibid.*

the client is also required to carry out an “an Informed Consultation and Participation (ICP) process.”⁵⁷ The exploration for oil and gas in Block 12A in the Kerio Valley, as a project that would have significant adverse impacts on the communities, meets this threshold.

Performance Standard 1 defines an ICP process as an:

In-depth exchange of views and information, and an organized and iterative consultation, leading to the client’s incorporating into their decision-making process the views of the Affected Communities on matters that affect them directly, such as the proposed mitigation measures, the sharing of development benefits and opportunities, and implementation issues.⁵⁸

Kenyan law similarly recognizes and has enshrined these principles. On June 26, 2019, the National Environmental Tribunal ruled that NEMA had breached the law for approving the construction of a coal power plant in Lamu Kenya without a proper ESIA.⁵⁹ The decision was based on a lack of public participation in respect of the ESIA, with the Tribunal stating “In the absence of public participation, the EIA study process is a still-born and deprived of life, no matter how voluminous or impressive the presentation and literal content of the EIA study report is.”⁶⁰

The tribunal found that the ESIA stakeholder meetings that were held in this case were “introductory in nature but not structured to share information on the possible effects and impacts of the project on the population and the proposed mitigation measures...”⁶¹ and that “information contained in the study report had not been made available in good time to members of the public, or at all, nor had there been an effort to undertake the same level of engagement with the public after the EIA study had been conducted and report published.”⁶²

In this case, consultation carried out by the Companies in respect of its 2011 ESIA and 2015 ESIA fall short of the requirements in the Performance Standards. As community members have advised, consultations consisted primarily of presentations by the Companies without corresponding opportunities for the Complainants to respond, ask questions or provide input. It is also questionable whether some of the consultations which were purported to have taken place actually did take place. For example, in Salawa, some residents told JCAP in 2015 that Tullow Oil did not begin to consult them until after it had already begun exploration.

The 2017 SSA does not document any consultation with the Communities other than consultation with community members as location guides.⁶³ The 2017 SSA includes no reference to the Companies having attended village-level meetings, provided explanatory documents in local languages, or presented the draft SSA to the Communities for review and comment.

⁵⁷ *Ibid.*, Performance Standard 1, s.31.

⁵⁸ *Ibid.*, Performance Standard 1, s.31.

⁵⁹ National Environmental Tribunal, Kenya, Tribunal Appeal number: 196/2016 (26 June 2019) online: https://naturaljustice.org/wp-content/uploads/2019/06/26-June-2019-Judgment_NET_Save-Lamu.pdf.

⁶⁰ *Ibid.*, para 73.

⁶¹ *Ibid.*, para 45.

⁶² *Ibid.*, para 69.

⁶³ *Delonex*, 2017 Site Specific Assessment, online: <https://www.delonexenergy.com/download/1639/>, p. 13.

The failure to meaningfully engage with respect to the 2015 ESIA is reflected in the document itself. The 2015 ESIA does not appear to incorporate any of the feedback it received from its community consultations. Despite issues such as title, revenue sharing, and distrust of Chiefs being repeatedly raised, none of these issues appear in the 2015 ESIA. The 2015 ESIA contains a section entitled “How the Results of the Engagement Have been incorporated into the ESIA,” but fails to identify any concrete examples of how this was achieved.⁶⁴

On November 18, 2016, KVCO sent a letter to Tullow Kenya confirming that during a meeting in November 2016, Tullow Kenya agreed in principle to share information with KVCO regarding oil exploration and anticipated new activities, and to provide sufficient time for stakeholders to meaningfully participate and to provide timely responses to questions and/or concerns raised by the Communities.⁶⁵ To date, Tullow Kenya has failed to confirm this understanding or take meaningful steps towards implementing the measures discussed at the November 2016 meeting.

The Companies were required to consult with the Complainants in accordance with the Performance Standards, including by fulfilling the enhanced consultation requirements for projects with the potential for significant adverse effects. The Companies failed to meet these requirements, and as such have breached Performance Standard 1. For its part, the IFC again failed to properly review, monitor and supervise the Companies to ensure compliance with these obligations.

b. Performance Standard 3 – Resource Efficiency and Pollution Prevention

Performance Standard 3 addresses issues related to resource efficiency (i.e. managing greenhouse gases and water consumption) and pollution prevention (i.e. managing wastes, hazardous materials management, pesticide use and management).⁶⁶ There are three significant concerns with the Companies’ compliance with this Performance Standard.

First, Performance Standard 3 obliges clients to minimize and mitigate any pollution or contamination.⁶⁷ It further requires clients to use management methods that “prevent economically significant pest damage and/or disease transmission to humans and animals.”⁶⁸

Community members have reported that pollution caused by the Companies’ activities in the area have led to: (i) the contamination of wells; and (ii) death of bees and livestock. This has a significant impact on the community as they rely on beekeeping and livestock for their livelihood.⁶⁹

In addition, the Companies’ failure to restore the land after conducting seismic surveys, has led to soil erosion and the destruction of farm land. These complaints strongly indicate that the Companies are not in compliance with Performance Standard 3.

⁶⁴ 2015 ESIA, *supra*, note 21, p. 699.

⁶⁵ *Ibid.*

⁶⁶ IFC, *supra*, note 10, Performance Standard 3, pp. 2-5.

⁶⁷ *Ibid.*, Performance Standard 3, s. 10.

⁶⁸ *Ibid.*, Performance Standard 3, s. 14.

⁶⁹ 2015 ESIA, *supra*, note 21, p. 113.

Second, it is unclear whether the Companies' operations pose a risk to the Communities' water supply. Performance Standard 3 requires companies to adopt measures that do not have a significant impact on the communities' water supply:

When the project is a potentially significant consumer of water...the client shall adopt measures that avoid or reduce water usage so that the project's water consumption does not have significant adverse impacts on others.

The 2015 ESIA states that during the construction phase of the project, significant amounts of water will be required:⁷⁰

Sources of water may include drilling boreholes, abstracting from permanent rivers, etc. However, some of the disadvantages with these sources are quality of water and conflict with the community, hence the need for constant consultation with the community.⁷¹

The 2015 ESIA further states that "spring sources could be tapped," but goes on to note that "[t]hese are community water sources and both the Water Resources Management Authority and the water user community will have to be engaged in the use of these resources."⁷²

Despite these comments, water is not listed as a concern at the construction stage of the 2015 ESIA. Water resources is listed as only a "negligible" concern at the Operation Phase, on account of the fact the water demand "volume of 150 m³/day is a small fraction of the annual renewable groundwater volume thus imposing no particular risk of over-abstraction."⁷³ However, the ESIA does not indicate the amount of annual renewable groundwater.

Without further information, it is impossible to confirm that the Companies are in compliance with Performance Standard 3 as it relates to water usage.

Third, the IFC requires clients to use efficient methods to reduce or prevent pollution for continuous improvement related to an IFC-funded Project. Given the limited information shared and consultation with the community, the Companies and the IFC have failed to safeguard against violations of Performance Standard 3.

c. Performance Standard 4 – Community Health, Safety and Security

Performance Standard 4 is intended:

To anticipate and avoid adverse impacts on the health and safety of the Affected Community during the project life from both routine and non-routine circumstances; and to ensure that the safeguarding of personnel and property is carried out in accordance with relevant human rights principles and in a manner that avoids or minimizes risk to the Affected Communities.⁷⁴

⁷⁰ *Ibid.*, p. 38.

⁷¹ *Ibid.*

⁷² *Ibid.*, p.151.

⁷³ *Ibid.*

⁷⁴ IFC, *supra*, note 10, Performance Standard 4.

There are two concerns with respect to the Companies' compliance with this Standard. First, at the 2018 JCAP and KVCO community meetings, participants complained about dangerous explosives being left behind by the Companies in the grazing lands which has endangered the lives of the people and in explosives having cause some buildings near the seismic sites to crack. Failing to properly dispose of explosives poses a serious risk to the safety of community members.

Second, given the Companies' failure to engage with the Complainants as required pursuant to Performance Standard 1, the Companies have not compiled the information necessary to appropriately safeguard and avoid risks to community health and safety. As a result, violations of Performance Standard 4 are inevitable. The IFC has failed in its obligations to ensure that its clients are carrying out operations in compliance with the Performance Standards.

d. Performance Standard 5 – Land Acquisition and Involuntary Resettlement

This standard recognizes that “project-related acquisition and restrictions on land use can have adverse impacts on communities and persons that use this land.”⁷⁵

The objectives of this Performance Standard are to:

- avoid, and when avoidance is not possible, minimize, displacement by exploring alternative project designs;
- avoid forced eviction;
- anticipate and avoid, or where avoidance is not possible, minimize, adverse social and economic impacts from land acquisition or restrictions on land use by:
 - (i) providing compensation for loss of assets at replacement cost; and
 - (ii) ensuring that resettlement activities are implemented with appropriate disclosure of information, consultation and the informed participation of those affected;
- improve, or restore, the livelihoods and standards of living or displaced persons; and
- improve living conditions among physically displaced persons through the provision of adequate housing with security of tenure at resettlement sites.³⁷

i. Community Engagement

It is important for extractive companies to understand the impact of their activities on the communities in the areas in which they operate, especially in the context of land acquisition and resettlement. Although the Companies have not been accused of relocating the people of the Kerio Valley, community members have reported damage to their lands and property as a result of the work being undertaken by the Companies, including:

1. Tullow filling one member's land with rocks, resulting in their loss of use of the land;

⁷⁵ *Ibid.*, Performance Standard 5, p. 1.

2. the digging up of another member's gardens by heavy machinery employed by the Companies, resulting in the destruction of their farm land;
3. deep gulleys developing in a member's land after seismic survey blasts by the Companies, rendering the land unusable for farming;
4. the destruction of trees during seismic surveying by Delonex Energy;
5. the destruction on various occasions of grazing fields, wetlands and a fence by Tullow.

Such activities constitute "economic displacement", for the purpose of Performance Standard 5.⁷⁶ In each of the above cases, the Companies did not consult with community members in advance of commencing their work. Nor did the Companies repair the resulting damage or offer any compensation to the impacted community members.

Ongoing engagement with impacted communities is necessary to ensure the community members are properly informed and meaningfully consulted about the Companies' activities and their potential effects and that potential mitigation and accommodation measures are adequately considered. Such engagement will also help the Companies better understand community concerns over land titling and acquisition as the Project moves through subsequent phases. It is important for all parties to understand the impact the extractive activities will have on the land rights of the stakeholders. Given the limited information shared and consultation with the community, the Companies and the IFC have failed to safeguard against violations of Performance Standard 5.

ii. Grievance Mechanism

This component is related to Performance Standard 1, as a grievance mechanism is a requirement of projects supported by IFC loans. Under Performance Standard 5, a grievance mechanism must allow impacted communities to present concerns about "compensation and relocation raised by displaced persons or members of host communities in a timely fashion, including a recourse mechanism designed to resolve disputes in an impartial manner."⁷⁷ Again, given the lack of accessibility to the current Tullow grievance mechanism, it is unclear that the grievance mechanism would meet this standard where it was required to address the concerns of displaced people.

iii. Economic Displacement

This component of Performance Standard 5 relates to the "loss of assets and/or means of livelihood, regardless of whether or not the affected people are physically displaced."⁷⁸ Under this Performance Standard, if there is economic displacement, Delonex Energy will be required to compensate the impacted communities and/or "improve, or at least restore, their means of income-earning capacity, production levels

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*, Performance Standard 5, p. 6.

and standards of living.”⁷⁹ The damage reported to date by community members, as summarized above, has resulted in the loss of assets and / or livelihoods for the individual members. However, in violation of this Performance Standard, the Companies have not compensated the impacted community members for the economic loss resulting from the impacts of the Project on the land and natural resources. The IFC should have identified this risk of economic displacement – inherent in the nature of extractive activities – and worked with its client to ensure that the requirements of Performance Standard 5 were satisfied.

IV. Conclusion

In light of the concerns set out above, the Complainants submit that the Companies and the IFC have failed to fulfil the IFC’s Performance Standards in relation to this Project. As such, the Complainants request that the CAO investigate the IFC’s and the Companies’ conduct on an immediate basis and carry out appropriate remedial measures to ensure compliance with the Performance Standards.

In order to avoid ongoing and additional breaches of the Performance Standards, we further request that the CAO provide facilitative problem-solving by recommending that IFC work with the Complainants and the Companies in developing and implementing a process of engagement which requires the Companies to consult with the Communities and address concerns related to the Project, consistent with the Performance Standards.

If you require any further information regarding this complaint, please do not hesitate to contact us.

⁷⁹ *Ibid.*, Performance Standard 5, p. 7.

Appendix 3: IFC Management Response

INTERNATIONAL FINANCE CORPORATION

**MANAGEMENT RESPONSE
TO THE CAO COMPLAINT**

ON

**DELONEX ENERGY AND AFRICA OIL
(Projects #33557 and #36699)**

April 3, 2023

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ABBREVIATIONS AND ACRONYMS

AOC	Africa Oil Corporation
CAO	Office of the Compliance Advisor Ombudsman
CLO	Community Liaison Officer
E&S	Environmental and Social
ESAP	Environmental and Social Action Plan
ESIA	Environmental and Social Impact Assessment
IFC	International Finance Corporation
PSs	IFC Performance Standards

EXECUTIVE SUMMARY

- i. In August 2019, the Office of the Compliance Advisor Ombudsman (CAO) received a complaint (the “Complaint”) from community members living in the Kenyan counties of Baringo, Elgeyo Marakwet, and West Pokot, with support from a local civil society organization and a legal clinic based in Canada. The Complaint focused on concerns related to oil and gas exploration in a 15,000 km² area called “Block 12A,” which includes the three counties above, together with Samburu and Turkana.
- ii. The International Finance Corporation (IFC) made equity investments in two companies which had interests in Block 12A: (i) Africa Oil Corporation (AOC; Project #36699) in 2015, a company holding joint interest in Block 12A with Tullow Kenya B.V. (Tullow) as the operator of the block; and (ii) Delonex Energy Limited, as owner of Delonex Kenya Energy (One) Ltd. (Delonex; Project #33557) in 2013. AOC relinquished its interest in Block 12A in 2017. IFC’s investment in AOC as a group is active. Delonex operated Block 12A in 2018 and relinquished its interest in the block in 2021. IFC fully exited from Delonex in June 2022.
- iii. The Complaint concerned both AOC/Tullow and Delonex; specific issues included stakeholder engagement and grievance mechanisms, compensation for temporary land access, land restoration activities, impacts on water and health, access to employment and working conditions, and community project benefits.
- iv. This Management Response presents IFC’s perspective on the issues raised in the Complaint. It demonstrates that IFC complied with its environmental and social (E&S) policies, including conducting the necessary due diligence and supervision on client compliance with IFC Performance Standards (PSs) in relation to its investments. Management reviewed the allegations set forth in the Complaint and is of the view that CAO’s appraisal criterion b.,¹ on “preliminary indications that IFC may not have complied with its E&S Policies,” has not been met.
- v. IFC is of the view that AOC/Tullow and Delonex implemented their E&S management systems and procedures in accordance with IFC PSs, regarding consultations with communities, establishing and managing a grievance mechanism, restoring land temporarily impacted as a result of the seismic surveys, assessing impacts and providing compensation, and prioritizing employment for local communities. This is based on IFC’s due diligence and supervision of both clients throughout its investments.
- vi. No activities have been conducted in Block 12A since 2018 by either AOC/Tullow or Delonex, and both companies have relinquished interests in the block. IFC has exited from Delonex.

¹ CAO Policy, para 91.b. at: <https://documents1.worldbank.org/curated/en/889191625065397617/pdf/IFC-MIGA-Independent-Accountability-Mechanism-CAO-Policy.pdf> (CAO Policy).

I. INTRODUCTION

1. In August 2019, the Office of the Compliance Advisor Ombudsman (CAO) received a complaint (the “Complaint”) from 140 community members living in the Kenyan counties of Baringo, Elgeyo Marakwet, and West Pokot (the “Complainants”). The Complaint was supported by a local civil society group and a Canadian-based legal clinic. The Complaint focused on concerns related to oil and gas exploration in a 15,000 km² area called “Block 12A,” which includes the three above counties and two others (Turkana and Samburu). Activities within Block 12A have been carried out at different times by two companies supported by investments of the International Finance Corporation (IFC): the Africa Oil Corporation (AOC), through its operator, Tullow Kenya (“Tullow”), and Delonex Energy Limited (“Delonex”), in the southern and northern areas of Block 12A, respectively.

2. IFC financed two corporate investments: in (i) Delonex, as owner of Delonex Kenya Energy (One) Ltd. (#33557) in 2013 and (ii) AOC (#36699) in 2015. Both AOC and Delonex had interests in Block 12A: AOC from 2010 through 2017 and Delonex from 2016 through 2021. While Block 12A had various owners, both AOC and Delonex were IFC clients and were required to conduct their activities in accordance with IFC Performance Standards (PSs), AOC indirectly through Tullow, and Delonex directly. AOC facilitated IFC’s access to work with Tullow in supervising the implementation of environmental and social (E&S) policies and procedures in accordance with the PSs. IFC’s investment in AOC as a group is active. IFC exited from Delonex in 2022.

3. CAO determined the Complaint eligible for further assessment in September 2019 and issued an Assessment Report in October 2020. During the assessment, Delonex and the affected community members agreed to engage in CAO’s Dispute Resolution function from May 2021 to November 2022. AOC indicated that it would not participate as it had exited Block 12A before CAO received the Complaint and was no longer involved as an operator.²

4. CAO refers to oil and gas activities conducted in Block 12A as “the project.”³ This Management Response presents IFC’s understanding of the issues raised in the Complaint.

II. PROJECT BACKGROUND

5. **IFC’s clients’ interests in Block 12A.** AOC owned an interest in Block 12A from 2010 to 2017. It signed a Joint Operating Agreement with Tullow in 2011 to serve as the operating company for AOC’s assets. IFC’s role focused on undertaking E&S due diligence and supervising all AOC assets held at the time, including Block 12A, in accordance with IFC’s Policy on Environmental and Social Sustainability.

6. Delonex became a farm-in partner with Tullow and AOC in Block 12A by acquiring 25 percent equity in January 2016, increasing this to 40 percent in February 2016 and then to 50

² CAO Dispute Resolution Conclusion Report Regarding Complaint Received in Relation to IFC’s Investment in Delonex Energy and Africa Oil (#33557 and #36699) in Kenya, December 2022.

³ CAO Assessment Report Regarding Concerns in Relation to IFC’s Investment in Delonex Energy and Africa Oil (#33557 and #36699) in Kenya, pgs. 1-3, October 2020. <https://www.cao-ombudsman.org/cases/kenya-delonex-energy-and-africa-oil-01-kerio-valley>

percent in March 2017 by acquiring AOC's remaining shares (10 percent). A farm-out agreement between Tullow and Delonex was signed in February 2018, for which Delonex assumed operatorship and an additional 10 percent equity (total 60 percent) in Block 12A. IFC's role was to undertake E&S due diligence and to supervise Delonex's implementation of its E&S management system in regard to the 2D seismic surveys, in accordance with IFC's Policy on Environmental and Social Sustainability. Delonex relinquished its interests in Block 12A in 2021.

7. **Background and context of activities in Block 12A.** AOC/Tullow finalized its Environmental and Social Impact Assessment (ESIA)⁴ for exploratory drilling in Block 12A, which also included seismic surveys. IFC reviewed the ESIA⁵ as part of its 2015 due diligence process and found it to be in accordance with the PSs. The first well (Cheptuket-1) was drilled in early 2016 in Block 12A in Elgeyo Marakwet County. This well was then plugged and the site returned to the landowners in late 2016. IFC did not observe any further activities in Block 12A during its supervision.

8. After Delonex acquired AOC's remaining shares, it prepared a site-specific ESIA for the 2D seismic surveys in Block 12A in 2017 to: (i) assess any potential E&S risks and impacts; and (ii) develop mitigation measures for each of the planned seismic lines.⁶ IFC determined that the ESIA was carried out in accordance with IFC PSs. The seismic surveys, which were carried out in 2018, took place in the counties of Baringo (65 percent of the seismic lines), Elgeyo Marakwet (19 percent) and West Pokot (16 percent). No activities were conducted in Samburu or Turkana. The seismic team was demobilized in October 2018, after which no activities were conducted in Block 12A by Delonex.

9. **General Context.** As regards the regional context, the area had long been characterized by historical conflicts over cattle, pasture, and water among the communities. However, at the time the seismic surveys were conducted, a peace process was underway in four of the counties in Block 12A (Baringo, West Pokot, Turkana and Elgeyo Marakwet).

III. ENVIRONMENTAL AND SOCIAL ASSESSMENTS AND ACTIVITIES

10. **E&S assessment and activities in the context of IFC's investment with AOC (2015 to present).** In 2015, IFC conducted E&S due diligence related to its intended investment in AOC and prepared an Environmental and Social Review Summary (ESRS) to disclose its review of the E&S issues. IFC's team reviewed the ESIA (2014) developed in accordance with the PSs as well as AOC and Tullow's E&S policies, stakeholder management plans, and specialized studies. It also conducted

⁴ Environmental and Social Impact Assessment (ESIA) for proposed Exploration Drilling in Block 12A, Onshore of Kenya (2014) by Tullow. <https://www.tulloil.com/application/files/4415/8504/7326/21ST-final-block-12a-esia-drilling-report---2015.pdf>

⁵ Although the Complainants annexed a different version of the ESIA to its Complaint, IFC refers to the ESIA as per the version found in the link in footnote 3 above.

⁶ "Seismic surveys are the primary tool utilized during the exploration of hydrocarbons ... A seismic survey is conducted by creating an energy wave commonly referred to as a seismic wave on the surface of the ground or in water along a predetermined line (seismic lines), using an energy source. This wave travels into and through the earth strata, where it is reflected and refracted by various subsurface formations, and returns to the surface where receivers called geophones are used to detect the waves and convey them to a recorder for analysis. By analyzing the time it takes for the seismic waves to reflect off subsurface formations and return to the surface, formations can be mapped and potential oil or gas deposits identified" (ESIA 2017, pp. 5-6).

a due diligence site visit of AOC/Tullow's assets in Kenya and Ethiopia, and engaged with communities and government representatives in Block 12A. An Environmental and Social Action Plan (ESAP) was agreed with AOC to address the gaps identified.⁷

11. Throughout the period of its investment and by 2017, AOC successfully completed the ESAP items. IFC monitored AOC's ESAP implementation and broader E&S performance at the corporate and asset levels in accordance with IFC's Policy on Environmental and Social Sustainability, and provided support where needed.
12. **E&S assessment and activities in the context of IFC's investment with Delonex (2013-2022).** In 2013, IFC conducted E&S due diligence related to its intended investment in Delonex, and prepared an ESRS and ESAP for disclosure. As Delonex did not hold any assets at the time, IFC's E&S due diligence focused on Delonex's corporate E&S management systems. The ESAP required Delonex to develop corporate E&S policies and procedures to guide the E&S due diligence for each potential asset to be acquired in the future and manage it in accordance with IFC PSs.⁸ Based on IFC's supervision throughout its investment, Delonex implemented its E&S policies and procedures in accordance with the PSs.
13. All ESAP items were completed by Delonex by the time of IFC's exit. Throughout its investment in Delonex, IFC's role was to: (i) monitor the implementation of its corporate level E&S policies and systems; (ii) review the potential E&S risks and impacts of potential assets being acquired and relevant mitigation measures; and (iii) supervise the implementation of Delonex's E&S policies and procedures at the asset level in accordance with the PSs.

IV. CAO COMPLAINT

14. The Complaint received by the CAO in August 2019 from the communities in the three counties was supported by a local civil society group, the Kerio Valley Community Organization, and the Justice and Corporate Accountability Project, a Canadian-based legal clinic. The Complaint focused on several concerns related to oil exploration in Block 12A. As described in CAO's Assessment Report, the concerns related to the northern and southern areas of Block 12A.⁹

A. Complainants from the Southern Part of Block 12A

15. The Complaint raised the following concerns about exploration activities undertaken between 2014 and 2016 by AOC/Tullow:

- **Stakeholder engagement process:** Complainants alleged that AOC/Tullow only engaged with government officials and chiefs without engaging the community members and their leaders. They also raised issues regarding (i) lack of consultation

⁷ <https://disclosures.ifc.org/project-detail/ESRS/36699/africa-oil>

⁸ <https://disclosures.ifc.org/project-detail/ESRS/33557/delonex-energy>

⁹ CAO Assessment Report Regarding Concerns in Relation To IFC's Investment in Delonex Energy and Africa Oil (#33557 and #36699) in Kenya, October 2020, https://www.cao-ombudsman.org/sites/default/files/downloads/CAOAssessmentReportDelonex_AfricaOil_01.pdf, p.3-4

for the ESIA; (ii) limited project information; (iii) no access to the ESIA; and (iv) lack of a functioning grievance mechanism.

- **Access to land:** Complainants alleged that their land was accessed without their consent and compensation was negotiated with the chief and not with each landowner.
- **Compensation for temporary access to land:** Complainants indicated that compensation rates were inadequate and low, and that they differed by county.
- **Impacts of the seismic surveys on land, buildings and sacred sites:** Complainants alleged that the exploration activities caused erosion and that their land was not properly restored. It also caused the destruction of sacred sites.
- **Impacts on water and health:** Complainants raised issues related to chemicals used in exploration activities, such as: (i) water contamination; (ii) illness in humans and livestock; (iii) impacts on wetlands; (iv) animal miscarriages and/or deaths; and (v) migration of bees away from hives.
- **Local employment and working conditions:** Complainants alleged that only a few local people were hired by the project, mainly drivers and housekeepers, who were underpaid and overworked.¹⁰
- **Allegations of gender-based violence:** Complainants raised allegations of gender-based violence by employees involved in Block 12A. CAO did not receive an individual complaint or identify a specific situation.
- **Corporate social responsibility programs:** Complainants stated that Tullow did not provide scholarships to the communities, as had been promised.
- **Right to natural resources and benefit sharing:** Complainants had questions about who would benefit from oil discovery on their land and what processes were in place.
- **Risks to land titles:** Complainants highlighted the risks of land grabs due to the potential increase in land value because of the exploration activities.

B. Complainants from the Northern Part of Block 12A

16. The Complaint expressed concerns related to the 2D seismic surveys conducted by Delonex in 2018 as follows:

- **Stakeholder engagement process:** Complainants alleged that Delonex only engaged with the chief and not with the community members. They also alleged that Delonex's Community Liaison Officers (CLOs) did not speak the local language.

¹⁰ Id.

- **Compensation for temporary access to land:** Complainants alleged that Delonex’s compensation rates were inadequate and compensation was not provided directly to the affected landowners.
- **Impact of seismic surveys on the land and restoration works:** Complainants claimed that Delonex did not restore their land following the seismic surveys.
- **Security and use of water:** Complainants alleged that explosives were used for the seismic surveys and explosive wires were left behind, putting children at risk. They also pointed out Delonex’s use of scarce water to wash vehicles and machines.
- **Local employment:** Complainants alleged that Delonex did not prioritize employment for local communities despite their being qualified. Employment opportunities were shared only with the chiefs, who passed these opportunities to their relatives.
- **Working conditions:** Complainants alleged that the few locally hired individuals were “overworked and underpaid.” Delonex allegedly did not provide medical assistance, and chemicals used caused respiratory infections and other health problems.

V. MANAGEMENT RESPONSE

17. IFC Management appreciates CAO’s assessment and efforts in the dispute resolution process for the Complaint. 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 responding to concerns in the Complaint for activities in the Southern part (2014-2016) of Block 12A, relevant for AOC and Tullow; and the second for the Northern part (2018), relevant for Delonex.

A. Concerns in Relation to Activities of AOC/Tullow in the Southern Part of Block 12A

18. **Stakeholder engagement process.** Based on IFC’s review of the ESIA (2014) during its due diligence, consultations were held with communities and local civil society across Block 12A. The consultations included elders, youth and women, and covered the Complainant communities—Salawa, Muchukwo, Kapluk, Katibel, Kabutiei, and Keturwo. Records indicate that AOC/Tullow explained the proposed drilling program and described the purpose and procedure of the ESIA process. Minutes of the consultations reviewed by IFC show that communities and other stakeholders (women, youth, NGOs, community leaders, regional and local governments, religious leaders) were able to comment, ask questions, and raise concerns directly to AOC/Tullow regarding the proposed seismic survey and drilling program. IFC assessed AOC/Tullow’s engagement process to be in accordance with IFC PSs and the ESIA was disclosed on Tullow’s website.¹¹ As part of information dissemination efforts for Block 12A, Tullow prepared a pamphlet describing the drilling process and potential impacts on communities. It also provided the contact information of the CLO to raise complaints. IFC reviewed Tullow’s community grievance mechanism and found it to be in accordance with PS requirements.

¹¹ <https://www.tulloil.com/application/files/4415/8504/7326/21ST-final-block-12a-esia-drilling-report--2015.pdf>

19. **Access to land.** During its due diligence (April 2015) and first supervision (December 2015) site visits, IFC reviewed AOC/Tullow's land access procedures for exploration and site assessment (applicable to seismic surveys and exploratory drilling) in relation to Block 12A, which it found to be in accordance with PS requirements. It contained clear procedures for assessing E&S impacts on land; for conducting consultations with the affected people as well as with community leaders, particularly when community land was at issue; and a clear approach for seeking community consent to access the land temporarily. For example, AOC/Tullow identified and consulted with each landowner affected by the drilling of Cheptuket-1 (about 4.5 ha) to temporarily lease their land in 2016. IFC found no evidence of threats to community members in relation to AOC/Tullow accessing the land when reviewing the grievance logs or minutes of community meetings, nor was it made aware of any when engaging with the company.

20. **Compensation for temporary access to land.** As per IFC's review during its due diligence, AOC/Tullow implemented a compensation framework that integrated the role of the Kenya National Land Commission in valuing affected assets and the requirements of PS5 (Land Acquisition and Involuntary Resettlement). The valuation of assets considered factors such as tenure systems, published rates for crops, economic trees, temporary structures and graves. For temporary access to the land for Cheptuket-1, compensation included an additional 15 percent disturbance allowance. Meetings with landowners and compensation agreements were observed by the Elgeyo Marakwet National Land Commission Country Land Management Board and a representative of the Ministry of Energy and Petroleum.

21. **Impact of seismic surveys on land, building and sacred sites, and restoration works.** Community participation was a key component throughout the process of assessing impacts due to seismic surveys and mitigating temporary impacts on land and crops (usually about one month's duration) through compensation. Land was restored and handed back when the seismic surveys were concluded, as observed during IFC's supervision visit (December 2015). Based on IFC's review, AOC/Tullow's decommissioning and restoration procedures for exploration activities (including seismic surveys) involved the following key steps: (i) re-vegetation; (ii) alignment of topography; (iii) reestablishment of drainage; (iv) restoration of soil structure and quality; and (v) a close out survey to confirm removal of all equipment and related infrastructure. Any affected asset was assessed and compensated for, and sacred sites were avoided as per the informational pamphlet.

22. **Impacts on water and health.** Water for drilling and washing purposes was obtained from groundwater boreholes, with appropriate government approvals. The boreholes were metered and monitored for quantity and quality per AOC/Tullow procedures and in accordance with the PSs. Water consumption was monitored and no impacts to other users were identified.

23. **Local employment and working conditions.** As exploration of Block 12A did not result in active wells, there were fewer employment opportunities than expected. However, AOC/Tullow continued to facilitate access to employment by the local communities in other areas of its operations. It did so by advertising employment in public areas/forums as well as communicating these opportunities through the CLOs. Occupational health and safety procedures, as well as a labor grievance mechanism, were in place, in accordance with the PSs.

24. **Allegations of gender-based violence.** Tullow had a clear policy of no tolerance for sexual harassment and retaliation. Complaints related to gender-based violence could be raised through the grievance mechanism and Tullow's policy committed it to conducting a confidential process as well as imposing a set of disciplinary actions. IFC was not made aware by AOC/Tullow of any complaints of gender-based violence in Block 12A, either during its due diligence (April 2015) and supervision visit (December 2015), when it engaged with communities, or based on the documentation it reviewed, such as grievance logs and minutes of community engagements.

25. **Corporate Social Responsibility programs.** Communities in the Elgeyo Marakwet and Baringo counties benefited from education and water projects. Specifically, school scholarships were provided to secondary and university students as well as skills development and training opportunities in the oil and gas sector if oil exploration led to production. Community water projects included boreholes and water pans for livestock.

26. **Right to natural resources and benefit sharing.** As exploration did not lead to any active wells, there were no revenues or project benefits to be shared. During consultations with the communities, AOC/Tullow did emphasize that exploratory drilling could not guarantee oil discovery.

27. **Risks to land titles.** IFC reviewed the land access procedure used by AOC/Tullow and how it was implemented. It included a process for identifying and confirming land ownership and use, and verifying this information through local government entities as well as with community leaders. This process was particularly important in recognizing community land and customary ownership and in minimizing opportunities for land grabs.

B. Concerns related to Delonex Activities in the Northern Part of Block 12A

28. **Stakeholder engagement process.** IFC assessed Delonex's stakeholder engagement was in accordance with the PSs, through review of project-related documentation, such as minutes of the consultations, and by direct engagement with community members during IFC's site visit in July 2018. Delonex conducted numerous community engagements in the counties of Baringo, Elgeyo-Marakwet and West Pokot, through town halls, community bazars, and meetings at schools and churches, to explain the seismic surveys. Additional engagements were conducted with affected persons along each of the seismic lines. Delonex also recruited three experienced CLOs who previously worked with communities in Block 12A through Tullow and spoke the local language. Based on IFC's review of available records from the 2017 ESIA consultations, as well as community meeting records/logs, engagements were conducted, among others, with the following communities involved in the Complaint: Tiaty, Kuikui, Marigut, Arror, Kinyach and Barwesa. Engagements were specifically carried out in the local language and included elders, village chiefs, women, youth, herders and other community members as well as county government representatives.

29. **Compensation for temporary access to land.** IFC found that Delonex met the requirements of PS5 in compensating for and mitigating impacts related to temporary land access. Temporary impacts on land use and agricultural activities lasted about a month as part of the seismic surveys. IFC reviewed Delonex's supervision of the contractor and the latter's implementation of the site-specific standards and procedures that had been put in place with regard

to PS requirements, and found them satisfactory. In this regard, IFC reviewed samples of Permit to Access forms allowing Delonex temporary land access for the purpose of conducting the seismic surveys, which were agreed to and signed by the landowner in coordination with village elders and chiefs.

30. Delonex hired a local accredited valuer to review the compensation rates in the impacted areas, including in the three counties (West Pokot, Baringo, and Elgeyo Marakwet) mentioned in the Complaint. Based on the comparison of rates in the three counties, Delonex proposed harmonized compensation rates across the three counties by taking the highest crop compensation rates as the benchmark, which was in accordance with PS5 requirements. The revised rates were agreed to by the three county governments and shared with communities prior to the start of seismic surveys. During the July 2018 visit, IFC reviewed a sample of compensation agreements, amounts paid and details of the affected community members.

31. **Impact of seismic surveys on the land, and restoration works.** IFC reviewed Delonex's record keeping of valuation assessments, land georeferencing, compensation, and restoration for the affected communities and found they were in line with IFC requirements. The implementation of land restoration and rehabilitation procedures was also reviewed through records of the grievance mechanism.

32. **Security and use of water.** IFC notes that Delonex used soluble explosives, which dissolve if they do not explode, and that this is in accordance with Kenya's Ministry of Mining regulations. During its supervision visit (July 2018), IFC observed Delonex's audit of the contractor in managing and recording all explosives and clearing the area. Additionally, groundwater boreholes were used with the relevant government approvals. Consumption was monitored to track potential impacts on other users.

33. **Local employment.** The three county governments agreed with Delonex to facilitate access to employment and business opportunities for communities in proportion to the level of seismic surveys being conducted in each of the three counties (i.e., Baringo 65 percent, Elgeyo Marakwet 19 percent, and West Pokot 16 percent) as part of the "benefit sharing agreement." This proposal was critical in minimizing further social conflicts ongoing at the time and was communicated in town hall meetings as part of Delonex's stakeholder engagement strategy. Job advertisements were published in public places in the project area, and interviews were conducted.

34. **Working conditions.** The seismic survey contractor was required to adhere to and implement Delonex's policies and standards on health and safety and working conditions, which were in accordance with IFC PSs. Health and safety inductions and daily toolbox talks were conducted with the workers. The clinic was accessible to all workers and health and safety data was recorded and reported. Delonex maintained close supervision of the contractor, and any grievances raised from the communities and the local workers were to be reported to Delonex. No grievances related to working conditions or salary payments were reported in IFC's review and supervision.

VI. CONCLUSION

35. 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/MIGA may not have complied with its E&S Policies; and c. whether the alleged harm is plausibly linked to the potential non-compliance.”¹² While respecting CAO’s independence in its eligibility decision, Assessment Report and Dispute Resolution Report findings, Management has reviewed the allegations set forth in the Complaint and believes that criterion b., regarding “preliminary indications that IFC may not have complied with its E&S Policies,” has not been met, as explained in the following paragraphs.

36. In relation to AOC (and Tullow as the operator for Block 12A),

- IFC reviewed the ESIA (2014) for the proposed exploratory drilling activities and engaged with the communities in Block 12A during its E&S due diligence;
- IFC closely supervised AOC/Tullow’s implementation of their E&S management procedures, particularly in relation to land access, compensation and grievance mechanism, and found them satisfactory; and
- IFC assessed AOC/Tullow’s community engagement approach and consultations undertaken and found them to be in accordance with IFC PSs.

37. In relation to Delonex,

- IFC reviewed Delonex’s site-specific ESIA (2017) for its seismic surveys and found it to be in compliance with PS requirements, as it identified the potential E&S risks and impacts as well as mitigation measures for each of the planned seismic corridors, based on a broad and inclusive community engagement process;
- IFC supervised the implementation of Delonex’s E&S management procedures, including grievances received from communities; these were adequately managed by Delonex and no significant issues were raised by the communities during IFC’s engagement with them in 2018 related to activities in Block 12A;
- IFC assessed and supervised Delonex’s stakeholder engagement activities and found them in line with PS1 (Assessment and Management of Environmental and Social Risks and Impacts) requirements, comprehensive, open and transparent, even during a time of high social tensions; and
- IFC reviewed Delonex’s harmonized compensation rates across all three counties and implementation of the compensation process, which aimed to provide

¹² CAO Policy, para 91(b) at: <https://documents1.worldbank.org/curated/en/889191625065397617/pdf/IFC-MIGA-Independent-Accountability-Mechanism-CAO-Policy.pdf> (CAO Policy).

consistency in compensation for all affected people and recognize customary land ownership and usage, and found these to be in accordance with PS5.

38. AOC (Tullow as the operator) and Delonex had a good understanding of the socio-economic context of the area and attention was paid to engaging with communities around key issues important to them, such as water, land and employment. This was reflected in AOC/Delonex E&S management procedures. AOC/Tullow and Delonex both welcomed stakeholders and communities to raise their concerns and grievances, and reiterated that they had not engaged in any retaliatory action. In fact, Delonex welcomed the dispute resolution process in order to find a way forward. Delonex and AOC have since relinquished their interests in Block 12A, and they have not been present on site since October 2018.

39. Based on IFC's due diligence and supervision as well as engagement with the communities, IFC believes both AOC/Tullow and Delonex demonstrated their commitment to the IFC PSs. Delonex, as the operator of Block 12A in 2018, was responsive to Complainants' concerns, even after terminating its activities and through its engagement in the CAO dispute resolution process.

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 4: Considerations Relevant to the Appraisal per CAO Policy

The CAO Policy¹ provides for the compliance appraisal to consider 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).	CAO has concluded that in recognition of IFC's exit from its Delonex Energy Project, a compliance investigation would not provide value in terms of accountability, learning, or remedial action in this case.
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).	As outlined in the body of this report, CAO finds preliminary indications of non-compliance. CAO notes that IFC has not clearly demonstrated that it dealt appropriately with issues raised by the complaint, nor has IFC acknowledged non-compliance with relevant E&S Policies.
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).	IFC's Management Response does not include any statements indicating plans to undertake remedial actions to address issues raised by complainants for appraisal.
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).	Not applicable.

¹ CAO. June 28, 2021. CAO Policy, para. 92.